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Vol. I

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 296.

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, AND ALFRED M. BARRETT, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT, APPELLANTS,

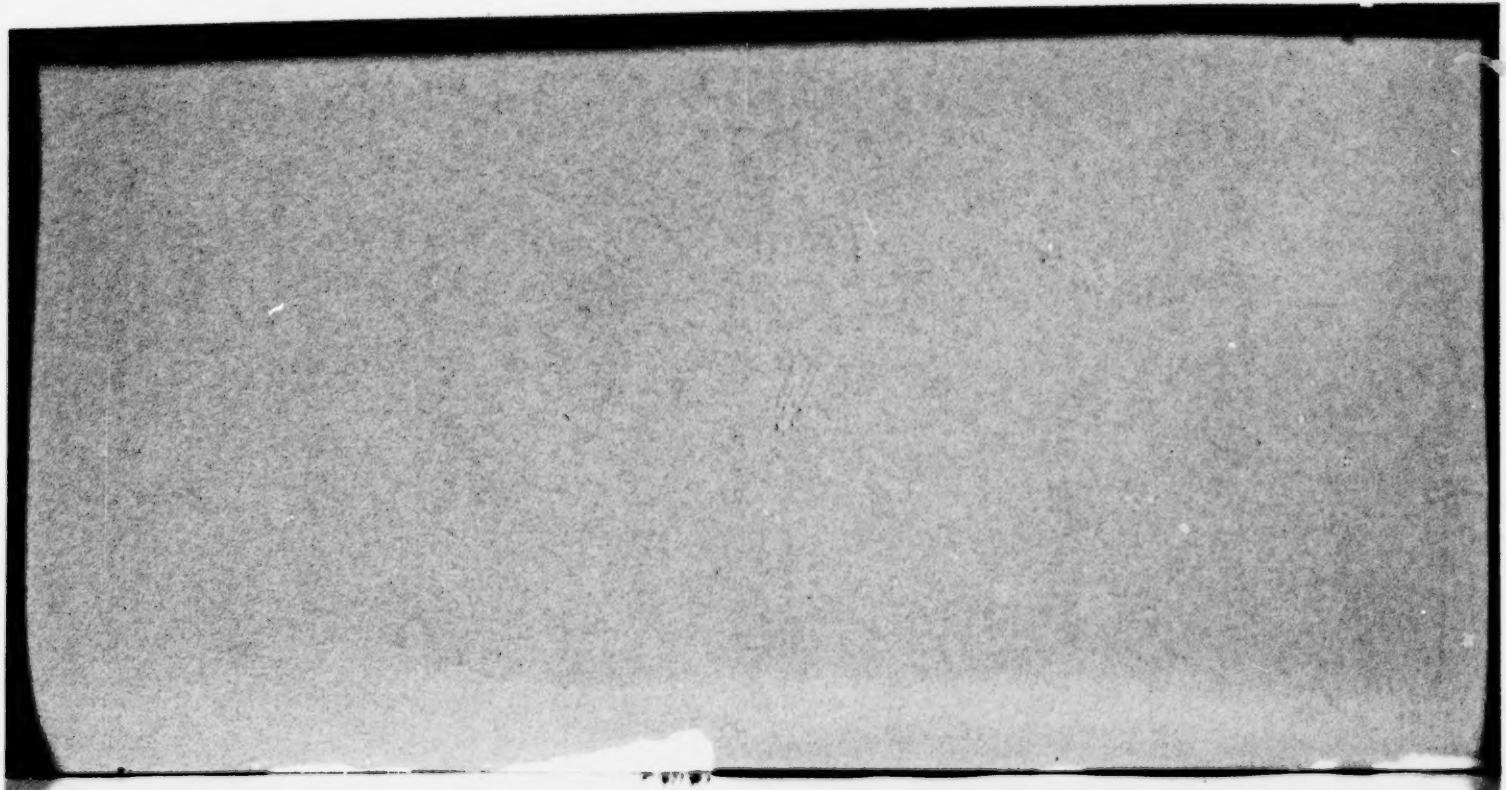
vs.

NEW YORK & QUEENS GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 11, 1921.

(28,225)



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vs.

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District Court of the United States, Southern District of New York.

In Equity.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Travis H. Whitney, Charles S. Hervey, and Frederick J. H. Kracke, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Bill of Complaint.

Shearman & Sterling, Solicitors for Complainant, 55 Wall Street, New York.
John A. Garver, of Counsel.

2 District Court of the United States, Southern District of New York.

In Equity.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Travis H. Whitney, Charles S. Hervey, and Frederick J. H. Kracke, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Bill of Complaint.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The New York and Queens Gas Company brings this its bill of complaint against Charles D. Newton, as Attorney General of the State of New York, Denis O'Leary, as District Attorney of the
3 County of Queens, in the State of New York, and Travis H. Whitney, Charles S. Hervey, and Frederick J. H. Kracke, constituting the Public Service Commission of the State of New York

for the First District; and thereupon your orator alleges, upon information and belief, and complains:

I. Your orator is a corporation duly incorporated on or about July 12, 1904, pursuant to the Transportation Corporations Law of the State of New York, for the purpose of manufacturing and supplying gas in the cities, villages and towns in the State of New York, and more particularly in the City of New York, within the Borough of Queens, County of Queens and State of New York.

II. The defendant Charles D. Newton resides in the Village of Geneseo, in the State of New York, and was duly elected and is now acting as the Attorney General of the said State, and has an office for the transaction of business at No. 51 Chambers Street, in the Borough of Manhattan, City of New York.

III. The defendant Denis O'Leary resides in the Borough of Queens, City of New York, in the State of New York, and was duly elected and is now acting as the District Attorney of the County of Queens in the said State.

IV. The defendants Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kracke, constitute the Public Service Commission of the State of New York for the First District, within which is the said Borough of Queens of the City of New York, and are now acting as such Commissioners, having been duly appointed under and by virtue of the provisions of Chapter 48 of the Consolidated Laws of the State of New York, prescribing their powers and providing for the regulation of certain public service corporations, in-
4 cluding your orator. The defendants Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kracke, are citizens of the State of New York and reside in the City of New York, and have their principal office for the transaction of business as such Commission at No. 49 Lafayette Street, in the Borough of Manhattan, City of New York. Under the said Act, the said Commission is, among other things, empowered to fix the maximum price chargeable for gas in the City of New York, but, in so doing, they cannot fix a price in excess of that fixed by a valid statute.

V. On or about July 29, 1904, your orator acquired, and now owns, operates and maintains, a certain plant and gas works located in the former village of Flushing, in the Third Ward of the Borough of Queens, City of New York, together with a system of mains and service pipes for the distribution of gas from such plant and works to various portions of the said Ward; and it also duly acquired and now owns and exercises various franchises or municipal consents, authorizing it to lay, maintain and operate mains, pipes and conductors in the streets, highways and public places in the territory comprising the said Third Ward.

VI. Your orator is required by law, under penalty and forfeiture, to supply gas, upon application of the owner or occupant, to all buildings and premises within one hundred feet of any mains laid by it, and to furnish gas meters to its consumers without rent or

charge, and may be and has been required by the said Public Service Commission, under the said Chapter 48 of the Consolidated Laws of New York, to make reasonable extensions of its mains and plant to serve new and additional consumers of gas.

VII. By Chapter 125 of the Laws of 1906, of the State of New York, it is provided, among other things, that a corporation
5 engaged in the business of manufacturing, furnishing or selling illuminating gas in the said Third Ward, shall not charge or receive, from and after 1910, for gas manufactured, furnished or sold by it to the public, a sum in excess of one dollar per thousand cubic feet; and the said Act further regulates the quality and pressure of gas and provides severe penalties for violations of any of the provisions thereof.

VIII. The capital stock of your orator consists of six thousand shares, of the par value of $600,000; and your orator has outstanding five per cent First Mortgage Bonds, of the par value of $816,000, payable on August 1, 1934. The said stock and some of the said bonds were duly issued in payment for the reasonable value of the plant and franchises purchased by your orator; and the remainder of the said bonds have been duly issued from time to time to obtain funds for the enlargement and extension of the plant and property of your orator.

Your orator has a present floating debt of at least $265,000, representing money borrowed to meet the requirements of its business.

IX. Since its organization in 1904, your orator has managed its business prudently, but has paid no dividends to its stockholders; it has devoted to the prosecution, development and expansion of its business certain income which might have been used for dividends; and, in addition, it has, from time to time, borrowed large sums of money, as aforesaid, for the enlargement and extension of its manufacturing and distributing plant. On account of the inadequacy of its earnings, it has also been obliged, during the past year, to borrow money to pay interest on its bonded indebtedness.

X. The reasonable value of your orator's property devoted to its gas business as of December 31, 1918, including additions made during the year, was not less than $1,492,976; and the cost
6 of reproducing the said property during the year 1918 and at the present time would greatly exceed that amount. In addition thereto, your orator is possessed of going value and other intangible assets of great value; and there now exists an aggregate deficiency in your orator's earnings below seven and one-half per cent upon the value of the said property devoted to the gas business, in the sum of at least $300,858.41, and including interest compounded at six per cent per annum, the sum of at least $352,023.07; and the aggregate deficiency in your orator's said earnings below even six per cent upon the value of the said property devoted to the gas business, already amounts to at least $141,713, and including interest compounded at six per cent per annum, $157,765.95,

which said aggregate deficiency, with interest so compounded, should be added to the value of your orator's tangible property above stated as going value, upon which your orator is entitled to a return. The said Public Service Commission for the First District has, at various times since the year 1910, found and determined that a reasonable average return upon the value of the property used in the public service, by your orator and by other corporations engaged in supplying gas and electric service in the said Borough of Queens and under similar conditions elsewhere in the City of New York, was and is not less than seven and one-half per cent per annum, and a return of seven and one half per cent per annum upon the value of such property is a reasonable return and is the rate expected and usually realized, in the locality where such property is located, upon investments of a similar nature, with due regard to the risk attending them.

XI. In and by the said Chapter 48 of the Consolidated Laws of the State of New York, the said Public Service Commission was and is empowered to prescribe uniform methods of keeping accounts, records, books and other data of financial operations and of
7 properties, to be observed by gas corporations; to examine fully into the accuracy and completeness of such accounts and records and into the matters therein set forth and into the methods, practices, regulations and property employed by such gas corporations in the transaction of their business; to require annual reports of their financial operations, properties, and the like, to be made under oath; to require the amendment or correction of any such report, if the same is found to be in any respect defective or erroneous; and, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. The said Commission, in the year 1908, prescribed a Uniform System of Accounts to be observed by gas corporations, including your orator, and from time to time, it has prescribed the form and detail of such annual reports; and it has ever since exercised fully, as to your orator, the powers of scrutiny and supervision conferred upon the said Commission by the said statute. Your orator has conformed in all lawful respects to the said system of accounts as prescribed by the said Commission and has kept its books, capital accounts, operating statistics, and the like, in full compliance with the lawful directions of the said Commission, which has exercised continuous supervision over the accounts, operations, receipts, operating expenditures, finances, and affairs of your orator. In and by the said accounts of your orator, so kept in pursuance of the provisions of statute and the said Uniform System of Accounts and under such supervision of the said Commission, and in and by the duly verified reports of your orator, made according to law, the receipts and expenditures of your orator, and full information regarding the gas operations and business of your orator, have been and are from time to time furnished to the said Commission, as directed or desired by it, and have been and are under the continuous

8 scrutiny, audit and check of the said Commission and its authorized representatives; and the said Commission has from time to time reported to the Legislature the facts so disclosed and has informed the general public thereof, by and in the reports required of the said Commission by the said Chapter 48 of the Consolidated Laws of the State of New York.

XII. During the year ending December 31, 1918, the gross operating revenues from your orator's gas business, at the said statutory rate of one dollar per thousand cubic feet, amounted to $344,676.09, and the cost of manufacturing and distributing said gas, together with taxes and other operating expenses, amounted to $314,060.45, leaving a net income from the business operations of your orator of only $30,615.64, which is less than two and one-quarter per cent on the minimum value of your orator's investment as hereinbefore set forth, and which would represent a return of seven and a half per cent upon a principal sum of only $408,208, or a return of six per cent upon a principal sum of only $510,260.

The present value of your orator's investment in property used in manufacturing and distributing gas within the said City of New York, exclusive of going value and of any intangible property, is, as above stated, not less than $1,492,976. The principal sum upon which a return of seven and one-half per cent was earned during 1918, is, as above stated, not more than $408,208, and the minimum value of the property upon which your orator is deprived of any return by the said Act of 1906, is not less than $1,084,768, and is in fact a substantially greater quantum of property at the present time, while the maximum value thereof, based upon the present cost of reproduction of the said property, is an even greater amount.

A return of only six per cent upon the minimum value aforesaid of your orator's investment in its gas property would amount to not less than $89,578 per annum, or 27.34 cents per thousand 9 cubic feet of gas sold. A return of seven and one-half per cent upon the minimum value aforesaid would amount to not less than $111,973 per annum, or 34.18 cents per thousand cubic feet of gas sold. The said net earnings of $30,615.64 for the year ending December 31, 1918, amounted to only 9.35 cents per thousand cubic feet of gas sold. The deficiency in your orator's earnings during the said year below six per cent on the minimum value of your orator's said investment amounted to $58,962.36, or 17.99 cents per thousand cubic feet of gas sold; and the similar deficiency below seven and one-half per cent amounts to $81,357.36, or 24.83 cents per thousand cubic feet of gas sold; and this deficiency is caused directly and solely by the arbitrarily restricted price at which your orator has been and is compelled by the said Chapter 125 of the Laws of 1906 of the State of New York, to supply gas to your orator's customers.

Your orator's average daily sales during the winter months amount to about 923,010 cubic feet, which, at 24.83 cents per thousand, establishes as your orator's present average daily loss since January 1, 1919, by reason of the said statutory rate, the sum of $229.18 per

day, which loss your orator can by no possible means recover. This continuing daily loss is in addition to the deficiency of $81,357.36 in your orator's earnings during the year ending December 31, 1918. There is no prospect of any material increase during the year 1919 in the net earnings on the value of your orator's property, over those of 1918.

XIII. The cost of manufacturing and distributing gas has greatly increased since the year 1918, by reason of the increase in the cost of coal, enriching oil and all other materials used in the manufacture and distribution of gas, the large advance in the wages of employees, and the substantial increase in taxes; and there is a certainty that there has thus far been, and will continue to be, a very substantial increase in such cost, during the year 1919.

10 XIV. During no year since its organization in 1904, have the earnings of your orator been sufficient to provide a return of as much as six per cent upon the reasonable value of its property devoted to the public use.

XV. The said Public Service Commission of the State of New York, for the First District, made an order on March 19, 1915, subsequently modified as to the time of performance by an order dated February 1, 1918, directing and requiring your orator to extend its mains and services from their present terminals to the distant and isolated community of Douglaston, including Douglas Manor. A compliance with the said order would require the installation of an entirely new system in an area not now served by your orator, involving the laying of six miles of transit mains to Douglaston, upon which there would be no customers, and thereafter six and one-half miles of distributing mains in the Douglaston community, all in order to reach about two hundred customers who are already supplied with electric current,—an average of sixteen customers per mile of main, which is less than one-fifth of the present average of customers upon mains of your orator. Compliance with the said order would require an estimated expenditure of from $130,000 to $250,000, the amount being dependent upon whether your orator may be required by the said Commission to instal a high or a low pressure system in the said Douglaston territory. The income from the gas to be sold to the prospective or potential customers in the said territory, even if the price of gas to them were increased from the present statutory maximum of one dollar to two dollars per thousand feet, would not be sufficient to pay the actual operating cost of supplying such customers with gas. Such income would therefore provide no return whatever upon the investment which your orator is directed to make in constructing such transmission and distributing mains. The return received by your orator upon the value of
11 the aggregate of its property presently devoted to the public use would therefore be still further reduced by compliance with the said order, and would thereafter amount to only one and three-tenths per cent or one and two-tenths per cent, according to whether a high pressure or a low pressure system were to be used to

supply gas through said extension. Your orator has accepted the said order of the said Commission, and intends to comply therewith as soon as practicable. By reason of the circumstances set forth in this paragraph and elsewhere in this bill, it has been and is and will continue to be altogether impossible for your orator to procure from any source the funds requisite for the construction of the said mains and extensions and furnish gas in the said Douglaston area, until your orator is enabled, by a decree of this Court, to charge an adequate rate for gas supplied by it to its customers. As soon as your orator is relieved from the disabling and oppressive effects of the said Act of 1906, and is permitted to charge an adequate rate, your orator will be enabled to secure from investors or through loans the necessary funds wherewith to make the expenditures requisite for the building of the said extension, and the said order of the Commission will be complied with by your orator.

XVI. By the Constitution of the United States, and particularly by the Fourteenth Amendment thereto, your orator is entitled to charge a price for its gas sufficient to cover the reasonable cost of conducting its business, including the amount required to renew and replace its plant and equipment, when necessary, so as to maintain your orator's investment therein unimpaired and to meet contingencies, accidents and losses, and also to provide a fair return upon the reasonable value of its property devoted to the public use. The maximum price of one dollar per thousand cubic feet for gas, fixed
12 by the said Act of 1906, has been, is and will continue to be wholly inadequate, in that it does not permit your orator to earn a reasonable return upon the fair value of its property devoted to the public use; and, in fixing the said maximum price, the said Act of 1906 has impaired, now impairs, and will continue to impair the obligation of your orator's contract with the State of New York, in violation of Section 10, Article I, of the Constitution of the United States, and has deprived, now deprives and will continue to deprive your orator of its property without due process of law, and has denied, now denies and will continue to deny it the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the said Constitution.

XVII. Your orator is advised by counsel and verily believes that the said Public Service Commission of the State of New York for the First District, has no power to permit your orator to increase the rate which it may charge for gas supplied in excess of the maximum rate of $1.00 per thousand cubic feet prescribed by the said Act of 1906. If your orator should so attempt to increase its said rate, it would be unable to collect the same; for it is provided by the said Chapter 48 of the Consolidated Laws of the State of New York that the charging by any Gas Company of any rate in excess of that permitted by law, shall be a complete defense to any action by such company against any consumer for any unpaid bill. Furthermore, it would be the duty of the defendants herein, Charles D. Newton as Attorney-General of the State of New York, and Denis O'Leary as District Attorney of the County of Queens, State of New York, to

prosecute your orator for each such violation of law to endeavor to enforce and collect the enormous penalties prescribed by the said law; and it would be the duty of the defendants Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kracke to cause suits
13 in mandamus or for injunction to be brought against your orator under Section 74 of said Chapter 48 of the Consolidated Laws of New York, for the purpose of preventing your orator from so increasing its rate.

XVIII. Your orator now has more than 10,000 customers in the said Ward to whom it is daily selling and distributing gas. The amount so sold and distributed during the year ending December 31, 1918, was 327,585,600 cubic feet. Many of said customers are financially irresponsible and are only temporarily residents of New York. Monthly bills for gas are rendered to its customers by your orator and unless such bills are promptly paid, the supply of gas to delinquent customers is discontinued by your orator, as authorized by law. If your orator should make a charge to any consumer, in excess of the statutory rate of one dollar per thousand cubic feet, your orator is informed and believes that such consumer would refuse to pay such charge, upon the pretext that the making of such charge is a complete defense to your orator's entire claim against such consumer. If your orator should thereupon discontinue service to such consumers and remove the meters, your orator is advised and believes that it would be at once subjected to a multiplicity of suits by such consumers, to compel the restoration of such meters and service, as well as to prosecutions for the fines and penalties prescribed by the said Act, which prescribes a penalty of $1,000 for each separate charge to any consumer in excess of the said statutory rate of one dollar per thousand cubic feet. If your orator should make a charge in excess of said one dollar rate each month to each of its consumers, the aggregate of the penalties so incurred in one year would amount to over $120,204,000, and the damage to your orator would be irreparable and absolutely destructive of all its assets, franchises and property; and a refusal or failure to observe and comply with said statute, if only for the purpose of having the same tested in good faith
14 in a court of law, would involve a risk of absolute ruin to your orator and the entire destruction and confiscation of its property, by reason of the enormous fines for which it would be the duty of the defendants Newton and O'Leary to institute suit, in accordance with the requirements of Section 1962 of the Code of Civil Procedure of the State of New York. Your orator is, therefore, without adequate remedy at law for the redress of the wrongs suffered by the enforcement of said confiscatory rate and the enforcement of the said Act of 1906; and such injury to your orator is irreparable except through the intervention of a court of equity.

XIX. Your orator is advised by counsel, and therefore avers and claims, that there is no remedy, except in equity, to test adequately the validity of the said Act, and that, in the absence of such remedy in equity, the penalties provided in the said Act would be unreasonable and confiscatory, and would deprive your orator of its

liberty of contract and of its property, without due process of law and without just compensation, and would likewise deny to it the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; on which account your orator invokes the jurisdiction of this Court, to protect it against the aforesaid threatened invasion by the defendants of its inherent rights under and guaranteed by the said Constitution.

XX. The reasonable value of your orator's property, which is impaired by the said statutory rate and by the threatened acts of the defendants aforesaid, and the amount involved in this suit, is largely in excess of $3,000.

XXI. To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the defendants may each answer the premises, but not upon oath or affirmation, the benefit whereof is hereby expressly waived by your orator, it now prays:

1. That it be adjudged and decreed that Chapter 125 of the laws of 1906, in so far as it provides that your orator shall not charge or receive for gas manufactured, furnished or sold in the said Third Ward of the Borough of Queens, a sum per one thousand cubic feet in excess of a rate of one dollar per thousand cubic feet, from and after the year 1910, is illegal and void, because in contravention of Section 10 of Article I of the Constitution of the United States, and of the Fourteenth Amendment to the said Constitution.

2. That it be adjudged and decreed that your orator has no adequate remedy at law for the injury which would result from the further enforcement of the said Act, and that such injury would be irreparable.

3. That it be adjudged and decreed that your orator be granted a writ of permanent injunction, issuing out of and under the seal of this Honorable Court against the defendants, restraining them and each of them and each of their officers, agents, servants and employees and any and every person acting under and by virtue of the authority of the said Act, from in any way enforcing or attempting to enforce the provisions of the said Act of 1906 against your orator, or from bringing any actions thereunder to enforce the said penalties against your orator, or from bringing any actions in mandamus or for an injunction in any court whatsoever, for the purpose of compelling compliance by your orator with the said Act.

4. Your orator further prays that your Honors grant unto your orator a writ of subpœna ad respondendum, issuing out of and under the seal of this Honorable Court, to be directed to the said defendants, commanding them and each of them, on a certain day and under a certain penalty, to be therein inserted, to appear before your Honors in this Honorable Court, and then and there full, true, direct and perfect answer to make to all and singular the premises, and further to stand, do, perform and abide by such further order and decree as to your Honors may seem meet.

And your orator will ever pray, etc.

NEW YORK AND QUEENS GAS COMPANY,
By ROBERT A. CARTER,
Treasurer.
SHEARMAN & STERLING,
Solicitors for Complainant.

55 Wall Street, Borough of Manhattan, New York City.

JOHN A. GARVER,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Robert A. Carter, being duly sworn, says that he is the treasurer of the New York and Queens Gas Company, the complainant named in the foregoing bill of complaint, and who has subscribed to the same; and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

ROBERT A. CARTER.

Sworn to before me, April 7, 1919.
[SEAL.]
H. L. McCORMICK,
Notary Public, Kings County No. 8.

Certificate filed in New York County No. 18.
Kings County Register's No. 110.
New York County Register's No. 10022.
Commission expires March 30, 1920.

17 Misc. 1289.

Equity Subpœna.

II.

The President of the United States of America to Charles D. Newton, as Attorney-General of the State of New York; Denis O'Leary, as District-Attorney of the County of Queens, State of New York, and Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kracke, constituting the Public Service Commission of the State of New York for the First District, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by New York and Queens Gas Company, and to further do and receive what the said Court shall have considered in this behalf; and this

you are not to omit under the penalty on you and each of you of two hundred and fifty dollars ($250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 7th day of April, in the year one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third.

ALEX GILCHRIST, JR.,
Clerk.

SHEARMAN & STERLING,
Sol'rs.

The defendants are required to file their answers or other defense in the above cause in the Clerk's office of this Court, on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

ALEX GILCHRIST, JR.,
Clerk.

Submitted to Public Service Commission, First District, Apr. 17, 1919.

Referred to Counsel—see minutes.

Action taken:

[SEAL.]

FRANK N. ROBINSON,
Acting Secretary.

18 I hereby certify that on the 9th day of April, 1919, at the City of Brooklyn, in my district, I personally served the within subpœna in equity upon the within named Denis O. Leary, Long Island City, by exhibiting to Mr. Meyers, secretary to the within, the original, and at the same time leaving with him a copy thereof.

Dated April 9th, 1919.

(Signed) J. M. POWERS,
U. S. Marshall, Eastern District of New York.

I hereby certify that on the 8th day of April, 1919, at the City of New York, in my District, I personally served the within subpœna in equity upon the within named defendants, Travis H. Whitney, Frederick J. H. Krache and Charles S. Hervey, constituting the Public Service Commission of the City of New York, first District, each of them, at 49 Lafayette Street, and at the same time leaving with them copies thereof.

Dated April 8th, 1919.

(Signed) THOMAS McCARTHY,
U. S. Mars-all, Southern District of New York.

UNITED STATES OF AMERICA,
Northern District of N. Y., ss:

I hereby certify and return that I served the annexed alias subpœna on the therein named Charles D. Newton, by handing to

and leaving a true and correct copy thereof with him at Albany, New York, in said District on the 14th day of April, 1919.

(Signed) CLAYTON T. WHEELER,
United States Marshall,

By JOHN J. O'CONNOR,
Deputy.

19 District Court of the United States, Southern District of New York.

Equity 16-41.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York; and Lewis Nixon, constituting the Public Service Commission of the State of New York, for the First District, Defendants.

Amended Answer of Defendant Lewis Nixon Constituting the Public Service Commission for the First District.

The above named defendant, Lewis Nixon, constituting the Public Service Commission of the State of New York, First District, by Terence Farley, his solicitor, hereby answers the bill of complaint herein as follows:

I.

Answering the allegations of Paragraph VIII of said bill of complaint this defendant denies that the stock and some of the bonds referred to in said paragraph were duly issued in payment for the reasonable value of the plant and franchises purchased by the complainant. This defendant is without knowledge as to whether the remainder of said bonds have been duly issued from time to time to obtain funds for the enlargement and extension of the plant and property of the complainant. This defendant is without knowledge as to whether the complainant has at present a floating debt of at least $265,000, representing money borrowed to meet the requirements of its business.

II.

Answering Paragraph IX of the said bill of complaint this defendant denies the allegations thereof except that this defendant admits that the complainant has paid no dividends to its stockholders and that this defendant admits that the complainant has from time to time borrowed large sums of money for the enlargement and extension of its manufacturing and distributing plant.

20 III.

Answering Paragraph X of the said bill of complaint this defendant denies the allegations contained in the said paragraph except that this defendant is without knowledge as to whether the cost of reproducing property of the complainant during 1918 and at the present time would greatly exceed the sum of $1,492,976 and therefore this defendant denies the said allegation.

IV.

Answering Paragraph XI of the said bill of complaint this defendant denies the allegations thereof.

V.

Answering the allegations of Paragraph XII of the said bill of complaint this defendant is without knowledge as to whether during the year ending December 31, 1918 the gross operating revenues from the complainant's gas business at the statutory rate of $1.00 per thousand cubic feet amounted to $344,676.09 and as to whether the cost of manufacturing and distributing said gas together with taxes and other operating expenses amounted to $314,060.45 and as to whether the net income from the business operations of the complainant was only $30,615.64 and therefore this defendant denies said allegations. This defendant denies that the net income of $30,615.64 is less than two and one-quarter per cent. of the value of the complainant's investment.

This defendant denies that the present value of the complainant's investment upon property used in manufacturing and distributing gas within the City of New York is as much as $1,492,976, whether exclusive of alleged going value and of other intangible property or otherwise. This defendant denies that the principal sum upon which a return of seven and one-half per cent. was earned during the year 1918 was as little as $408,208. This defendant denies each and all the other allegations contained in said Paragraph XII of said complaint.

This defendant further alleges that the gross operating revenues received by complainant in the year 1918 and its net income for said year are not fair or lawful criteria of the return heretofore earned and hereafter to be earned by complainant under Chapter
21 125 of the Laws of 1906 of the State of New York. This defendant further alleges that the costs entering into the manufacture and distribution of gas in the year 1918 were abnormally and temporarily high owing to the existence of a state of war between the United States and the Imperial German Government. Upon information and belief this defendant further alleges that heretofore and before the commencement of this suit complainant earned a reasonable and fair average return upon the fair value of its property employed in the public service, and will hereafter earn such fair return on said value under the said act of 1906.

This defendant further alleges that the hypothetical cost of reproducing complainant's property in the year 1918 during the existence of said state of war is not the fair value of the complainant's property and that to base rates for gas upon a valuation representing a hypothetical cost of reproduction in the year 1918 or during the said war period would be unlawful and manifestly unfair and unreasonable to the public and would result in allowing complainant to take advantage of a public calamity as a means of increasing its rates above what would be a fair return upon the fair value of its property employed in the public service.

VI.

Answering the allegations of Paragraph XIII this defendant is without knowledge as to the truth of the allegations herein contained and this defendant therefore denies the said allegations.

VII.

Answering the allegations of Paragraph XIV of the said bill of complaint this defendant denies the allegations of the said paragraph.

VIII.

Answering the allegations of Paragraph XV of the said bill of complaint this defendant is without knowledge as to said allegations (and therefore denies the same) except that he admits that on March 19, 1915 the Public Service Commission of the State of New York for the First District made an order subsequently modified as to the time of performance by an order dated February 1, 1918 directing and requiring the complainant herein to extend its mains and services so as to reasonably serve the territory known as Douglas-
22 ton, including Douglas Manor, and except that said defendant admits that the complainant has accepted the said orders of the said Commission and except that this defendant denies that said territory is distant and isolated. This defendant further answering Paragraph XV of the said bill of complaint alleges that after the said Commission adopted the said order of March 19, 1915 the complainant herein applied for a rehearing before the said Commission which rehearing was denied by order duly made on April 27, 1915. Thereafter, on March 30, 1915 a writ of certiorari was sued out of the Supreme Court of the State of New York in and for the County of New York upon the relation of the said New York and Queens Gas Company to review the proceedings of the said Commission including the said order of March 19, 1915. Thereafter such proceedings were duly had under the said writ of certiorari in the Appellate Division of the Supreme Court for the First Department, the Court of Appeals of the State of New York and the United States Supreme Court that on December 10, 1917 the said United States Supreme Court by its judgment duly affirmed the judgment of the said Court of Appeals of the State of New York and the judgment of the State

Supreme Court entered therein which theretofore had affirmed the determination and order of the said Commission. On February 1, 1918 judgment was duly entered in the Supreme Court of the State of New York making the said judgment of the United States Supreme Court the judgment of the said Supreme Court of the State of New York. This defendant further alleges that upon petition duly brought by the said Public Service Commission for the First District pursuant to Section 74 of the Public Service Commissions Law and after notice to complainant and a hearing, a peremptory writ of mandamus was duly issued on July 24, 1918 by the Supreme Court of the State of New York commanding the complainant herein to comply with the said orders of the Commission made on March 19, 1915 and February 1, 1918 and commanding said complainant to commence the construction of said proposed extension not later than August 1, 1918 and completing said construction as far as Alley Road or Main Street, Douglaston, by December 1, 1918 and
23 commanding complainant to complete the said extension and place the same in service not later than December 10, 1918.

By virtue of the foregoing proceedings this defendant alleges that the duty and obligation of the complainant herein to construct the said extension has become res adjudicata and the said duty and obligation is absolute and exists independently of this suit and independently of and irrespective of any decree which may be entered herein.

This defendant further alleges that the complainant herein has wholly failed to comply with the said orders of the said Commission as affirmed by the said United States Supreme Court and as directed and as commanded by the said peremptory writ of mandamus.

IX.

Answering the allegations of Paragraph XVI of the said bill of complaint this defendant denies the allegations of the said paragraph.

X.

Answering the allegations of Paragraph XVIII of the said bill of complaint this defendant is without knowledge of the allegations and therefore this defendant denies the same.

XI.

Answering Paragraph XIX of the said bill of complaint, this defendant denies that there is no remedy, except in a Court of Equity, to test the validity of the said Act, and that in the absence of such remedy in equity, complainant would be deprived of its property without due process of law, or denied the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

XII.

As a separate and further defense

This defendant further alleges that said Chapter 125 of the Laws of 1906 provides that an illuminating gas to be furnished by complainant therein, shall have an illuminating power of not less than twenty-two sperm candles of six to a pound, burning at the rate of one hundred and twenty — spermaceti per hour, tested at a distance of not less than one mile from the distributing holder, by a
24 burner consuming five cubic feet of gas per hour, and this defendant alleges, upon information and belief, that the complainant has persistently, continuously, knowingly and wilfully failed to abide by and comply with the foregoing provisions of said Chapter 125 of the Laws of 1906, in that it has persistently, continuously, knowingly and wilfully failed during the years 1918 to date and prior thereto, to furnish gas having an illuminating power of not less than twenty-two sperm candles of six to a pound burning at the rate of one hundred and twenty grains of spermaceti per hour tested as provided in the said act and has furnished gas through the years 1918 and 1919 and prior thereto, which, when tested as provided by said act had an average illuminating power much less than twenty-two sperm candles of six to a pound burning at the rate of one hundred and twenty grains of spermaceti.

As a result of said failure of complainant to comply with the statute, the consumers of said company received gas of a less heating and lighting value than they were entitled to receive under said act, and were obliged to and did pay more for gas necessarily consumed by them than they would have paid had complainant complied with said act of 1906 and the gas actually consumed was inferior to twenty-two candle power gas.

This defendant alleges upon information and belief that the failure of the complainant herein to furnish gas of the candle power as provided for by the said act of 1906 was occasioned by the fact that during the year 1918 the complainant voluntarily and without compulsion of law, pursuant to a contract made by it, extracted from the gas after its manufacture and before its distribution to the consumer much of the enriching oil contained therein, for the sole purpose of manufacturing a product known as toluol with the result that the gas when tested as provided by said statute had a candle power at much less than twenty-two. This defendant further alleges that despite this fact complainant during the said years 1918 and 1919 and prior thereto continued to exact and collect from consumers the rate of 80 cents per thousand cubic feet without giving to said consumers any credit or allowance whatever for the loss in candle power. That complainant has included in its operating expenses of the years 1918 and 1919 and prior thereto the cost of manufacturing twenty-two candle power gas. This defendant alleges that said acts
25 of complainant were illegal and in fraud and violation of the rights of consumers under said statute of 1906 and that because of said acts of complainant it does not come into this Court of Equity with clean hands and in no event is entitled to charge to

operating expenses the cost of manufacturing twenty-two candle power gas during the times in which it delivered to the consumer less than the statutory standard, or to any assistance to relief from this Court against the provisions of the act of 1906 (which complainant has violated) because of conditions, costs or return resulting from its operations during said years of 1918 and 1919 and prior thereto.

Wherefore this defendant prays that the bill of complaint herein be dismissed with costs.

TERENCE FARLEY,
Solicitor for Defendant Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, No. 49 Lafayette Street, Borough of Manhattan, New York City.

26 [Endorsed:] District Court of the United States, Southern District of New York. In Equity. 16-44. New York and Queens Gas Company, Complainant, against Charles D. Newton, as Attorney General, et al., Defendants. Amended answer of Lewis Nixon, constituting the Public Service Commission of the State of New York, First District. Terence Farley, Solicitor for Defendant Lewis Nixon, No. 49 Lafayette Street, Borough of Manhattan, New York City.

27 III. B.

District Court of the United States, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Travis H. Whitney, Charles S. Hervey, and Frederick J. H. Kracke, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

The defendant Charles D. Newton, Attorney General of the State f New York, one of the defendants above named, answering the bill f complaint of the complainant, alleges as follows:

First. Denies any knowledge or information sufficient to form a elief as to the allegations set forth in paragraph "V" of the bill f complaint.

Second. Denies any knowledge or information sufficient to form belief as to the allegations set forth in paragraph "VIII" of the ll of complaint.

Third. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "IX" of the bill of complaint.

Fourth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "X" of the bill of complaint.

Fifth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XI" of
28 the bill of complaint, except that part of said paragraph which alleges:

"In and by the said Chapter 48 of the Consolidated Laws of the State of New York, the said Public Service Commission was and is empowered to prescribe uniform methods of keeping accounts, records, books and other data of financial operations and of properties, to be observed by gas corporations; to examine fully into the accuracy and completeness of such accounts and records and into the matters therein set forth and into the methods, practices, regulations and property employed by such gas corporations in the transaction of their business; to require annual reports of their financial operations, properties and the like, to be made under oath; to require the amendment or correction of any such report, if the same is found to be in any respect defective or erroneous; and, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. The said Commission, in the year 1908, prescribed a Uniform System of Accounts to be observed by gas corporations, including your orator, and from time to time, it has prescribed the form and detail of such annual reports; and it has ever since exercised fully, as to your orator, the powers of scrutiny and supervision conferred upon the said Commission by the said statute.

Sixth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XII" of the bill of complaint.

Seventh. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XIII" of the bill of complaint.

Eighth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XIV" of the bill of complaint.

Ninth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XV" of the bill of complaint.

29 Tenth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XVI" of the bill of complaint, except said defendant admits that complainant is entitled to enjoy a fair return upon its property invested in the public service.

Eleventh. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XVII," except that part which alleges that it will be the duty of the Attorney General to prosecute the complainant if it should violate the provisions of Chapter 125 of the Laws of 1906.

Twelfth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XVIII" of the bill of complaint.

Thirteenth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XIX" of the bill of complaint.

Fourteenth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XX" of the bill of complaint.

Fifteenth. Denies, upon information and belief, that complainant can only obtain relief in a court of equity.

Sixteenth. Upon information and belief, that the rate or rates provided for in Chapter 125 of the Laws of 1906, are reasonable and not confiscatory, and do not deprive complainant of its property without due process of law, and do not deny it the equal protection of the law, and that such statute is not in violation of the Fourteenth Amendment of the Constitution of the United States.

Seventeenth. Upon information and belief, that the rate fixed by said Chapter 125 of the Laws of 1906, gives complainant a fair and reasonable return on the capital stock invested by it in the gas business.

Eighteenth. Upon information and belief, that all and every of the matters in said complainant's bill of complaint are matters which may be tried and determined at law, and with respect to which complainant is not entitled to any relief in a court of equity.

Nineteenth. Upon information and belief, that the gross operating revenues received by complainant during the year 1918, and its income for that year, is not a fair criterion of a return heretofore earned and hereafter to be earned by complainant under said Chapter 125 of the Laws of 1906.

Twentieth. Upon information and belief, that the cost entering into the manufacture and distribution of gas for the year 1918 was abnormal, and temporarily high, owing to the existence of a state of war between the United States and the Imperial German Government.

Twenty-first. Upon information and belief, that the complainant, prior to the year 1918 earned a reasonable and fair average return upon the fair value of its property employed in the public service, and will hereafter earn such return on said value under said provisions of Chapter 125 of the Laws of 1906.

31 Wherefore, said defendant asks that the bill of complaint herein be dismissed, with costs.

Dated, Albany, April 29, 1919.

WILBER W. CHAMBERS,
Deputy Attorney General, Solicitor for said Defendant,
Charles D. Newton, Attorney General.

Office and P. O. Address: Capitol, Albany, N. Y.

CHARLES D. NEWTON,
Attorney General.

Office and P. O. Address: Capitol, Albany, N. Y.

32 [Endorsed:] District Court of the United States, Southern District of New York. New York and Queens Gas Co., Complainant, against Charles D. Newton, Denis O'Leary, et al., Defendants. Copy. Answer of Defendant Charles D. Newton, as Attorney General. Charles D. Newton, Attorney-General, Attorney for deft., Capitol, Albany, N. Y. Wilber W. Chambers, Deputy Attorney General, Solicitor for defendant, Charles D. Newton, as Atty. Gen. Office and P. O. Address: Capitol, Albany, N. Y.

33 IV.

III C.

District Court of the United States, Southern District of New York.

In Equity.

16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kracke, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Answer of Defendant Denis O'Leary, as District Attorney of the County of Queens, State of New York.

The Separate Answer of the Defendant, Denis O'Leary, as District Attorney of the County of Queens, to the Bill of Complaint of the New York and Queens Gas Company, Complainant.

And now comes this defendant herein and saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfec-

tions in the said complainant's Bill of Complaint for answer thereto or to such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto he, this defendant, separately answering, says:

First.

This defendant does not know and is not informed save by said Bill of Complaint whether or not the complainant, New York and Queens Gas Company, is a corporation incorporated pursuant to the Transportation Corporation Laws of the State of New York
34 for the purpose of manufacturing and supplying gas in the cities, villages, and towns in the State of New York and therefore leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

Second.

Admits that this answering defendant resides in the Borough of Queens, City of New York and State of New York, and was duly elected and is now acting as the District Attorney in the County of Queens, in the said State.

Third.

Admits the several allegations contained in paragraphs numbered IV, V, VI and VII of the complainant's Bill of Complaint.

Fourth.

This defendant further and specially answering alleges that this defendant does not know and is not informed save by said Bill of Complaint whether or not the capital stock of the complainant consists of six thousand shares, of the par value of Six Hundred Thousand Dollars ($600,000) with outstanding five per cent. mortgage bonds of the par value of Eight Hundred and Sixteen Thousand Dollars ($816,000) payable on August 1st, 1934, and that the complainant has a present indebtedness of Two Hundred and Sixty-five Thousand Dollars ($265,000), representing money borrowed to meet the requirements of its business, and therefore leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

35

Fifth.

And this defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph IX of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised or deem necessary and proper.

Sixth.

And this defendant further and specially answering paragraph X of the Bill of Complaint of the complainant denies the allegations contained in the said paragraph, except that this defendant does not know and is not informed save by said Bill of Complaint as to whether the cost of reproducing the property of the complainant during the year 1918 and at the present time would greatly exceed the sum of $1,492,976.00, and leaves the complainant to make such proof in this regard as it may be advised or deem necessary and proper.

Seventh.

And this defendant further and specially answering herein denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph XI of the Bill of Complaint, except that part of said paragraph which alleges:

"In and by the said Chapter 48 of the Consolidated Laws of the State of New York, the said Public Service Commission was and is empowered to prescribe uniform methods of keeping accounts, records, books and other data of financial operations and of properties, to be observed by gas corporations; to examine fully unto the accuracy and completeness of such accounts and records and
36 into the matters therein set forth and into the methods, practices, regulations and property employed by such gas corporations in the transaction of their business; to require annual reports of their financial operations, properties and the like, to be made under oath; to require the amendment or correction of any such report, if the same is found to be in any respect defective or erroneous; and, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. The said Commision, in the year 1908, prescribed a Uniform System of Accounts to be observed by gas corporations, including your orator, and from time to time, it has prescribed the form and detail of such annual reports; and it has ever since exercised fully, as to your orator, the powers of scrutiny and supervision conferred upon the said Commission by the said statute."

Eighth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph XII of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

Ninth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint,

as to the truth of the allegations contained in paragraph XIII of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

Tenth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of
37 Complaint, as to the truth of the allegations contained in paragraph XIV of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

Eleventh.

Answering the allegations of paragraph XV of the said Bill of Complaint this defendant is without knowledge as to said allegations (and therefore denies the same) except that he admits that on March 19, 1915, the Public Service Commission of the State of New York for the First District made an order subsequently modified as to the time of performance by an order dated February 1, 1916, directing and requiring the complainant herein to extend its mains and services so as to reasonably serve the territory known as Douglaston, including Douglas Manor, and except that said defendant admits that the complainant has accepted the said orders of the said Commission and except that this defendant denies that said territory is distant and isolated. This defendant further answering paragraph XV in the complainant's Bill of Complaint avers that after the said Commission made its said order of date March 19, 1915, such proceedings were had in the Appellate Division of the Supreme Court for the First Department, the Court of Appeals of the State of New York and the United States Supreme Court that on December 10, 1917, the said United States Supreme Court, by its judgment duly affirmed the judgment of the Court of Appeals of the State of New York and the judgment of the Supreme Court of the State of New York entered therein which theretofore had affirmed the determination and
38 order of the said Commission. On February 1, 1918, judgment was duly entered in the Supreme Court of the State of New York making the said judgment of the United States Supreme Court the judgment of the said Supreme Court of the State of New York. This defendant further alleges that upon petition duly brought by the said Public Service Commission for the First District pursuant to Section 74 of the Public Service Commission Law and after notice to complainant and a hearing, a peremptory writ of mandamus was duly issued on July 24, 1918, by the Supreme Court of the State of New York commanding the complainant herein to comply with the said orders of the Commission made on March 19, 1915, and on February 1, 1918, and commanding said complainant to commence the construction of said proposed extension not later than August 1, 1918, and completing said construction so far as Alley Road or Main Street, Douglaston, by December 1, 1918, and com-

manding complainant to complete the said extension and place the same in service not later than December 10, 1918.

By virtue of the foregoing proceedings this defendant alleges that the duty and obligation of the complainant herein to *contract* the said extension has become res adjudicata and the said duty and obligation is absolute and exists independently of this suit and independently of and irrespective of any decree which may be entered herein.

This defendant further alleges that the complainant herein has wholly failed to comply with the said orders of the said Commission as affirmed by the said United States Supreme Court and as directed and as commanded by the said peremptory writ of man-
39 damus.

Twelfth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph XVI of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper, except this defendant admits that complainant ought to receive a fair return upon the reasonable value of its property devoted to the public use.

Thirteenth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph XVII of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper, except that portion which alleges that it will be the duty of the District Attorney of the County of Queens and State of New York to prosecute the complainant should it violate the various provisions of Chapter 125 of the Laws of 1906.

Fourteenth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph XVIII of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem neces-
40 sary and proper.

Fifteenth.

This defendant further and specially answering paragraph XIX of the said Bill of Complaint denies that there is no remedy except in the Court of Equity to test the validity of the said Act.

Wherefore this answering defendant demands judgment dismissing the Bill of Complaint of the complainant with costs.

WILLIAM J. MORRIS, JR.,
Solicitor for Defendant Denis O'Leary.

County Court House, Long Island City, New York.

W. H. VAN STEENBERGH,
Of Counsel.

[Endorsed:] District Court of the United States, Southern District of New York. New York and Queens Gas Company against Newton, et al. Copy. Answer of Defendant O'Leary.

IV.

41 At a Stated Term of the District Court of the United States for the Southern District of New York, in the Second Circuit, Held at the Court House in the Post Office Building, in the Borough of Manhattan, City of New York, on May 29, 1919.

Present: Hon. Julius M. Mayer, District Judge.

In Equity.

16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Order Appointing Special Master.

Issue having been joined in this case upon the filing of the answers of the above-named defendants to the bill of complaint herein, and the complainant having moved upon the affidavit of John A. Garver, Esq., verified May 17, 1919, for the appointment of a Special Master herein, and it appearing that there is no objection thereto on the part of the defendant;

Now, on motion of Messrs. Shearman & Sterling, Solicitors for the Complainant, it is

Ordered:

1. That Abraham S. Gilbert, Esq., be, and he hereby is appointed Special Master, to take all of the testimony and evidence respecting the issues herein, make all needed computations and fully find the

facts; but nothing herein contained shall be construed as meaning that the Special Master's Findings of Fact shall be final, but only that he shall find the facts for the purpose of aiding the
42 Court and making his recommendations. The said Master shall, before submitting to this Court his final report, prepare and serve on the solicitors for the respective parties hereto a draft of such report.

2. The said Master shall give due notice to all parties hereto and shall proceed promptly to the hearing of the testimony and evidence in this cause, and shall, so far as practicable, continue the hearing of the said cause from day to day; and, whenever deemed by him to be necessary for the prompt completion of such hearings, he shall hold two sessions in each day, until the completion of the taking of testimony and evidence.

The said Master shall report to this Court all the testimony and evidence received by him, together with his findings of fact and his recommendations as to the facts and the law, with diligence, it being the intent of this order that the report of the Master and exceptions thereto shall come on for hearing no later than the second Monday of October, 1919.

J. M. MAYER,
United States District Judge.

43 Take notice that the within is a copy of an order this day duly entered and filed in the office of the Clerk of the District Court of the United States, for the Southern District of New York.

New York, June —, 1919.

Yours, etc.,

SHEARMAN & STERLING,
Solicitors for Complainant.
55 Wall Street, New York City.

To:

Wilbur W. Chambers, Esq.,
Solicitor for Defendant, Charles D. Newton.
W. T. Morris, Esq.,
Solicitor for Defendant, Denis O'Leary.
Godfrey Goldmark, Esq.,
Solicitor for Defendant, Lewis Nixon.

[Endorsed:] District Court of the U. S., Southern District of New York. New York and Queens Gas Company, against Charles D. Newton, as Attorney General of the State of New York et al. Order with Notice of Entry. Shearman & Sterling, Solicitors for Complainant, 55 Wall Street, N. Y.

Copy received June 4, 1919.

——— ———,
Counsel for Public Service Commission,
First District, State of New York.

V.

44 District Court of the United States for the Southern District of New York.

In Equity.

No. 16-44.

NEW YORK & QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Dennis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

On the annexed consent of the Solicitors for all parties, it is

Ordered that Alfred M. Barrett, now constituting the Public Service Commission of the State of New York, First District, be and he hereby is substituted as party defendant herein in place and stead of the defendant Lewis Nixon, constituting the Public Service Commission of the State of New York, First District, and that this suit be continued against said Alfred M. Barrett as such party defendant herein without prejudice to the proceedings already had herein.

JULIUS M. MAYER,
U. S. D. J.

Entrd. 11/24/20. E. J. S.

45 We hereby consent to the entry of the foregoing Order.
Dated, New York, November 13, 1920.

SHEARMAN & STERLING,
Solicitors for Complainant.
WILBER W. CHAMBERS,
Solicitor for Charles D. Newton, Attorney-General.
WILLIAM J. MORRIS, JR.,
Solicitor for Dennis O'Leary, District Attorney.
TERENCE FARLEY,
Solicitor for A. M. Barrett, Constituting the Public Service Commission of the State of New York, First District.

46 [Endorsed:] Misc. 1289. Index No. —. Year 19 —. District Court of the United States for the Southern District of New York. New York & Queens Gas Company, Complainant, against Charles D. Newton, as Attorney-General of the State of New York, et al., Defendants. Order of Substitution. Shearman & Sterling, Attorneys for Complainant, 55 Wall Street, New York.

VI.

47 District Court of the United States, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Report and Opinion of the Special Master.

A. S. Gilbert, special master.

Copy received Jul. 2-, 1920.

———,
Counsel for Public Service Commission,
First District, State of New York.

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53 United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Report of the Special Master.

To the Honorable Judges of the said Court:

I, the undersigned, Special Master appointed by Honorable Julius M. Mayer, District Judge, by order dated the 23rd day of May, 1919, "to take all of the testimony and evidence with respect to the issues herein, make all needed computations, and fully find the facts, and * * * report to this Court all the testimony
54 and evidence received by him, together with the findings of fact and his recommendations as to the facts and the law," do hereby respectfully report: that, having been attended by counsel as below stated, I proceeded to take the proofs submitted by the several parties and to hear arguments thereon, the proofs so taken consisting of pages 1 to 2373 of printed testimony, which are herewith submitted and filed, together with a stipulation signed by the various solicitors of record waiving the signatures of the various witnesses to their several depositions, and further waiving the filing of the original exhibits marked in evidence.

There appeared before me as counsel the following:

For complainant: Messrs. William L. Ransom, Charles A. Vilas, and Jacob H. Goetz;

For defendant Newton: Messrs. Wilber W. Chambers, Charles J. Tobin, and C. R. Cummings;

For defendant O'Leary: Mr. William H. Van Steenbergh;

For defendant Public Service Commission: Mr. Ely Neumann, and Mr. Edward M. Deegan.

Upon the proofs as taken, I find and report as follows:

1. The complainant New York and Queens Gas Company was incorporated on or about July 12, 1904, under and in pursuance of the provisions of the Transportation Corporations Law of the State of New York, for the purpose of manufacturing and supplying gas for lighting the streets and public and private buildings in cities, villages and towns in the State of New York, and particularly in the Borough of Queens, City of Greater New York.

2. Immediately prior to the organization of the complainant company, the Newtown and Flushing Gas Company had been furnishing gas to consumers in the Third Ward of the Borough of Queens, that company being the successor of a number of companies which had supplied gas in various portions of the Borough of Queens, and of which one of the manufacturing plants had been located at the same point, hereinafter more fully described, in the Village or Town of Flushing, since about the year 1856.

3. On the 12th day of July, 1904, and theretofore, the Newtown and Flushing Gas Company owned and used certain lands, buildings and other property, real and personal, for, and was actually engaged in, the manufacture, sale and distribution of gas in the Borough of Queens, City of New York. In addition to the property above described, the Newton and Flushing Gas Company owned, and was in the actual enjoyment of, franchises and rights, certain of them perpetual in character:

(1) To be a corporation and to exercise the privileges and rights of corporation action;

(2) To lay and maintain mains, pipes and conductors in and under the streets, highways, alleys, lanes and other public places in the Third Ward of the Borough of Queens (formerly the Town of Flushing, County of Queens), and also in the Second and Fourth Wards of the Borough of Queens (formerly the towns of Newtown and Jamaica, respectively, in the County of Queens), for the purpose of supplying gas through the said mains to the inhabitants of the said portions of the Borough of Queens;

(3) Sundry other intangible rights.

The Newtown and Flushing Gas Company and its predecessors had also developed the gas business in the said Third Ward of the Bor-

ough of Queens, and had secured consumers sufficient in numbers and requirements to constitute a going and remunerative business.

4. On or about the 12th day of July, 1904, the New York and Queens Gas Company acquired all of the capital stock and all of the outstanding bonds of the Newtown and Flushing Gas Company, and, on or about July 18, 1904, by resolution adopted and filed in accordance with the requirements of the laws of the State of New York, the New York and Queens Gas Company merged the Newtown and Flushing Gas Company into itself. By virtue of the merger and of the statute pursuant to which it took place, the complainant New York and Queens Gas Company became possessed of and became the owner in fee simple of all of the real and personal property owned by the Newtown and Flushing Gas Company, the owner of the franchises and rights then owned, possessed or enjoyed by the Newtown and Flushing Gas Company, and the owner of the business established and developed by the Newtown and Flushing Gas Company and its predecessors.

5. The complainant New York and Queens Gas Company has, even since the date of the said merger, owned, possessed, used and enjoyed all of the said franchises and rights of the said Newtown and Flushing Gas Company, and still does own, possess, use and enjoy the said franchises and rights and each of them, together with
57 additional rights and franchises from time to time acquired by it; and the complainant company, by virtue of the said franchises and rights, has ever since the said merger maintained, and still does maintain, its mains and services in the streets, highways, alleys and public places of the City of New York, particularly in the Third Ward of the Borough of Queens, and has supplied and still does supply gas through the said mains and services to the inhabitants of the said Third Ward of the Borough of Queens.

6. The complainant New York and Queens Gas Company, since July 18, 1904, has owned and used, and still owns and uses, a plant for the manufacture and distribution of carbureted water-gas, located at the corner of Myrtle Avenue and Farrington Street, in the former Village of Flushing, in the Third Ward of the Borough of Queens. Additions to the said plant and property so acquired, improvements therein, and renewals and replacements of portions thereof, have been made from time to time since its acquisition in 1904, and various units or portions thereof have been from time to time withdrawn from service. As at present constituted, the plant consists of three Lowe type water-gas generator sets, one set being eight feet, six inches in diameter, and two set being each seven feet, six inches in diameter, which provide for the plant a working capacity not exceeding 2,250,000 cubic feet of gas per day. By the addition of high pressure blowing apparatus, this working capacity will be increased to not exceeding 2,750,000 cubic feet of gas per day. In connection therewith, the complainant owns and uses various other apparatus, equipment, appliances and appurtenances necessary for the manufacture and distribution of water-gas, including a gas stor-

age holder of 1,000,000 cubic feet capacity, a gas storage
58 holder of 100,000 cubic feet capacity, and a relief holder of 250,000 cubic feet capacity, which, in emergency, can also be used alternatively as a gas storage holder. In the streets, highways, alleys and public places of the Third Ward of the Borough of Queens, the complainant company owns and uses 658,727 feet of mains of various sizes, and 7,998 services, through which it furnishes gas to approximately 11,000 consumers. The complainant also necessarily occupies, under lease, and uses in the conduct of its business, a shop building on Amity Street in Flushing, for the accommodation of the department engaged in the installation of meters and appliances and in other gas-fitting work, and a store-room and office building on Main Street, in Flushing, for the housing and accommodation of its general offices, its bookkeeping staff and commercial department, and a display-room wherein are exhibited and offered for rental or sale domestic and industrial appliances designed to increase the use of gas and make such use more economical, efficient and satisfactory to consumers.

7. In the year 1919, in compliance with the determination and order of the defendant Public Service Commission that consumers in an outlying portion of the Third Ward known as Douglaston and Douglas Manor, distant from Flushing about six miles, should be furnished with gas, the complainant New York and Queens Gas Company, up to May 1, 1920, laid and installed 31,330 lineal feet of four (4) inch transmission main and 9,928 feet of 16 inch main to enable the use of the high-pressure transmission system, together with 38,934 lineal feet of street mains, and also the services, governors, and other apparatus necessary in connection therewith, in order to supply gas to that territory, necessarily expending for this purpose, up to May 1, 1920, no less than $145,735.71. Since on or about the
28th of November, 1919, the complainant has been furnishing
59 gas to the inhabitants of said additional territory through the use of the said mains and a high-pressure distribution system, by means of which gas manufactured at its plant in Flushing is compressed and transmitted through the said four-inch main and distributed to consumers in Douglaston and Douglas Manor.

8. Since January 1, 1909, the books of account of the complainant company and of all other gas companies in the City of New York have been required to be kept in accordance with the rules and regulations of the defendant Public Service Commission of the State of New York for the First District, which Commission has had certain jurisdiction over said companies pursuant to the provisions of the Public Service Commissions Law of the State of New York, and I find that the books of the complainant company have been kept in conformity with the said rules and regulations and that they accurately set forth the facts therein undertaken to be shown.

9. By Chapter 125 of the Laws of 1906, which prescribed a maximum rate of eighty cents per thousand cubic feet of gas sold in the Borough of Manhattan and in certain portions of the Boroughs of

The Bronx and Brooklyn, the Legislature of the State prescribed, from and after the year 1910, a maximum rate of one dollar for certain outlying portions of the City of New York, including the territory served by this complainant, the pertinent provisions of the said statute being as follows:

"A corporation, association, co-partnership, or person engaged in the business of manufacturing, or furnishing or selling illuminating gas in the City of New York * * * shall not charge or receive for gas manufactured, furnished or sold in said City, a sum
60 per thousand cubic feet in excess of the following rate:

(2) In * * * the second, third and fourth wards in the Borough of Queens * * * $1."

It was further provided in and by the said statute that:

"The illuminating gas furnished by any corporation, association, co-partnership or person, shall have an illuminating power of not less than 22 sperm candles of 6 to a pound, burning at the rate of 120 grains of spermaceti per hour, tested at a distance of not less than 1 mile from the distribution holder by a burner consuming 5 cubic feet of gas per hour, and each 100 cubic feet of gas shall not contain more than 5 grains of ammonia, nor more than 20 grains of sulphur, nor more than a trace of sulphureted hydrogen. The pressure of illuminating gas in any service mains in said city at any distance from the place of manufacture shall not be less than one inch nor more than two and one-half inches."

10. Under the construction which the courts of the State of New York have placed upon the provisions of Section 72 of the Public Service Commissions Law of the State of New York (People ex rel. Municipal Gas Company v. Public Service Commission, 224 N. Y. 156), the Public Service Commission of the State of New York for the First District, which otherwise would have plenary power over the rates of the complainant New York and Queens Gas Company, has been given no power or jurisdiction to fix, or to authorize the complainant to charge, a rate in excess of the one dollar rate fixed by Chapter 125 of the Laws of 1906, the said Section 72 of the Public Service Commissions Law providing that the Commission may not fix or authorize a rate for gas in excess of such rate as may have been fixed by statute.

61 11. In the manufacture of water-gas of the statutory standard of 22 candle-power, under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 4.2 gallons of gas oil of the gravity and quality now being supplied to the complainant, and the complainant did, in fact, use on the average 4.19 gallons per thousand cubic feet of gas made, during the year 1919.

12. The reasonable and necessary average cost of gas oil to the New York and Queens Gas Company during the year 1919 was 6.7 cents per gallon, and the price during 1920 has been slightly higher, aver-

aging 7.283 cents per gallon during the period covered by the proofs before me. The present price at which contracts may be made for the delivery of gas oil, alongside the plant of the New York and Queens Gas Company is substantially in excess of 7.3 cents per gallon (including lighterage cost), and is, in fact, in excess of ten cents per gallon. The trend of oil prices during 1919 and 1920 has been, and has remained, sharply upward, and the evidence adduced before me affords no reason to believe that upon the expiration of the contract under which the complainant is receiving its gas oil during 1920, it will be possible to secure a new contract or a supply of gas oil at a price less than ten cents per gallon.

13. In the manufacture of water-gas under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 37 pounds of anthracite coal of the grade of coal being supplied in recent years, or its fuel equivalent, of which approximately 34 pounds are used in the generators, and approximately three pounds are used under the boilers. In addition, there is also required to be used under
62 the boilers approximately nineteen pounds of bituminous boiler coal or its equivalent in water-gas tar (one gallon of such tar weighing nine pounds and one pound of tar having a fuel value of about 1.7 pounds of the grade of boiler fuel now and recently supplied). The plant and operating conditions of the complainant company require the use of slightly more boiler fuel per thousand cubic feet of gas made than would be required if it were not under the necessity of compressing a portion of the gas sent out in order to reach the distant community of Douglaston and Douglas Manor, hereinbefore referred to.

14. The average cost of the anthracite generator coal used by the complainant during the year 1919 was $8.28 per gross ton, plus $1.08 as the cost of cartage and handling from the dock in Flushing to the coal storage bins of the complainant, making in all $9.36 per gross ton; and at the present time the price of such coal is at least $10.25 per gross ton, plus $1.25 for such cartage and handling, making in all at least $11.50 per gross ton.

15. The average cost of the boiler coal used by the complainant during the year 1919 was $6.472 per gross ton plus $1.08 as the cost of cartage and handling from the dock in Flushing to the coal storage bins at the plant of the complainant company, making $7.552 in all; and the present time the price of such coal is at least $10.2479 plus $1.25 for cartage and handling, making at least $11.4979 in all, the exact extent of the increase which has taken place in 1920 not appearing in the record.

16. In addition to the cost of fuel, there is involved in water-gas manufacture the cost of labor handling of fuel used in the generators and under the boilers. In 1918, the cost of labor handling
63 fuel at the complainant's plant, under the rates of pay then in force, amounted to 2.08 cents, and in 1919 to 2.45 cents, per thousand cubic feet of gas made. As of the present time, under

average operations and the rates of pay now in force, the testimony before me showed the cost of labor handling fuel to amount to at least 3.13 cents per thousand cubic feet of gas made.

17. In the manufacture of water-gas, there is also required the use of iron mass, city water and incidental minor materials and supplies. In the year 1918, this item, in the complainant's plant, amounted to 0.83 cents, and in 1919 to 1.34 cents per thousand cubic feet of gas made. As of the present time, under average operations, the testimony before me showed this item to amount to at least the sum as shown for the year 1919.

18. In the manufacture of water-gas, under the conditions obtaining in a plant such as that of the complainant, there is realized as a residual credit, under average operations, about 0.7 gallons of water-gas tar per thousand cubic feet of gas made, such water-gas tar as of December 31, 1919, having a market or sale value of approximately 4.25 cents per gallon. During the year 1919, practically all of the water-gas tar so realized by the complainant was used by it as fuel under its boilers, being charged to the cost of boiler fuel at the rate of 6 cents per gallon, and being credited at the same figure to the production cost of gas in the complainant's plant during 1919. During the year 1919, the amount of water-gas tar realized as a residual credit, in the manufacture of water-gas in the complainant's plant was 0.7 gallons, and in 1918 0.5 gallons per thousand cubic feet of gas made.

64 19. The evidence adduced in this record affords no ground for expecting that the prices of materials or the wages paid for labor will be reduced during 1920 or 1921, or at any time which can now be forecast.

20. There is necessary, in the manufacture of water-gas, the employment of gas-making labor, the employment of repair labor, the use of repair material, and the incurring of miscellaneous works expense. In 1918, under the prices and the rates of pay then in force, the cost of gas-making labor, in the complainant's plant, was 4.67 cents; of repair labor, 1.7 cents; of repair material 1.82 cents; and of miscellaneous works expense 0.37 cents per thousand cubic feet of gas made. In 1919, under the prices and the rates of pay then in force, the cost of gas-making labor was 6.31 cents, of repair labor 2.66 cents, of repair material 4.69 cents, of miscellaneous works expense 0.39 cents, per thousand cubic feet of gas made. As of the present time, under average operations and the rates of pay and prices of materials now in force, the testimony before me, showed these items, under average operations, to cost at least the sums shown, respectively, for the year 1919.

21. During the year 1918, under the prices of materials and labor at that time in force, the reasonable and actual cost of water-gas manufacture in the complainant's plant was 55.38 cents per thousand cubic feet of gas made. During 1919, it was 63.45 cents per thousand cubic feet of gas made. Under the present prices paid for generator

and boiler coal and for gas oil, the cost of water-gas manufacture substantially exceeds the sum above stated for 1919, and is at least 74.55 cents per thousand cubic feet of gas made.

65 22. During the year 1919, the complainant sold to its consumers 336,241,400 cubic feet of gas, an increase of 2.6 per cent. over 1918. During the past five years the gas sales of the complainant to its consumers have increased, on the average, approximately seven per cent. per annum. During the year 1920, it is my judgment that, by reason of extension of mains into outlying portions of the territory the sales of the complainant company will reach approximately 386,000,000 cubic feet, an increase of approximately 15 per cent.

23. In the manufacture and sale of gas, a percentage of the gas made is lost, due to condensation, difference in temperature at the consumer's meters, slow meters, leaks and the like. The relative amount of gas lost through these causes tends to be greater in a suburban area where the mains are smaller, the length of mains greater in relation to consumption, and where meters are commonly located in cellars of private houses. The use of high-pressure transmission also tends to increase the quantity of gas lost through condensation. I find that this so-called unaccounted-for gas, in the instance of the complainant company, reasonably represents approximately eleven per cent (11.03 per cent) of the gas made, and that in calculating the requirements of the complainant, that percentage should be used as a basis for computation.

24. The consumption of gas and its sale varies from time to time, depending, in large part, upon the weather and consequent factors. The low mark of gas sales is found in the warm summer months, when many consumers are absent from their homes, and the temperature eliminates the use of gas for heating, and lessens its use for cooking and lighting. The "peak" or maximum demand is found in the winter months. The complainant company
66 must, therefore, be prepared not alone to make sufficient gas to meet a total annual demand, but must be prepared to meet a maximum day's demand. The maximum day's send-out of the plant of the complainant company during the winter of 1919 to 1920 was 1,698,000 cubic feet of gas. The increased use of gas as a substitute for coal for heating and other domestic uses has a tendency to accentuate the maximum day's demand in relation to the annual output and thus requires a relatively larger plant capacity in relation to the average daily requirements. I find that the complainant's plant ought reasonably to have a reserve manufacturing capacity equal to the capacity of its largest unit (1,500,000 cubic feet per day), as accidents or the need for repairs may at any time take this unit out of use.

25. During the year 1918, the cost of water-gas manufacture in the complainant's plant was 60.65 cents per thousand cubic feet of gas sold. During the year 1919 this cost of water-gas manufacture was 71.73 cents per thousand cubic feet of gas sold. As of the present

time, under the cost of manufacture shown in Finding No. 21 hereinbefore, this cost is at least 84.27 cents per thousand cubic feet of gas sold.

26. I find that the reasonable and necessary amount of taxes paid by the complainant company during the year 1919 upon property used by it in the production and distribution of gas was 7.07 cents per thousand cubic feet of gas sold. During 1918 the taxes amounted to 7.39 cents per thousand cubic feet of gas sold.

27. There must also be added to the cost of making and distributing gas, the cost of renewals and replacements of property,
67 which I find to be the sum of three cents per thousand cubic feet of gas sold.

28. In addition to the item hereinbefore referred to, there must be included, in determining the cost of gas as delivered to the consumer, various items entering into the cost of distribution, including distribution superintendence and supplies and expenses, meter and installation work, transmission pumping, work on consumer's premises, repairs of meters, repairs of tools, repair of gas appliances, commercial expenses, salaries at the general office, supplies and expenses at the general office, legal expenses, claims and arrears expense, insurance, stable expense, automobile expense, claims for damages, real estate rents paid for property leased, stationery and printing, undistributed adjustments, uncollectible bills, interest on consumers' deposits, and relief department and pensions, and I further find that the actual and reasonable cost to the complainant company of these items during the year 1919 was not less than 27 cents per thousand cubic feet of gas sold. During 1918, the actual and reasonable cost to the complainant company of these items, including an item of 0.32 cents for defensive emergency service necessary in that year but not necessary in as great an amount in 1920 or future years, was not less than 23.97 cents per thousand cubic feet of gas sold.

29. The complainant derives an income from the rental of appliances, from its profit on the sale of appliances, from interest on bank balances and on consumers' final bills, and the like, which is classified as miscellaneous operating revenue. In 1918, the miscellaneous operating revenues represented 5.72 cents per thousand cubic feet of gas sold. In 1919 the miscellaneous operating revenue repre-
68 sented 6.75 cents per thousand cubic feet of gas sold. I find that 6.75 cents per thousand cubic feet should be credited against the cost of making and distributing gas, on account of miscellaneous operating revenue.

30. I find the total reasonable cost of the gas delivered to its consumers by the New York and Queens Gas Company during the year 1919 was at least $1.0880 per thousand cubic feet, from which should be deducted 6.75 cents per thousand cubic feet for miscellaneous operating revenue, making the net cost of gas delivered to the consumer, in 1919, $1.0205 per thousand cubic feet.

31. I find the average selling price of gas to the complainant, in 1919, including that sold to the City of New York at 75 cents per thousand cubic feet, by reason of a statutory limitation on the rate chargeable for such gas, to be 99.51 cents per thousand cubic feet in 1919, leaving a net deficit to the complainant company from its gas operations in 1919 of 2.54 cents per thousand cubic feet, irrespective of any returns upon any of the property used in its gas operations. As of the present time, such net deficit is substantially in excess of that sum.

32. The plant, machinery and equipment used in the gas business of the complainant company have been and are maintained in excellent operating condition; proper repairs, renewals and replacements have been made as and when needed, and the same are now in as high a state of efficiency as if new.

33. I find that the complainant company was, on January 1, 1920, and now is, entitled to include in the amount upon which it
69 was and is entitled to a fair return, the sum of $135,000 for working capital.

34. The tangible and intangible property (including land, plant, distributing system, franchises and rights) acquired by the complainant at the end of July, 1904, and still owned and used by it on January 1, 1920, I find to have actually cost, prior to August 1, 1904, and to have been reasonably worth at the time of such acquisition by the complainant, at least the sum of $670,488.86, exclusive of working capital. There has since been erected, installed or acquired by the complainant and added to its property, and there was in use in its gas business on January 1, 1920, certain additional land, plant, apparatus, mains and other property, of which the actual cost to the complainant company, less withdrawals since August 1, 1904, and exclusive of working capital, was and is no less than $850,389.08, making the total cost of such property owned and used by the complainant company, as of January 1, 1920, and the present time, at least the sum of $1,520,877.94. Adding to this the sum of $135,000 which I deem a reasonable allowance for necessary working capital, produces an aggregate of $1,665,877.94 as the sum representing the complainant company's total investment in the property used and useful in its gas business on January 1, 1920, its present investment being slightly in excess of that figure. In my opinion, the fair value of the property used and needed in the manufacture and distribution of the gas sold by the complainant company, as of January 1, 1920, and the present time, was and is at least the sum of $1,655,877.94, and the complainant company has and is constitutionally entitled to have its rate such as to yield a fair return upon at least that sum. For reasons set forth in my opinion herewith submitted, I have made no deduction from
) the above-stated amount on account of so-called "accrued depreciation," theoretical or otherwise.

35. I find that $5.00 per thousand cubic feet of gas sold fairly presents the actual and necessary investment in property used and

needed for the manufacture, transmission and distribution of gas under the conditions such as those under which the complainant company carries on its gas operations, and such investment may, for the purposes of this case, be taken to be at least that sum.

36. Upon the trial before me, no claim was made by any of the defendants that any of the property owned or used by the complainant company was not and is not used in useful in its gas business.

37. Upon acquiring the capital stock and outstanding capital obligations of the Newtown and Flushing Gas Company in 1904, the complainant company paid for the same by issuing its capital stock for the par value of $600,000 and its first mortgage bonds of the par value of $650,000, making in all $1,250,000.

38. The actual cost, when acquired, of the property now used by the complainant company but acquired by some predecessor company in earlier years, cannot be ascertained.

39. I find that the fair and reasonable market value of the land (unimproved) owned by the complainant company and used and useful in its gas business as of January 1, 1920, was and is at least $45,153.90.

40. I find that, exclusive of the working capital and the undistributable structural costs hereinafter referred to, the cost to
71 reproduce the plant, distributing system and other tangible property of the complainant company as of January 1, 1920, or as of the present time, was and is, without any deduction for depreciation, at least the sum of $2,100,774.90, made up as follows:

(*a*) Building and apparatus	$505,960.00
(*b*) Street Mains	1,071,139.00
(*c*) Services	175,563.00
(*d*) Meters	174,163.00
(*e*) Gas Appliances	85,427.00
(*f*) Arc Lamps	3,173.00
(*g*) Tools and Implements	1,002.00
(*h*) Laboratory Equipment	2,449.00
(*i*) Office Furniture and Fixtures	6,023.00
(*j*) Stable equipment	5,424.00
(*k*) Omissions and Contingencies	25,298.00
(*l*) Land	45,153.90

In the foregoing, I have not included any allowance for organization and development expenses prior to construction; the cost of financing; interest during construction; taxes on land during construction; engineering, superintendence and general contractor's expense and profit; administrative, legal and miscellaneous expenses during construction; or for so-called "going value." Unquestionably, in the reproduction of a plant distributing system and gas enterprise of this character, as of the present time, items of expense would necessarily be incurred along the lines indicated by these

items, all except "going value" being comprised within the category of what is commonly called "undistributable structural costs." Under the circumstances of my determination of this case, however, I have not felt called upon to determine and allow definite amounts to recover these additional elements of reproduction cost and expense.

72 41. With respect to the tangible property owned and used by the complainant as of January 1, 1920, and included in the above finding as to the cost to reproduce the said property, the complainant submitted to the defendants, in advance of the trial before me, a detailed inventory of items, units, and quantities, with brief descriptions of such property and a statement of the unit prices or costs applied to each such unit, to reach the above-stated cost to reproduce the property. Such inventory was checked up by the engineers of the defendants, at least to the extent desired by them, and upon the trial no testimony was given challenging any item or quantity shown in such inventory or any unit price applied therein.

42. Using the unit prices of labor and materials prevailing as of January 1, 1914, the cost to reproduce the tangible property of the complainant company itemized in Finding No. 40 hereinbefore, would be about one-half of the above-stated cost to reproduce the same as of January 1, 1920, to which, of course, in order to reach and state a figure reflecting all elements of reproduction cost, there would have to be computed, on a similar basis, and added, amounts covering the other items referred to in Finding No. 40.

43. During the twelve months ended December 31, 1918, the twelve months ended December 31, 1919, and during the portion of 1920 covered by the proofs before me, and during all and each of the periods so indicated, the operating revenues of the complainant company were not sufficient to pay the reasonable and necessary costs of the manufacture, transmission and distribution of gas, and to provide a reasonable return upon the value of the property owned and used by the complainant in the manufacture, transmission and distribution of the gas sold by it to its consumers. During the twelve months ended December 31, 1919, and during the portion of 1920 covered by the proofs before me, the said
73 net operating revenue did not and does not as of the present time, provide any return whatever upon the said fair present value of any of the property so owned and used by the complainant company as hereinbefore found.

44. On the basis of my finding of a net deficit from operations in 1919 of 2.54 cents per thousand cubic feet of gas sold, I find that the operating revenues of the gas business of the complainant company, during the year 1919 were not even sufficient to pay the reasonable and necessary costs of the manufacture and distribution of gas; and that in addition to being deprived of any return whatsoever upon the fair and reasonable value of its property devoted to the gas business, the complainant gas company actually suffered a loss from its gas

operations in 1919 of 2.54 cents per thousand cubic feet of gas sold and is suffering a loss at a still greater rate in 1920.

45. The reasonable and proper rate of return upon the capital invested in the plant, distributing system, properties and business of the complainant company, I find to be not less than eight per cent. per annum, amounting to $132,470.24, calculated upon the fair value of the property used and needed, as hereinbefore found. At no time during 1919 or thus far in 1920 has the complainant company earned any part of such a return.

46. As of May, 1920, the actual average rate of pay per hour for labor in the complainant's works has been necessarily increased 24 per cent. over the average rate per hour for all of 1919; the increase in the shop department has been 20 per cent., and in the office employees 10 per cent. The average increase in the prices paid for materials other than coal and oil, from 1919 to May, 1920, has been 10 per cent.

74 47. Since 1914 the complainant company has paid no dividends upon any of its stock, and during 1919 and 1920 it has necessarily borrowed the money to pay the interest on its bonds. During 1919 and 1920, it has necessarily borrowed money also to enable it to meet in full its current bills for coal, oil and materials.

48. During the twelve months ended December 31, 1919, the revenues and expenses of the gas business of the complainant were as follows:

Revenues.

Sales of Gas	$334,614.83
Miscellaneous Operating Revenues:	
Rents from Gas Appliances	13,839.53
Gross Profits from Sales of Gas Appliances	8,465.39
Interest on bank balances	308.60
Interest on consumers' final bills	5.44
Interest on Main Contracts Deposits	81.10
	$357,314.89

Expenses.

Cost of Production	$241,176.84
Cost to Distribute	91,331.63
Renewals and replacements	10,086.41
Taxes and interest thereon	23,794.71
Total expenses	$366,389.59
Total revenues	357,314.89
Net loss from gas business	$9,074.70
Deficit below a reasonable return on complainant's investment as hereinbefore found	$141,544.94

75 In the above-stated finding of the revenues and expenses of the complainant company, I have eliminated, as not properly to be included for the purposes of my present inquiry whether the maximum rate prescribed by statute has been, is, and will continue for a period of indefinite duration to be, confiscatory, the company's outlays in 1919 for "defensive emergency service," amounting to $747.46, and for the expenses charged in that year on account of the present suit in equity, amounting to $15,518.73.

49. With the approval of the defendant Public Service Commission for the First District, the Consolidated Gas Company of New York, in the year 1913, acquired and now owns all of the capital stock of the New York and Queens Gas Company (except qualifying shares). The Consolidated Gas Company of New York apparently does not own any of the bonds of the complainant company.

50. I find that the complainant company has complied with the provisions of Chapter 125 of the Laws of 1906, with reference to the candle-power and with the requirements of law regarding pressure.

51. Various matters comprised within the issues referred to me by the order of May 23rd, 1919, I have discussed in greater detail in a separate opinion which is herewith submitted and made a part of this report. It is my intention that the facts, and the conclusions regarding the law, set forth for reasons of convenience in that separate document, shall be deemed a part hereof, with the same force and effect as though they had been physically incorporated in this report.

52. I recommend that it be adjudged and decreed that Chapter 125 of the Laws of 1906, in so far as it provides that the com-
76 plainant New York and Queens Gas Company shall not now charge or receive for gas manufactured, furnished or sold by it, a sum per thousand cubic feet, in excess of a rate of one dollar ($1.00) per thousand cubic feet, is illegal and void, because in contravention of Section 10 of Article I of the Constitution of the United States and of the Fourteenth Amendment to the said Constitution, and that the complainant New York and Queens Gas Company have the other and further relief against the defendants in this suit which is asked for in the complainant therein.

All of which is respectfully submitted,

ABRAHAM S. GILBERT,
Special Master.

Dated New York, July 16th, 1920.

77 United States District Court, Southern District of New York.

In Equity.

No. 15-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, at Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Opinion of the Special Master.

The complainant New York and Queens Gas Company is engaged in the business of manufacturing gas in that part of New York City known as Flushing. It delivers gas to consumers in the Third Ward of the Borough of Queens in the City of New York. By statute it is required to furnish gas to its private consumers at a price not exceeding $1.00 per thousand cubic feet. It is also required by statute to furnish gas to the municipality at a price not exceeding seventy-five cents per thousand cubic feet.

In this action the complainant company attacks the constitutionality of the statute which limits its charge to private
78 consumers to the sum of $1.00 per thousand cubic feet, upon the ground that such statute is confiscatory of its property.

The complainant contends that it does now and has for some time past cost more than $1.00 per thousand cubic feet to make, distribute and deliver the gas to its consumers. If that claim is sustained by the evidence in this case, the value of the property used in the manufacture and distribution of the gas is of only secondary importance. The question involved in this case is not what rate ought to be authorized by statute or by order of the defendant Public Service Commission had no statutory limitation been imposed, but whether the maximum rate now permitted by statute is confiscatory.

Necessary Elements in Complainant's Operating Costs.

It is conceded at the outset that in order to make gas, it is necessary to have coal, oil and other incidental manufacturing material and the labor necessary to make and distribute the gas. It is also conceded that in the operation of gas plant, repairs are required which call for repairs material and repair labor. In order to determine the cost of making and distributing gas, it becomes important to find out how much of the various materials is actually and reasonably used in the manufacture of gas and the reasonable cost of

that material; the amount of labor required in the manufacture of gas, and the reasonable cost of that labor; the amount of repairs required, on the average, and the amount of material and labor required for that purpose, and the reasonable cost thereof; and the reasonable expenses of managing the business, delivering the gas to the consumers and collecting the moneys payable therefor, including the necessary clerical hire, the pay of meter readers, indexers an dbill clerks, the executive salaries, and the like.

79 Scope of the Complainant's Proofs.

For the purpose of proving the quantity and cost of materials, labor and the like, as well as the revenues and expenses of its gas business, the complainant company presented to me, as previously to the accountants and experts of the defendants, all of its invoices and vouchers for coal, oil and other materials and supplies purchased, together with its various payrolls, works reports, records of manufacture, office reports, and the like, together with its books of account in which the items of expenditure and revenue shown by these underlying records had been entered. All of this data covered the year 1919 and the first five months of the year 1920. To the invoices for coal, oil and other materials, were attached the certificates evidencing the receipt of the quantities indicated, and to the oil invoices were also attached the certificates of the New York Produce Exchange Inspectors attesting the quantity and quality of the oil delivered. The public accountants employed by the complainant had checked these vouchers and records to the books and certified to the accuracy of both. There was also submitted to me the sworn testimony of qualified witnesses as to the actual cost of oil, coal and other materials from 1906 down to the present time, including the years 1919 and 1920, and the sworn testimony of experienced operating engineers as to the quantities of coal, oil and other materials, and of the labor, actually required for the manufacture of gas and the wages necessarily paid to labor during this period, including 1919 and the first five months of 1920.

The defendants also offered in evidence data showing the operating results, the unit quantities of materials used, the unit costs thereof, and other information as to the revenues and expenses of the complainant company during the years from 1906 to
79¼ 1920. Various of the underlying records of 1918 and prior years were also produced in Court at the instance of the defendants, and various of the entries in the books of the complainant and its predecessor company were placed in evidence by the defendants.

Increased Sales and Increased Costs.

The evidence before me is practically without dispute that since the first of January, 1920, labor cost has considerably increased over the year 1919, and that material cost has considerably increased over the year 1919. On the other hand, the vice-president and

operating manager of the complainant, Mr. Spear, stated on one of the closing days of the trial that in his judgment the sales of the complainant company during 1920 will be about 15 per cent in excess of the sales during 1919. In my opinion, a finding to this effect is justified and required by all the evidence, although counsel for the complainant points out that from 1918 to 1919 the increase in sales was only 2.6 per cent and that the average increase during the past five years has been only 7.02 per cent.

An increase of fifteen per cent in the volume of sales will, in my judgment, necessarily tend to reduce the cost, in terms of cents, per thousand cubic feet of gas sold, of certain of the items classified as distribution costs, particularly in the category of commercial and general office expenses. Any such decrease in the unit cost of these commercial expenses (in the meter-reading, bookkeeping and billing departments, for example) will probably prove less than would otherwise be the case, by reason of the fact that the company's present office force is small and is compelled to work on an overtime basis to look after the present volume of sales, and additional staff may be required for increased sales; but as fairly as I can
791½ figure it, increased sales of fifteen per cent. over 1919 would ordinarily make a difference of about four cents per thousand cubic feet, in the distributing cost of the gas sold by the complainant. Any such saving in the unit expenses of the general office and commercial departments will, however, be at least absorbed by the increased cost of gas manufacture and the increased cost of the labor and material entering into the work of distribution, so that the net effect on the unit distribution costs as they now appear for 1920 will be that, despite the prospective increase in sales, the gas as delivered to the consumer, including the commercial expenses, does and will cost considerably more per thousand cubic feet than in 1919 or early 1920.

1920 Costs Higher Than Those of 1919.

If, therefore, the actual results of operations for the year 1919 show the rate to be confiscatory, it follows that the net result of operations for the year 1920, which can only be determined in definite figures when the year has ended and the books for 1920 have been closed, will show a larger deficiency than appeared as the result of operations in the year 1919. I have therefore concluded to base my findings as to the cost of making and distributing gas especially upon the operations and costs established for the year 1919, those figures being taken, of course, in the light of what I have just said, that the cost of making and distributing gas in the year 1920 will be in excess of the figures I reach for the year 1919.

80 Details of 1919 Costs as Shown by the Company's Books.

The books of account, vouchers, manufacturing records, works reports, and the like, of the complainant company were placed at the disposal of the defendants, more than six months in advance

of the beginning of the trial before me, along with copies of the principal statistical exhibits which the complainant proposed to offer in evidence upon the trial, and were carefully and thoroughly examined and analyzed by counsel for the defendants, their accountants and engineers. These operating records show that in the year 1919 the actual cost of the gas made at the complainant's works was 63.45 cents per thousand cubic feet of gas made, and that the loss in volume based upon the quantity of gas metered at the consumers' premises, to which I shall presently refer in discussion of this so-called "unaccounted for gas", was 11.03 per cent of the gas made. On that basis, the complainant's actual cost of making gas in the year 1919 was 71.73 cents per thousand cubic feet of gas sold. The actual distribution expenses, including the commercial expenses (and including also an item of 0.22 cents for defensive emergency service still required in 1919 and 4.62 cents on account of the expenses of the present suit in equity, totalling 4.84 cents, both of which items it is my judgment that I ought to disregard for the purposes of my present inquiry, for reasons hereinafter indicated), aggregated 32 cents per thousand cubic feet sold; renewals and replacements three cents per thousand cubic feet sold; taxes and interest thereon 7.07 cents per thousand cubic feet sold, making a total actual cost of $1.1380 per thousand cubic feet of gas sold. The complainant's income from the sale of gas in 1919, according to these same books and records, was 99.51 cents per thousand cubic feet, showing a deficiency below actual cost of 14.29 cents per
81 thousand cubic feet of gas sold. As against this deficiency, however, the complainant company credits the account with the profit made on its sale of gas appliances, the moneys received as rental of such appliances, and certain interest items, aggregating 6.75 cents per thousand cubic feet of gas sold, leaving a net deficiency during the year 1919 of 7.54 cents per thusand cubic feet of gas sold, or in money, the sum of $25,340.89.

The Uniform System of Accounts.

It becomes important, therefore, to determine whether these figures appearing in the books and records of the complainant company have been sustained and confirmed by the proofs submitted in the present record, and whether any of the items of expenditure shown in the accounts should be disregarded by me in determining whether the statutory rate was and in confiscatory.

The books and accounts of the complainant company, like the accounts of all other gas companies in the City of New York since the year 1908, have been kept under the jurisdiction of the defendant Public Service Commission of the State of New York for the First District. The Public Service Commission has prescribed a uniform system of accounts which is observed by the complainant company, and possesses authority to examine the complainant's books and records at all times and require changes in the accounts, if deemed advisable. The powers and duties of the defendant Com-

mission are set forth in full in the statute known as the Public Service Commissions Law, and it is unnecessary, I think, for me to dwell at length upon the provisions of that statute at this point.

Unit Quantities of Materials and Labor.

The first question to determine is whether the quantities used by the complainant company as they appear from the books and
82 records of the company are correct and set forth a reasonable and necessary use of materials and of labor, or whether there has been a waste of gas-making material and unnecessary use of labor forces and the books do not accurately reflect the quantities actually needed and used. I have analyzed these figures in the light of the defendants' proofs and also of the sworn testimony given by Mr. Woods, an operating engineer of wide experience produced by the complainant company, whose testimony has not been directly attacked or contradicted by any witness. Except for some minor variances when contrasted with the 1919 operating results, such as his estimate of "unaccounted-for" gas at 10 per cent. (the record for 1919 shows 11.03 per cent.), his slight underestimate of the required boiler fuel, and the slight difference as to the figures given by him for the gas oil required, it may be said that the results shown in the operating records closely accord with the sworn expert opinion of Mr. Woods, and are confirmed by his judgment as to the results which might reasonably be looked for and secured.

Complainant's Records Accurately Kept and Reflect Efficient Results.

As to some items, the complainant company in 1919 did a little better than Mr. Woods said he would expect to find its operating staff doing under average operations as of the present time. As to gas oil, Mr. Woods' estimate was the average use of 4.2 gallons per thousand cubic feet; the operating results showed an actual use of 4.19 gallons in 1919 and of 4.26 gallons in 1918. As I have already indicated, Mr. Woods thought that the "unaccounted-for" gas would ordinarily not exceed 10 per cent.; whereas the operating records showed an actual unaccounted for in 1919 of 11.03 per cent., which seems to me a reasonable figure, having in mind all present conditions. On the whole, I am convinced that the operating records of the complainant company have been honestly and accurately
83 kept, and accurately reflect actual, efficient, and reasonable operating results. In arriving at a conclusion, therefore, in this case, I have accepted the actual operating results for the year 1919 as they appear from the books of the complainant company, showing the cost of manufacture to be 63.45 cents per thousand cubic feet of gas made.

The Volume of "Unaccounted-for" Gas.

The question of the so-called "unaccounted-for" gas becomes important in order to determine the cost of the gas actually supplied

to consumers. It is conceded that there is an unavoidable loss in gas volume known in the art as "unaccounted-for" gas. The fact that in any year, in order to deliver a certain number of million cubic feet of gas to consumers, a larger quantity of gas has to be made and sent out than is ever metered on the consumers' premises, is one of the factors affecting and determining the cost per thousand cubic feet of the gas delivered to the consumers. Counsel for the defendants contend that the "unaccounted-for" gas of the complainant in the year 1919 was greater than in prior years. That appears to be the fact. I am asked by counsel for the defendants to find that this increase in the "unaccounted-for" gas during the year 1919 has not been explained by the complainant. I am unable to make such a finding because there is ample evidence in the case indicating that it is practically impossible to regulate the amount of "unaccounted-for" gas and that factors were operative in 1919 which tended to increase the percentage. Weather and other conditions affect the gas in such manner and form that it is impossible to say that "unaccounted-for" gas should be kept below a certain percentage. Some years it seems to run very high, and in other years it seems to run quite low. This variance is caused by a number of changing
84 conditions. I feel that I am compelled, in considering the operating results of the complainant company, to accept the actual conditions as I find them during the year 1919, and to accept the "unaccounted-for" gas at the figure of 11.03 per cent., which was the exact amount of such loss in volume during that year. In this connection, of course, it should be borne in mind that in 1920 or in some subsequent year this percentage may be lessened, so that the actual cost of making the gas in such year, if based upon the rates of pay for labor and the price of materials prevailing in 1919, might be somewhat less than the figures now shown for 1919. But here again it should be noted that although there may be a reduction in the percentage of "unaccounted-for" gas, whatever reduction may take place from such a cause will be more than absorbed and offset by the increased cost of materials and of labor. Upon the basis of 11.03 per cent. of "unaccounted-for" gas, the complainant's actual cost of manufacture during the year 1919 was 71.73 cents per thousand cubic feet of gas sold.

The Cost of Distribution.

This brings me to the cost of distribution and other expenses, including the commercial expense. The defendants challenge only four of the items included in this general item of "distribution and other expenses." They ask me to strike out from the 1919 outlays the item of $747.46 for "defensive emergency service"; the item of $15,518.73 representing the charges made in 1919 on account of the expenses of the present rate suit; interest on insurance, amounting to $57.58; and increased fire insurance, $477.30. I cannot agree with counsel for the defendants in their claim that I ought to eliminate the items "interest on insurance, $57.58" and the item "increase in fire insurance, $477.30."

85 Eliminated Items.

I do, however, agree with counsel for the defendants that for the purposes of the test I am required to make in this case, I should eliminate the amount charged in 1919 to the account of the present rate case, amounting to $15,518.73 and the items appearing in the 1919 accounts for defensive emergency service amounting to $747.46. I limit my statement as I have with respect to these two items last mentioned because I agree with counsel for the complainant that in establishing a new rate an allowance must be made for the necessary expense to which the complainant company has been put in establishing its right to charge an adequate and remunerative rate for the gas sold by it, despite the existing statutory limitation, which I herein find to be confiscatory. I draw a distinction between analyzing the usual and necessary operating expenses of the company for the purpose of determining whether, in the first instance, the maximum rate fixed by statute is confiscatory, and the analysis of the complainant's expenses which must be made in fixing the fair rate for the future. The latter, of course, must make provision for the complainant's reimbursement for the expense of freeing itself from a statute which the complainant has proved to be confiscatory. That, however, remains to be considered in the fixation of a new rate.

The two items which I have thus stricken out for the purposes of the present inquiry aggregate $16,266.19. The total amount of actual distribution expense for 1919 was $107,597.82. Deducting $16,266.19 from $107,597.82, gives $91,331.63; this divided by $336,000,000 cubic feet sold in 1919 makes the allowable distribution expense approximately 27 cents instead of 32 cents as shown on the books of the complainant company.

86 Renewals, Replacements and Taxes.

The item of the cost of providing for the renewal and replacement of property withdrawn from service seems to be agreed upon by all parties at three cents per thousand cubic feet of gas sold. As to the taxes and interest thereon, amounting to $23,794.71, or 7.07 cents per thousand sold, the defendants ask me to eliminate the interest on unpaid taxes, amounting to $233.71, and the Federal income tax item of $443.25. I doubt whether these items, particularly the latter, should be included in the cost of taxes to the complainant company, but if I should eliminate either or both of them, it would make no substantial change in the tax figure, so that in arriving at my figures, I have taken the tax item as 7.07 cents per thousand cubic feet of gas sold.

Conclusions as to 1919 Results.

There appears to be no dispute that the income from sales of gas amounted to 99.51 cents, nor does there appear to be any dispute as to the amount of credit for miscellaneous operating revenue, viz.,

6.75 cents per thousand cubic feet of gas sold. I have reached the conclusion, therefore, that the actual cost of making and distributing gas during the year 1919, including taxes and the renewal and replacement of property, was $1.0880, against which there is to be credited 6.75 cents, leaving a net cost of $1.0205, or a deficiency over the sum realized from gas sales (99.51 cents) of 2.54 cents per thousand cubic feet of gas sold. This sum, multiplied by 336,241,400 cubic feet of gas sold during the year 1919, gives $8,540.53 as the actual deficiency in operating expenses for the year 1919, without regard to any return upon any of the complainant's investment in the property used in its gas business. These figures show
87 a confiscation of the complainant's property in 1919 and a confiscation thereof to an even greater extent thus far in 1920, and there might appear to be no necessity for my going further and ascertaining the present fair value of the property upon which the complainant was and is entitled to earn a reasonable return. Both sides, however, have asked that I make findings with respect to the complainant's property and its value, and in order that the reviewing court may have before it the exact situation of the complainant, I have made my findings in detail with respect to the property and its value.

Franchises and Rights Acquired by the Complainant.

The complainant company was organized in the month of July, 1904. Between the time of its organization and its merger with the Newtown and Flushing Gas Company, it acquired all of the outstanding securities of the Newtown and Flushing Gas Company. It issued for these securities its own securities—$600,000 of stock and $650,000 of bonds. At the time of the merger, the complaniant company apparently, so far as this record discloses, owned no property, had no cash, and had no assets of any kind or description. No inventory and appraisal of the property acquired by the complainant seems to have been made the basis of the merger. The securities issued by the complainant for this purpose cannot, it seems to me from the present record, be considered to have been worth more than the property thereby acquired. The Newtown and Flushing Company, when it was merged with the complainant company, owned certain tangible and intangible properties, including certain franchises issued by various village and town officials. No proof was offered tending to show any specific sums as paid to the public authorities for franchises, or what specific amounts were paid
88 by the companies which acquired these franchises to the persons and corporations which theretofore owned them. The record does not show to what extent the cost of these franchises and rights to the Newtown and Flushing Gas Company as shown by its books placed in evidence by the defendants represented actual payments for the same to public authorities by that company or its predecessors.

Agreement as to the Cost of Present Tangible Property.

Fortunately, there has been agreement between the parties upon this record as to the cost, up to and as of August 1, 1904, of the tangible properties still in existence and use, which were acquired by the complainant company on that date. The complainant and the defendants agree that the tangible property acquired on August 1, 1904, and still in existence and use, did cost, and as of that date was reasonably worth, at least, $280,108 and I accept that figure in arriving at the complainant's total investment and the present value of its property. Since that date, the net additions to the plant and property of the complainant have cost $850,389.08, and there is no dispute as to this item. These two items not in controversy cover the actual cost of the tangible property now in use, aggregating $1,130,497.08.

Additional Elements of the Original Investment.

To the first of these items, the complainant asks me, on the basis of Mr. Miller's testimony and the book entries as of 1904 and subsequent years, to add $320,350 for the preliminary organization and development expenses of the enterprise and other items of cost set forth in Mr. Miller's estimate (Complainant's Exhibit 96). It is conceded by the defendants that in the initiating of a gas
89 enterprise there is necessarily incurred preliminary and development expenses, cost of financing, engineering and superintendence expenses, interest and taxes during construction, and the like as to which varying amounts were testified by the witnesses on each side, principally based upon opinions as to the proper percentages to be allowed for such items. The defendants contend, moreover, that there is no adequate proof before me on which I should base any finding of value for the franchises and rights.

"Going Value."

The complainant further contends that, under the decisions of the courts, I must include in my figures, if they are to be complete and state the full reproduction cost, an amount for so-called "going value." I readily agree that in arriving at a statement of the full cost of bringing such a gas project into being and its business to a profitable point, an allowance for "going value" would have to be included. The complainant's testimony in this case was that these elements of cost commonly referred to as "going value" would, as to this company, amount to at least $500,000. My present task, however, does not necessarily call for such an effort to cover specifically all elements of reproduction cost. I also readily accept the argument that in arriving at the cost of the tangible and intangible property of the complainant, I should expect to find that the franchises and rights had cost a substantial sum and that some allowance must be made for the necessary but undistributable expenses

already referred to. The difficulty here, however, is in finding a satisfactory figure from the evidence available in this record.

The $650,000 of bonds originally issued by the complainant company upon the purchase of the securities of the Newtown and Flushing Company are probably now in the hands of persons who at that time had no connection with the Newtown and Flushing
90 Company. All of the stock of the complainant company is owned by the Consolidated Gas Company of New York. As I have already pointed out, one difficulty here is that I have not before me the satisfactory basis for a finding that the securities issued by the complainant company were worth any more than the book value of the tangible and intangible property acquired, or that under the circumstances already referred to, such property, at the time it was acquired, had cost or was worth more than was shown by the books of the company from which it was acquired.

Basis of Finding as to Undistributable Structural Costs.

At the time of the merger of the Newtown and Flushing Gas Company into the New York and Queens Gas Company, the total property and assets of the former (exclusive of working capital) were carried on the books of the former at $694,678.00. Since that time, plant and equipment so acquired by the complainant on August 1, 1904, has been retired, at a book cost totalling $24,189.14. The tangible property acquired on August 1, 1904, and still in service, is agreed to have cost before August 1, 1904, and to have been worth on that date, the sum of $280,108 exclusive of franchises and rights and "going value" and the undistributed structural items under consideration. The deduction of these two items from the book total of $694,678.00 leaves only $390,380.86 as representing the book cost to the Newtown and Flushing Gas Company of the franchises and rights, the "going value," and the undistributable structural items hereinbefore mentioned. There is sufficient evidence to warrant my conclusion upon the present record that the item of "franchises, good will, etc.," on the books of the com-
91 plainant and its predecessors, covered, among other things, preliminary and development expenses and the various other items which Mr. Miller puts in at a total of $320,350, and also the cost of "franchises and rights," which Mr. Miller puts in at $500,000; and I think it will be fair for me to say, for the purposes of the present case, that for all of these items just referred to, the New York and Queens Gas Company actually paid no more than their book cost to the Newtown and Flushing Gas Company and its predecessors, viz: $390,380.86, and that these elements had cost the Newtown and Flushing Gas Company and its predecessors, and were worth, on August 1, 1904, at least that sum.

Working Capital.

To the cost of the present property acquired in 1904 and the net additions to such property since 1904, totalling $1,520,877.94, there

must be added an item for materials and supplies, cash on hand and in banks, and the like, commonly called working capital. The experts for the defendants figure this item for the year 1919 at $80,000. Mr. Miller, on behalf of the complainant company, figures the item at $165,000. The expert witnesses called by the defendants frankly concede that the amount to be allowed for working capital is such amount as reasonable business men of experience would require in the conduct of this kind of a business. Taking into consideration the various elements which are and must be provided for in arriving at the necessary amount of working capital, I have reached the conclusion that $135,000 would be a fair sum to be allowed for working capital. I therefore reach the conclusion that the tangible and intangible property, including working capital, used and useful during the year 1919 and as of January 1st, 1920, by the complainant company in the conduct of its gas
92 business, represents an actual investment, and is reasonably and fairly worth at this time, at least the sum of $1,655,877.94, and that it is on at least this amount that the complainant company was and is entitled to have its rate such as to yield a fair return.

Cost and Present Value of Land.

In view of some statements made by me on the record with reference to the value of land and my statement that I would fix the value of land at about $44,000, I should add that upon analyzing the figures I found that land acquired prior to August 1st, 1904, is included in the agreed item of $280,108 at $19,423, plus grading and filling, $5,000, making $24,423 for land unimproved and that additions to real estate since 1904 have cost the complainant $20,630.90, a total of a little more than $45,153.90.

Compliance with Candle-power Statute.

Statements made by me on the record indicate my views as to the claim made by counsel for the defendants that the complainant company was not entitled to equitable relief because of its alleged failure to comply with the statutory requirements as to candle power, and I therefore deem it unnecessary to say anything further herein upon that subject, which I discussed at considerable length in my opinion as Special Master in the Consolidated Gas Company case. In view of the similarity of the record facts, I refer to that opinion for a fuller statement of my views upon the subject. I am clear that this complainant has complied with the candle-power provisions of the statute.

93 Basis of Finding of "Present Value."

It is proper for me to say before concluding this opinion that I have based my finding of fair present value upon what I conceive to be the actual cost of the property to the complainant company. My reasons for the adoption of this criterion or standard of present

value in such a suit as this were set forth at length in my opinion as Special Master in the Consolidated Gas Company case, to which I refer for a more comprehensive statement of those reasons. In my opinion the property now used by the complainant company is worth at least that sum.

The Undisputed Testimony as to Present Reproduction Cost.

The complainant company offered testimony as to the present reproduction cost of the tangible property of the complainant company. The proof was undisputed that the complainant owns and uses the items of tangible property which it inventoried as of January 1, 1920, and that, exclusive of working capital and the undistributable structural costs, the cost of reproducing the tangible property, as of January 1, 1920, would be at least $2,099,621 as compared with the complainant's actual and unimpaired investment in the same tangible items of only $1,130,497.08. In other words, leaving out working capital and the undistributable working costs, it would cost nearly twice as much to reproduce the tangible property today as it did actually cost the complainant and its predecessors.

Of course, to this figure of $2,099,621, to reach a complete figure of present reproduction cost, there must be added amounts, based on the present cost of such items, for organization and de-
94 velopment expenses prior to construction; cost of financing; engineering, superintendence and general contractors' expense and profit; interest during construction; taxes on land during construction; the cost of franchises and rights; administrative, legal and miscellaneous expenses during construction; certainly the sum of $135,000 for working capital; and perhaps also a suitable amount for "going value." The above-stated investment figure of $1,130,497.08 likewise does not include any allowance for the cost of these items prior to August 1, 1904, although they were, of course, principally incurred before that time. In so far as these undistributed elements arise in connection with the present cost to reproduce this property, I have not thought it necessary to make a finding as to any of them, and in so far as they arise in connection with the complainant's present aggregate investment, I have declined to make any finding assigning to them a value in excess of the item representing their cost to the complainant and its predecessors, viz: $390,380.86, in which they are included to an extent deemed adequate for the purposes of this case.

No Deduction for "Accrued Theoretical Depreciation."

In determining that the complainant's property has a fair present value of at least the amount of the complainant's actual investment therein as found by me, viz., at least $1,655,877.94, I have made no deduction for what is termed "depreciation," in whatever way calculated. Under any basis of determining present value the complainant's property is now worth at least the amount of such investment therein, and the sound rule of law and policy seems to require

the allowance of a reasonable return upon at least that sum.

95 Upon the present trial, it was insistently urged upon me by some of the defendants that there should be deducted from the cost of the property (irrespective of whether "original," "pre-war," or "present reproduction" cost be under consideration) an amount claimed to represent so-called "accrued theoretical depreciation," based upon an assumption of "life expectancy" for a gas plant and equipment and the estimated or known number of years since the same was erected or installed. From the testimony given upon the trial, I was strongly impressed that in respect of a very large proportion of gas property, there is no ascertainable "life expectancy." The withdrawal of such property from service comes about from inadequacy or obsolescence which cannot be forecast in terms of years or even satisfactorily guessed at. Certain parts of operating machinery and equipment are of course subject to the effects of use. The replacement of these wearing parts enters into the cost of repairs. As to the substantial units of structures, apparatus, mains, and equipment, their withdrawal from the property accounts comes about from causes not attributable to the condition of the property itself or any diminution in its operating efficiency but varying utterly with the particular plant, time, local conditions and service demands and hence capable of being forecast only as the occasion for such change in plant or equipment becomes imminent.

The Renewal and Replacement of Gas Property.

In other words, in order to keep abreast of improvements in the art of making and distributing gas when and as it becomes economically advantageous to do so, and to meet the growing demand of the public for service more adequately and economically than would be possible through merely making additions and extensions to

96 existing plant and equipment, larger or better and more economical and efficient units of plant and equipment are from time to time installed, to take the place of units which still are operating as efficiently as when first installed. The loss due to such supersession cannot properly be said to have accrued during the period the superseded unit was in service. It occurred when supersession took place. It became a proper charge against the economies to be realized therefrom. It furnished no basis for the imposition of an additional charge against the user of the superseded unit during the period of its useful service over and above the higher cost of operating it. Such a charge could not be justified either on the ground that the unit was losing potential life, or that the capital invested in it was being consumed, because neither is true.

Additional Burden on the Consumer Unwarranted.

In order to justify the deduction of "theoretical depreciation," I was asked in this case to assume that a "depreciation reserve" equal to the computed "theoretical depreciation" had been collected from the public, and then to deduct from the company's investment the

amount of such assumed reserve. No such reserve had, in fact, been collected or accumulated by this company. The rate chargeable did not permit it, and there is no reason to believe that the Legislature, in prescribing the rate, ever contemplated it. As I have set forth in Findings Nos. 32 and 27 of my Report and as I have elsewhere indicated herein, the complainant gas company has maintained its property and investment intact in the past, through renewals and replacements, at an average actual cost of approximately three cents per thousand cubic feet of gas sold, and no reason appears for be-
97 lieving that it cannot continue to do so on that basis. Even assuming that the statute permitted such a rate, to have imposed on the company's consumers an additional burden nearly twice as great, representing a purely theoretical item of operating cost, merely to accumulate a useless reserve to justify a drastic deduction from investment in some ultimate proceeding as to rates, could not have been justified on any sound theory in the past and cannot now be sustained as to the future.

Effects of an Unnecessary Reserve.

In order to justify the assumption that a "depreciation reserve" was or should have been collected, defendants' witness Hine testified in this case that such a reserve was necessary "so that when the property is retired for any cause whatsoever the fund can be charged with the cost of the property." He testified also that the reserve should be in his opinion "invested in the property," and that when the funds were needed for renewals and replacements they would be provided "by issuing securities against construction work which had been done originally out of this fund, for the money laid aside for this fund, just to reimburse the treasury on account of these expenditures." This view seemed to me to disregard the obvious fact that having deducted the amount of the reserve temporarily invested in property from that on which he proposed the company should be allowed to earn a return, he, to all intents and purposes, destroyed the earning power of such property and investment; that therefore he could not issue any securities against such property, there being no earnings therefrom with which to pay interest on the securities; that the reserve could never thereafter be availed of for the purpose for which it was alleged to have been created, and that it would
98 be, in fact, as if it had never been created. Thus he not only failed to sustain his contention that a "depreciation reserve" was necessary for the purposes which he alleged, but he proposed to treat the reserve as if he himself believed it to be both unnecessary and ineffectual, except for the purpose of justifying a deduction from the complainant's investment.

It is obvious that the collection of an unnecessary reserve and its periodic deduction from the value of the property in service would operate to effect a piece-meal purchase on the part of the public, of the property used by the utility in its service. In other words, it is really asking the consumer to pay for the plant, instead of paying a return on the investment. If such a consummation is desirable, of which there is no evidence, it should be effected openly, and not sur-

reptitiously under the guise of providing for so-called "theoretical depreciation."

Present Condition of the Property.

Mr. Miller testified that as of April, 1920, the expenditure of $6,144.07 for repairs, renewals and replacements, would put the plant, structures, machinery and equipment in condition substantially as good as when they were erected or installed. His testimony in this respect was not contradicted by that of any witness. This sum, however, does not, in my opinion, measure any impairment in the present value of the property used and useful in the gas business. It represents merely an unmatured obligation to maintain the property in efficient operating condition out of future earnings, the expert witnesses of both the complainant and the defendants agreeing that it was and is maintained in efficient and first-
99 class condition. I therefore have not deducted this or any other sum representing so-called "accrued depreciation" from the amount found by me to represent the investment of the complainant in its gas property upon which it is entitled to have its rate such as to yield a reasonable return.

Respectfully submitted,

ABRAHAM S. GILBERT,
Special Master.

Dated, New York, July 16th, 1920.

100 VII *a*1.

United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY Complainant,

vs.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of Queens County, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Exceptions to Special Master's Report and Opinion.

Please take notice that the within exceptions of the defendants to the Special Master's findings were filed in the clerk's office of the United States District Court on the 6th day of August, 1920.

Dated, August 6th, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York.

WILBER W. CHAMBERS,
Solicitor for Defendant Charles D. Newton.
Office & Post-office address, Capitol, Albany, N. Y.

TERENCE FARLEY,
Solicitor for Defendant Lewis Nixon.
Office & P. O. Address, 49 Lafayette St., New York City.

101 W. H. VAN STEENBURGH,
Solicitor for Defendant O'Leary.
Office & P. O. Address, 27 Cedar Street, New York City.

102 United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK & QUEENS GAS COMPANY, Complainant,

vs.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Exceptions to Special Master's Report.

Now come the defendants, Charles D. Newton, as Attorney-General of the State of New York, Denis O'Leary, as District Attorney of the County of Queens and Lewis Nixon, constituting the public Service Commission of the State of New York for the First District, and except to the findings of fact and conclusions of law filed herein by Abraham S. Gilbert, Esq., Special Master herein in the following particulars, to wit:

1. Except to the finding marked "2" of the Master's report, which finds that:

"Immediately prior to the organization of the complainant company, the Newtown and Flushing Gas Company had been furnishing gas to consumers in the Third Ward of the Borough of Queens, that company being the successor of a number of companies which had supplied gas in various portions of the Borough of Queens, and of which one of the manufacturing plants had been located at the same point, hereinafter more fully described, in the village or
103 town of Flushing, since about the year 1856."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it. The Master should have found that the town of Flushing including the villages of Flushing and Whitestone was annexed to the city of New York by Chapter 488, Laws of 1896.

2. The Defendants except to finding marked "3" of the Master's Report in so far as it finds that:

"In addition to the property above described, the Newtown and Flushing Gas Company owned, and was in the actual enjoyment of, franchises and rights, certain of them perpetual in character."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it. The Master should have found that all the existing franchises, including those claimed to have been acquired from the Newtown and Flushing Gas Company are only to lay and operate mains and pipes in the streets, highways and public places in the Third Ward, Borough of Queens, former Village of Flushing, Village of Whitestone and in the town of Flushing outside of the then (May 1, 1897) incorporated villages.

And that the "franchise" to operate in the former village of Whitestone will expire by its terms December 30, 1922.

104 3. Defendants except to finding marked "4" of the master's report in so far as it finds that:

"On or about the 12th day of July, 1904, the New York and Queens Gas Company acquired all of the capital stock and all of the outstanding bonds of the Newtown and Flushing Gas Company, and on or about July 18th, 1904, by resolution adopted and filed in accordance with the requirements of the laws of the State of New York, the New York & Queens Gas Company merged the Newtown and Flushing Gas Company into itself. By virtue of the merger and of the statute pursuant to which it took place, the complainant New York and Queens Gas Company became possessed of and became the owner in fee simple of all of the real and personal property owned by the Newtown and Flushing Gas Company, the owner of the franchises and rights then owned, possessed or enjoyed by the Newtown and Flushing Gas Company, and the owner of the business established and developed by the Newtown and Flushing Gas Company and its predecessors."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the Master should have found that at the time of the merger July 12, 1904, the complainant company owned or possessed no cash or property whatsoever, and that when complainant began business August 1, 1904, it was entirely with the property of the Newtown and Flushing Gas Company. And the master should have found that the cost or value if established on July 18, 1904, of the property which was acquired by complainant company from the Newtown and

Flushing Company and its predecessor companies in earlier years cannot be ascertained.

And that the directors and officers of the Newtown and
105 Flushing Gas Company and the complainant company prior to and at the time of the merger were the same.

4. Defendants except to finding marked "5" of the report in so far as it finds that:

"The complainant New York and Queens Gas Company has, ever since the date of the said merger, owned, possessed, used and enjoyed all of the said franchises and rights of the said Newtown and Flushing Gas Company, and still does own, possess, use and enjoy the said franchises and rights and each of them, together with additional rights and franchises from time to time acquired by it; and the complainant company, by virtue of the said franchises and rights, has ever since the said merger maintained, and still does maintain, its mains and services in the streets, highways, alleys and public places of the City of New York, particularly in the Third Ward of the Borough of Queens, and has supplied and still does supply gas through the said mains and services to the inhabitants of the said Third Ward of the Borough of Queens."

And the Master should have found that the New York and Queens Gas Company has since its incorporation and merger with and into the Newtown and Flushing Gas Company acquired no additional rights or franchises.

5. The defendants except to finding marked "6" in so far as it finds that:

"As at present constituted, the plant consists of three Lowe type water-gas generator sets, one set being eight feet, six inches in diameter, and two sets being each seven feet, six inches in diameter, which provides for the plant a working capacity not exceeding 2,250,000 cubic feet of gas per day. By the addition of high pressure blowing apparatus, this working capacity will be increased to not exceeding 2,750,000 cubic feet of gas per day. In con-
106 nection therewith, the complainant owns and uses various other apparatus, equipment, appliances and appurtenances necessary for the manufacture and distribution of water-gas, including a gas storage holder of 1,000,000 cubic feet capacity, a gas storage holder of 100,000 cubic feet capacity, and a relief holder of 250,000 cubic feet capacity, which, in emergency, can also be used alternatively as a gas storage holder. In the streets, highways, alleys and public places of the Third Ward of the Borough of Queens, the complainant company owns and uses 658,727 feet of mains of various sizes, and 7,998 services, through which it furnishses gas to approximately 11,000 consumers. The complainant also necessarily occupies, under lease, and uses in the conduct of its business, a shop building on Amity Street in Flushing, for the accommodation of the department engaged in the installation of meters and appliances and in other gas-fitting work, and a store-room and office

building on Main street, in Flushing, for the housing and accommodation of its general offices, its bookkeeping staff and commercial department, and a display-room wherein are exhibited and offered for rental or sale domestic and industrial appliances designed to increase the use of gas and make such use more economical, efficient and satisfactory to consumers."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the Master should have found that the working capacity of the plant does not exceed 1,698,000 cubic feet of gas per day; that the complainant company owns 657,584 feet of mains of various sizes and 7,641 services from which it furnishes gas to approximately 10,357 consumers. That the evidence does not justify a finding to the effect that the store-room, office building, and display room, make for the more economical, efficient and satisfactory use of gas to consumers. That the evidence does not justify any
107 finding to the effect that the rated capacity of the generators (2,750,000) or by the addition of any pressure blowing apparatus the working capacity of the plant will be increased to not exceeding 2,750,000 cubic feet per day. That the evidence does not warrant any finding as to the extent of use of mains and services.

6. The defendants except to the finding marked "7" of the Master's report which finds that:

"In the year 1919, in compliance with the determination and order of the defendant Public Service Commission that consumers in an outlying portion of the Third Ward known as Douglaston and Douglas Manor, distant from Flushing about six miles, should be furnished with gas, the complainant New York and Queens Gas Company, up to May 1, 1920, laid and installed 31,330 lineal feet of four (4) inch transmission main and 9,928 feet of 16 inch main to enable the use of the high-pressure transmission system, together with 38,934 lineal feet of street mains, and also the services, governors, and other apparatus necessary in connection therewith, in order to supply gas to that territory, necessarily expending for this purpose, up to May 1, 1920, no less than $145,735.71. Since on or about the 28th of November, 1919, the complainant has been furnishing gas to the inhabitants of said additional territory through the use of the said mains and a high-pressure distribution system, by means of which gas manufactured at its plant in Flushing is compressed and transmitted through the said four-inch main and distributed to consumers in Douglaston and Douglas Manor."

On the ground that the same is not supported by the evidence, is contrary to the evidence, and has no evidence tending to support it. The Master should have found that the complainant unnecessarily hindered and delayed the furnishing of gas to Douglaston
108 and Douglaston Manor, thus causing the cost to build the extension to increase to $145,735.71 on May 1, 1920.

7. The defendants except to finding marked "8" of the Master's Report which finds that:

"Since January 1, 1909, the books of account of the complainant company and of all other gas companies in the City of New York have been required to be kept in accordance with the rules and regulations of the defendant Public Service Commission of the State of New York for the First District, which Commission has had certain jurisdiction over said companies pursuant to the provisions of the Public Service Commissions Law of the State of New York, and I find that the books of the complainant company have been kept in conformity with the said rules and regulations and that they accurately set forth the facts therein undertaken to be shown."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the Master should have found that the books of the complainant company are not kept in conformity with the rules and regulations of the Public Service Commission and that officers of the complainant company testified at various times to the effect that particularly specified accounts required under the uniform system of accounts were not carried at all on the books of the complainant company.

8. The defendants except to finding marked "9" of the Master's report which finds that:

"By Chapter 125 of the Laws of 1906, which prescribed a
109 maximum rate of eighty cents per thousand cubic feet of gas sold in the Borough of Manhattan and in certain portions of the Boroughs of The Bronx and Brooklyn, the Legislature of the State prescribed, from and after the year 1910, a maximum rate of one dollar for certain outlying portions of the City of New York, including the territory served by this complainant, the pertinent provisions of the said statute being as follows:

'A corporation, association, co-partnership, or person engaged in the business of manufacturing, or furnishing or selling illuminating gas in the City of New York * * * shall not charge or receive for gas manufactured, furnished or sold in said City, a sum per thousand cubic feet in excess of the following rate:

(2) In * * * the second, third and fourth wards in the Borough of Queens * * * $1.'

It was further provided in and by the said statute that:

'The illuminating gas furnished by any corporation, association, copartnership or person, shall have an illuminating power of not less than 22 sperm candles of 6 to a pound, burning at the rate of 120 grains of spermaceti per hour, tested at a distance of not less than 1 mile from the distribution holder by a burner consuming 5 cubic feet of gas per hour, and each 100 cubic feet of gas shall not contain more than 5 grains of ammonia, nor more than 20 grains

of sulphur, nor more than a trace of sulphureted hydrogen. The pressure of illuminating gas in any service mains in said city at any distance from the place of manufacture shall not be less than one inch nor more than two and one-half inches,' "

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that said Chapter 125 of the Laws of 1906 was amended by Chapter 604 of the Laws of 1916, which confirmed and fixed the maximum rate of one dollar
110 per 1,000 cubic feet of gas sold in the said Third Ward of the Borough of Queens.

And the Master should have found that in 1905 the maximum rate for gas furnished to the City of New York was fixed by the Legislature (Chapter 736) at seventy-five (75) cents per thousand cubic feet.

9. The defendants except to finding marked "10" of the Master's Report which finds that:

"Under the construction which the courts of the State of New York have placed upon the provisions of Section 72 of the Public Service Commissions Law of the State of New York (People ex rel. Municipal Gas Company v. Public Service Commission, 224 N. Y. 156), the Public Service Commission of the State of New York for the First District, which otherwise would have plenary power over the rates of the complainant New York and Queens Gas Company, has been given no power or jurisdiction to fix, or to authorize the complainant to charge, a rate in excess of the one dollar rate fixed by Chapter 125 of the Laws of 1906, the said Section 72 of the Public Service Commissions Law providing that the Commission may not fix or authorize a rate for gas in excess of such rate as may have been fixed by statute,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

On the contrary this finding is not one of fact but an attempted declaration of what the law is, as concerns the jurisdiction and powers of the legislature and the respective public service commissions of the State of New York.

10. The defendants except to finding marked "11" of the Master's Report which finds that:

111 "In the manufacture of water-gas of the statutory standard of 22 candle-power, under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 4.2 gallons of gas oil of the gravity and quality now being supplied to the complainant, and the complainant did, in fact, use on the average of 4.19 gallons per thousand cubic feet of gas made, during the year 1919",

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the number of gallons of gas oil required to make 1,000 cubic feet of gas is variable and is oftimes as low as 3.6 gallons; that there is no set rule for the number of gallons of gas oil which is required to make 1,000 cubic feet of gas; that the number of gallons depends upon the quality of the oil and the skill of the operator, together with the efficiency of the machine used. And the Master should have found that the years 1918 and 1919 and the period ending May 31, 1920, were abnormal, unusual and unprecedented and should not be used as the basis of any calculations for oil necessary in making 1,000 cubic feet of gas, but an average period should be taken, which period should be from 1910 to 1919, inclusive, all as indicated by the reports of the complainant company filed with the Public Service Commission.

11. The Defendants except to finding marked "12" of the Master's report which finds that:

"The reasonable and necessary average cost of gas oil to
112 the New York and Queens Gas Company du ing the year 1919 was 6.7 cents per gallon, and the price during 1920 has been slightly higher, averaging 7.283 cents per gallon during the period covered by the proofs before me. The present price at which contracts may be made for the delivery of gas oil, alongside the plant of the New York and Queens Gas Company is substantially in excess of 7.3 cents per gallon (including lighterage cost), and is, in fact, in excess of ten cents per gallon. The trend of oil prices during 1919 and 1920 has been, and has remained, sharply upward, and the evidence adduced before me affords no reason to believe that, upon the expiration of the contract under which the complainant is receiving its gas oil during 1920, it will be possible to secure a new contract or a supply of gas oil at a price less than ten cents per gallon,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the evidence shows the years 1918 and 1919 and the period of five months ending May 31, 1920, were abnormal, unusual and unprecedented; that the price paid for oil since 1917 is no criterion of what the cost of oil will be in the future; that the average cost of gas oil for the year 1919 to complainant was 6.66 cents per gallon; that the complainant company has an interlocking directorate with the Standard Oil Company from which company it purchased all of its oil; that it could have obtained its oil free from this combination of interests at a cost less than the prices paid in the year 1919; that any change in abnormal condition of the gas oil market today may tend to reduce the price as well as increase it, which is further reason for believing that the years 1918, 1919 and 1920 must be deemed abnormal years in relation to the cost of gas oil; that this case ought not to be
113 decided upon abnormal and unusual conditions such as now exist; that there is no market price for gas oil; that it is subject, as experience has shown in the past, to violent and sharp

fluctuations; that the complainant company purchasing all of its oil from one company—namely, the Standard Oil Company of New Jersey, makes no real or honest effort to obtain oil from any other company or source, and has not since 1906 endeavored to obtain oil from any other company or any other course, or at a price lower than that quoted by the one company, with which it does business, and with which it has close corporate relations; that no effort was made by complainant to secure a supply of gas oil for the needs only of complainant.

12. The defendants except to finding marked "13" of the Master's report which finds that:

"In the manufacture of water-gas under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 37 pounds of anthracite coal of the grade of coal being supplied in recent years, or its fuel equivalent, of which approximately 34 pounds are used in the generators, and approximately three pounds are used under the boilers. In addition, there is also required to be used under the boilers approximately nineteen pounds of bituminous boiler coal or its equivalent in water-gas tar (one gallon of such tar weighing nine pounds and one pound of tar having a fuel value of about 1.7 pounds of the grade of boiler fuel now and recently supplied.) The plant and operating conditions of the complainant company require the use of slightly more boiler fuel per thousand cubic feet of gas made than would be required if it were not under the necessity of compressing a portion of the gas sent out in order to reach the distant community of Douglaston and Douglas Manor; hereinbefore
114 referred to,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the experience in the complaint for the years 1910 to 1919, and including the first five months of 1920, shows that the company did not use an amount in excess of 32½ pounds of generator coal per 1,000 cubic feet of gas made; and that the amount of coal necessary to make 1,000 cubic feet of gas depends largely upon the quality of the coal, the efficiency of the plant and the skill of the operator, and that there is no set rule that can be laid down for the number of pounds of coal necessary in making 1,000 cubic feet of gas; and the Master should have found that the company did not use more than 16 pounds of bituminous boiler coal under the boilers. The Master should have found that there is no evidence in this case that more generator or boiler fuel per 1,000 cubic feet of gas would be required to serve the Douglaston extension territory.

13. The defendants except to finding marked "14" of the Master's report which finds that:

"The average cost of the anthracite generator coal used by the complainant during the year 1919 was $8.28 per gross ton, plus

$1.08 as the cost of cartage and handling from the dock in Flushing to the coal shortage bins of the complainant, making in all
115 $9.36 per gross ton; and at the present time the price of such coal is at least $10.25 per gross ton, plus $1.25 for such cartage and handling, making in all at least $11.50 per gross ton,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the year 1919 and the first five months of 1920 were abnormal periods and that the prices during said periods are no criterion of the price of generator fuel; and the master should have taken the average of the prices of generator coal from 1910 to 1919, inclusive; and the master should have found that the price of coal in 1918, 1919 and 1920 was due in a large extent to strikes at the mines, shortage of cars and also the unusual railroad situation; and the master should have found that the cost of cartage and handing coal from docks to works was excessive because such handling was interrupted during the year 1919 by construction work; and the master should have found that complainant's witness Wood testified the cost of handling the coal would be less if the complainant company were to construct a siding from the railroad to the plant; a saving in an amount of at least fifty (50) cents a ton; that the complainant company purchases all of its coal through the Consolidated Gas Company and makes no effort to obtain coal through any other source or at a price lower than that quoted by the one (1) company, with which the Consolidated Gas Company does business.

14. The defendants except to the finding marked "15" of the master's report which finds that:

"The average cost of the boiler coal used by the complain-
116 ant during the year 1919 was $6.472 per gross ton plus $1.08 as the cost of cartage and handling from the dock in Flushing to the coal storage bins at the plant of the complainant company, making $7.552 in all; and the present time the price of such coal is at least $10.2479 plus $1.25 for cartage and handling, making at least $11.4979 in all, the exact extent of the increase which has taken place in 1920 not appearing in the record,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found there was no competent testimony to show what the price of boiler fuel was per gross ton. And the master should have found that the year 1919 and the first five months of 1920 were abnormal periods and that the prices during said periods are no criterion of the price of boiler fuel; and the master should have taken the average of the prices of generator coal from 1910 to 1919, inclusive, and the master should have found that the price of coal in 1918, 1919 and 1920 was due in a large extent to strikes at the mines, shortage of cars and also the unusual

railroad situation; and the master should have found that the cost of cartage and handling of coal from railroads to works was excessive because such handling was interrupted during the year 1919 by the construction work; and the master should have found that complainant's witness Wood testified that the cost of handling the coal would be less if the complainant company were to construct a siding from the railroad to the plant, a saving in the amount of at least fifty (50) cents a ton; that the complainant company purchases all of its coal through the Consolidated Gas Company and makes no effort to obtain coal through any other source or at a price lower than that quoted by the one (1) company, with which the Consolidated Gas Company does business.

117 15. The defendants except to finding marked "16" of the Master's report which finds that:

"16. In addition to the cost of fuel, there is involved in water-gas manufacture the cost of labor handling of fuel used in the generators and under the boilers. In 1918, the cost of labor handling fuel at the complainant's plant, under the rates of pay then in force, amounted to 2.08 cents, and in 1919 to 2.45 cents, per thousand cubic feet of gas made. As of the present time, under average operations and the rates of pay now in force, the testimony before me showed the cost of labor handling fuel to amount to at least 3.13 cents per thousand cubic feet of gas made."

on the ground that the case is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the years 1918 and 1919 were abnormal, unusual and unprecedented as was also the first five months of 1920; and the Master should have taken the average of the prices of these items from 1910 to 1919 inclusive; and said years of 1918 and 1919 and said period of 1920 are improper periods upon which to base any findings as to the cost of making gas, and that the five months' period ending May 31, 1920 and the twelve months' period ending December 31, 1919 are not proper periods, under any circumstances, upon which to base a finding as to how much it costs to make gas, because of the existing era of high and excessive prices and costs for labor and materials, and also the winter months included in these two periods were extremely severe

118 and unusual and beset with numerous transportation difficulties.

And that there is no competent evidence in this record as to what prices for materials are at the present time or will be for the year 1920; and that as to such prices of material it is mere guess and surmise and cannot be forecast by anybody, and is not properly the subject of a finding in this case.

16. The defendants except to finding marked "17" of the Master's report which finds that:

"In the manufacture of water-gas there is also required the use of iron mass, city water and incidental minor materials and supplies.

In the year 1918, this item, in the complainant's plant, amounted to 0.83 cents, and in 1919 to 1.34 cents per thousand cubic feet of gas made. As of the present time, under average operations, the testimony before me showed this item to amount to at least the sum as shown for the year 1919."

on the grounds that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the figures in the table of witness Wood which is incompetent, irrelevant and of no value whatsoever (plaintiff's Exhibit 77); that the total as shown in 1919 by the books is only 1.23 cents, that the total as given in the table of witness Wood (Plaintiff's Exhibit 77) is only 1.25¢ as against 1.34¢ per thousand cubic feet of gas made found by the master; that the years 1918 and 1919
119 and the first five months of 1920 were and are abnormal periods and prices during such times are no criterion of the price of these respective items because of the existing era of high and excessive prices and costs for labor and materials; and the Master should have taken the average of the prices of these items from 1910 to 1919 inclusive; and the Master should have found that there is no competent evidence in this case of what prices for materials will be in 1920 and 1921, and that what will happen concerning prices for materials in the future is a mere guess and surmise and cannot be forecast by anybody, and is not properly the subject of a finding in this case.

17. The defendants except to finding marked "18" of the Master's report which finds that:

"In the manufacture of water-gas, under the conditions obtaining in a plant such as that of the complainant, there is realized as a residual credit, under average operations, about 0.7 gallons of water-gas tar per thousand cubic feet of gas made, such water-gas tar, as of December 31, 1919, having a market or sale value of approximately 4.25 cents per gallon. During the year 1919, practically all of the water-gas tar so realized by the complainant was used by it as fuel under its boilers, being charged to the cost of boiler fuel at the rate of 6 cents per gallon, and being credited at the same figure to the production cost of gas in the complainant's plant during 1919. During the year 1919, the amount of water-gas tar realized as a residual credit, in the manufacture of water-gas in the complainant's plant was 0.7 gallons, and in 1918 0.5 gallons per thousand cubic feet of gas made."

on the ground that the same is not supported by the evidence,
120 is contrary to the evidence and has no evidence tending to support it; whereas, the master should have found that there was no competent evidence of the amount of water-gas tar realized as a residual in making 1,000 cubic feet of gas made, nor any evidence to support the sale value per gallon of such residual; and that there was no evidence of the gallons of drip oil tar per thousand cubic of gas made or of the sale price of said drip oil; that the figures

used by the master in said 18th Finding are based upon hypothetical figures and the table of witness Wood (Plaintiff's Exhibit No. 77) which is incompetent, irrelevant and of no value whatsoever; that the residual and the amount of water-gas tar realized for the year 1919 and the year 1918 are mere guess, as the evidence disclosed the fact that while great quantity of tar and drip oil was on hand, only a small part of the same had been sold during said years 1918 and 1919. The master should have found that 0.8 gallons of water gas tar was realized by complainant as a residual in making 1,000 cubic feet of gas. The prices named by the master in his finding are the lowest prices received by complainant in the past year.

121 18. The defendants except to finding marked "19" of the Master's report which finds that:

"19. The evidence adduced in this record affords no ground for expecting that the prices of materials or the wages paid for labor will be reduced during 1920 or 1921, or at any time which can now be forecast."

on the ground that the same is not supported by the evidence is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that there is no competent evidence in the case of what prices for material and wages will be in 1920 and 1921 and that what will happen concerning prices for labor and materials in the future is a mere guess and surmise and cannot be forecast by anybody and is not properly the subject of a finding.

19. The defendants except to finding marked "20" of the Master's report which finds that:

"20. There is necessary, in the manufacture of water-gas the employment of gas-making labor, the employment of repair labor, the use of repair materials, and the incurring of miscellaneous works expense. In 1918, under the prices and the rates of pay then in force, the cost of gas-making labor, in the complainant's plant, was 4.67 cents; of repair labor, 1.7 cents; of repair material 1.82 cents; and of miscellaneous works expense 0.37 cents per thousand cubic feet of gas made. In 1919, under the prices and the rates of pay then in force, the cost of gas-making labor was 6.31 cents, of repair labor 2.66 cents, of repair material 4.69 cents, of miscellaneous works expense 0.39 cents, per thousand cubic feet of gas made. As of the present time, under average operations and the rates of pay and prices of materials now in force, the testimony before
122 me showed these items, under average operations, to cost at least the sums shown, respectively, for the year 1919,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the years 1918 and 1919 were abnormal, unusual and unprecedented as was also the first five months of 1920, and the said years of 1918 and 1919, and the said

period of 1920 are improper periods upon which to base any findings as to the cost of making gas. And the master should have found that the year 1919 and the first five months of 1920 are not proper periods, under any circumstances, upon which to base a finding as to how much it costs to make gas, because said twenty months are of an era of high and excessive prices and costs for labor and material and contained two winter periods which were unusual and extreme in severe temperature, and beset with numerous transportation difficulties.

123 And the master should have found that the "present time" is an abnormal period and the rates of pay and prices of materials now in force are no criterion of cost but mere guess and surmise. The master should have taken the average cost of labor and material from 1910 to 1919, inclusive.

20. The defendants except to the finding marked "21" of the master's report which finds that:

"During the year 1918, under the prices of materials and labor at that time in force, the reasonable and actual cost of water-gas manufacture in the complainant's plant was 55.38 cents per thousand cubic feet of gas made. During 1919, it was 83.45 cents per thousand cubic feet of gas made. Under the present prices paid for generator and boiler coal and for gas oil, the cost of water-gas manufacture substantially exceeds the sum above stated for 1919, and is at least 74.55 cents per thousand cubic feet of gas made,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the period taken by him in said 21st finding was an abnormal, unusual and unprecedented time and was not a proper period to take in this case, and that, according to complainant's own records as shown by the books of the company, the cost of making gas per thousand cubic feet of gas made is as follows:

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Year.	Per M sold.
1910	26.56
1911	27.09
1912	26.63
1913	29.46
1914	32.26
1915	30.43
1916	34.15
1917	43.85

And the master should have found that during the year 1918, under the prices of materials and labor then in force, the actual cost of water-gas manufactured in complainant's plant was 55.38 cents per thousand cubic feet of gas made. And the master should have found that there is no competent evidence in the case of the actual cost

of water-gas manufactured in the complainant's plant for the year 1919 and that what will happen concerning prices for labor and materials for the balance of the year 1920, is a mere guess and surmise and cannot be forecast by anybody and is not properly the subject of a finding in this case.

21. The defendants except to finding marked "22" of the master's report which finds that:

"During the year 1919, the complainant sold to its consumers
336,400,000 cubic feet of gas, an increase of 2.6 per cent over
125 1918. During the past five years the gas sales of the com-
plainant to its consumers have increased, on the average approximately seven per cent per annum. During the year 1920, it is my judgment that, by reason of extension of mains into outlying portions of the territory the sales of the complainant company will reach approximately 386,000,000 cubic feet, an increase of approximately 15 per cent."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that during the year 1920, by reason of extension of mains into outlying portions of the territory and general expansion, the sales of the complainant company would reach an increase of 28%.

22. The defendants except to finding marked "23" of the master's report which finds that:

"In the manufacture and sale of gas, a percentage of the gas made is lost, due to condensation, difference in temperature at the consumers' meters, slow meters, leaks and the like. The relative amount of gas lost through these causes tends to be greater in a suburban area where the mains are smaller, the length of mains greater in relation to consumption, and where meters are commonly located in cellars of private houses. The use of high pressure transmission
also tends to increase the quantity of gas lost through conden-
126 sation. I find that this so-called unaccounted-for gas, in the instance of complainant company, reasonably represents approximately eleven per cent (11.03) per cent of the gas made, and that in calculating the requirements of the complainant, that percentage should be used as a basis for computation."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that defendants' exhibit (A-13) correctly and accurately shows the amount of gas unaccounted for — the years 1909 to 1919, inclusive, according to complainant's reports to the Public Service Commission, First District; and the master should have found that the amount of gas manufactured each year is the corrected "registered" make; that the corrected "registered" make is the registered make, less deductions made to cover difference in temperature of manufacture and 60 degrees, so

that in the amount manufactured allowances are made for variations in temperature and any other variation or difference is largely inefficient operation. And the master should have found that the average unaccounted for gas for the years 1909 to 1918, inclusive, is 5.74c per thousand cubic feet sold; that the unaccounted for gas for the year 1919 is 8.27c per thousand cubic feet sold; that complainant has not explained the large difference in unaccounted-for gas in the year 1919 over prior years; that a reasonable and fair cost for
127 unaccounted-for gas in the year 1919 is 23.

The defendants except to finding marked "24" of the master's report which finds that:

"24. The consumption of gas and its sale varies from time to time, depending, in large part, upon the weather and consequent factors. The low mark of gas sales is found in the warm summer months, when many consumers are absent from their homes, and the temperature eliminates the use of gas for heating, and lessens its use for cooking and lighting. The 'peak' or maximum demand is found in the winter months. The complainant company must, therefore, be prepared not alone to make sufficient gas to meet a total annual demand, but must be prepared to meet a maximum day's demand. The maximum day's send-out of the plant of the complainant company during the winter of 1919 to 1920 was 1,698,000 cubic feet of gas. The increased use of gas as a substitute for coal for heating and other domestic uses has a tendency to accentuate the maximum day's demand in relation to the annual output and thus requires a relatively larger plant capacity in relation to the average daily requirements. I find that the complainant's plant ought reasonably to have a reserve manufacturing capacity equal to the capacity of its largest unit (1,500,000 cubic feet per day), as accidents or the need for repairs say at any time take this unit out of use."

on the ground that the same is not supported by the evidence,
128 is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the complainant's plant had a reserve manufacturing capacity of over 2,300,000 cubic feet of gas in excess of the maximum day's send-out of the plant during the winter of 1919 to 1920, which was 1,698,000 cubic feet of gas; and the Master should have found that extreme cold weather and unusual conditions such as occurred in the winters of 1919 and 1920, expansion and extension of business, accidents, repairs, peak loads, additional use of gas as a fuel and other contingencies are amply provided for by the reserve manufacturing capacity equal to at least 2,300,000 cubic feet per day.

24. The defendants except to finding marked "25" of the Master's report which finds that:

"During the year 1918, the cost of water-gas manufacture in the complainant's plant was 60.65 cents per thousand cubic feet of gas sold. During the year 1919 this cost of water-gas manufacture was 71.73 cents per thousand cubic feet of gas sold. As of the present

time, under the cost of manufacture shown in Finding No. 21 hereinbefore, this cost is at least 84.27 cents per thousand cubic feet of gas sold."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to sup-
129 port it.

And the master should have found that the records of the complainant company showed the corrected cost to make water-gas in 1918 not more than 55.38 cents per thousand cubic feet of gas sold; that the years 1918 and 1919 were abnormal as was also the first five months of 1920 and the said years 1918 and 1919 and the said period of 1920 were improper periods upon which to base any finding as to the cost of making gas; that the five months ending May 31, 1920, and the twelve months ending December 31, 1919, are not proper periods, under any circumstances, upon which to base a finding as to how much it costs to make gas, because the said seventeen months' period contains two winter seasons when the temperature was extremely low, the weather severe, transportation difficult and all business hazarded by unusual and unprecedented conditions making the cost enormously and excessively high; that the years 1918, 1919 and 1920 were abnormal, unusual and unprecedented and should not be used as the basis of any calculations for the cost of water-gas manufacture, but an average period should be taken, which period should be from 1910 to 1917, inclusive, and the two abnormal years 1918 and 1919 excluded entirely from consideration; and that the master erred in attempting to fix the cost of manufacture of gas as of the present time; it can only be mere guess and surmise; it can in no way bind the defendants as it is not within
130 the province of the master to forecast.

25. The defendants except to finding marked "26" of the master's report which finds that:

"I find that the reasonable and necessary amount of taxes paid by the complainant company during the year 1919 upon property used by it in the production and distribution of gas was 7.07 cents per thousand cubic feet of gas sold. During 1918 the taxes amounted to 7.39 cents per thousand cubic feet of gas sold."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the years 1918 and 1919 were abnormal, unusual and unprecedented, as was also the first five months of 1920, and the said years 1918 and 1919 and the said period of 1920 are improper periods on which to base any findings as to the amount for taxes per thousand cubic feet of gas sold.

26. The defendants except to finding marked "27" of the master's report which finds that:

"There must also be added to the cost of making and distributing
was, the cost of renewals and replacements of property, which
131 I find to be the sum of three cents per thousand cubic feet
of gas sold."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

27. The defendants except to finding marked "28" of the Master's report which finds that:

"28. In addition to the item hereinbefore referred to, there must be included, in determining the cost of gas as delivered to the consumer, various items entering into the cost of distribution, including distribution superintendence and supplies and expenses, meter and installation work, transmission pumping, work on consumer's premises, repairs of meters, repairs of tools, repair of gas appliances, commercial expenses, salaries at the general office, supplies and expenses at the general office, legal expenses, claims and arrears expense, insurance, stable, expense automobile expense, claims for damages, real estate rents paid for property leased, stationery and printing, undistributed adjustments, uncollectible bills, interest on consumers' deposits, and relief department and pensions, and I further find that the actual and reasonable cost to the complainant company of these items during the year 1919 was not less than 27 cents per thousand cubic feet of gas sold. During 1918, the actual and reasonable cost to the complainant company of these items, including an item of 0.32 cents for defensive emergency service necessary in that year but not necessary in as great an amount in 1920 or future years, was not less than 23.97 cents per thousand cubic feet of gas sold."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should not have included in the distribu-
132 tion costs interest on consumers' deposits, for such item has been considered and included in the make-up of working capital. And the master should have found that the years 1918 and 1919 were abnormal, unusual and unpre*dec*ented as was also the first five months of 1920, and the said years 1918 and 1919 and the said period of 1920 are improper periods on which to base any findings as to the cost of distribution per thousand cubic feet of gas sold; and the master should have found that the item for distribution expense should be averaged over the period of 1910 to 1919, inclusive; and that the master erred in attempting to fix the cost of "distribution" of gas as of the present time, it can only be mere guess and surmise; it can in no way bind the defendants as it is not within the province of the master to forecast.

28. The defendants except to finding marked "29" of the master's report which finds that:

"The complainant derives an income from the rental of appliances, from its profit on the sale of appliances, from interest on bank balances and on consumers' final bills, and the like, which is classified as miscellaneous operating revenue. In 1918, the miscellaneous operating revenues represented 5.72 cents per thousand cubic feet of gas sold. In 1919 the miscellaneous operating revenue repre-

sented 6.75 cents per thousand cubic feet of gas sold. I find that 6.75 cents per thousand cubic feet should be credited against the cost of making and distributing gas, on account of miscellaneous operating revenue."

133 on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

29. The defendants except to finding marked "30" of the master's report which finds that:

"I find the total reasonable cost of the gas delivered to its consumers by the New York and Queens Gas Company during the year 1919 was at least $1.0880 per thousand cubic feet, from which should be deducted 6.75 cents per thousand cubic feet for miscellaneous operating revenue, making the net cost of gas delivered to the consumer, in 1919, $1.0205 per thousand cubic feet."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the year 1919 was abnormal, unusual and unprecedented as was also the first five months of 1920; and that the said year 1919 and the said period of 1920 are improper periods on which to base any findings as to the cost of distribution per thousand cubic feet of gas sold, and the master should have found that the item for distribution expenses be averaged over the period of 1910 to 1919, inclusive.

134 30. The defendants except to the finding marked "31" of the master's report which finds that:

"I find the average selling price of gas to the complainant, in 1919, including that sold to the city of New York at 75 cents per thousand cubic feet, by reason of a statutory limigation on the rate charged for such gas, to be 99.51 cents per thousand cubic feet in 1919, leaving a net deficit to the complainant company from its gas operations in 1919 of 2.54 cents per thousand cubic feet, irrespective of any return upon any of the property used in its gas operations. As of the present time, such net deficit is substantially in excess of that sum,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that there is no evidence taking into consideration the small amount of sales of gas to the city of New York and the special conditions under which gas is supplied
135 to the city, that the complainant company does not, as of the present time, receive substantial remuneration for the gas supplied to the city of New York at the rate of seventy-five (75) cents per thousand cubic feet, as fixed by chapter 738 of the laws of 1905.

31. The defendants except to finding marked "32" of the master's report which finds that:

"The plant, machinery and equipment used in the gas business of the complainant company have been and are maintained in ex-

cellent operating condition; proper repairs, renewals and replacements have been made as and when needed, and the same are now in as high a state of efficiency as if new,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the cost of repairs for the year 1919 was thirteen (13) cents per thousand cubic feet of gas sold as against six (6) cents for the previous year and that this large increase is not accounted for in the increased sum for labor and materials in said year 1919; and the master should have found that the plant is not new, and even if held to be in excellent operating condition, that the property is subject to depreciation.

136 And the master should have found that the plant, machinery and equipment were subject to depreciation as shown by the expenditures of more money in the first five months of 1920, than that which complainant's witness Miller testified would make all the property practically new; that there is no evidence as to the efficiency of operation; the master's declaration is mere guess and surmise.

32. The defendants except to finding marked "33" of the master's report which finds that:

"I find that the complainant company was, on January 1, 1920, and now is, entitled to include in the amount upon which it was and is entitled to a fair return, the sum of $135,000, for working capital,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it, and on the further ground that the amount used by the master for working and construction capital is an arbitrary one selected by him; whereas, he should have found that the complainant is entitled to include in the amount upon which it is entitled to a fair return as working and construction capital only the sum of $80,000 for the year 1919, and that defendants' Exhibit A-112 cor-

137 rectly and accurately indicates the amount of working and construction capital for 1904 to 1919, inclusive, upon which complainant is entitled to a fair return.

33. The defendants except to finding marked "34" of the Master's report which finds that:

"34. The tangible and intangible property (including land, plant, distributing system, franchises and rights) acquired by the complainant at the end of July, 1904, and still owned and used by it on January 1, 1920, I find to have actually cost, prior to August 1, 1904, and to have been reasonably worth at the time of such acquisition by the complainant, at least the sum of $670,488.86, exclusive of working capital. There has since been erected, installed or acquired by the complainant and added to its property, and there was in use in its gas business on January 1, 1920, certain additional

land, plant, apparatus, mains and other property, of which the actual cost to the complainant company, less withdrawals since August 1, 1904, and exclusive of working capital, was and is no less than $850,389.08, making the total cost of such property owned and used by the complainant company, as of January 1, 1920, and the present time, at least the sum of $1,520,877.94. Adding to this the sum of $135,000, which I deem a reasonable allowance for necessary working capital, produces an aggregate of $1,655,877.94 as the sum representing the complainant company's total investment in the property used and useful in its gas business on January 1, 1920, its present investment being slightly in excess of that figure. In my opinion, the fair value of the property used and needed in the manufacture and distribution of the gas sold by the complainant company, as of January 1, 1920, and the present time was and is at least the sum of $1,655,877.94, and the complainant company was and is constitutionally entitled to have its rate such as to yield a fair return upon at least that sum. For reasons set forth in my
138 opinion herewith submitted, I have made no deduction from the above-stated amount on account of so-called 'accrued depreciation', theoretical or otherwise."

on the ground that the same is not supported by the evidence, is contrary to the evidence, and has no evidence tending to support it; and the Master should have found that there is no proof whatsoever in the record as to the cost, if any, or value of the respective "franchises" acquired by merger or from predecessor companies and claimed to be owned by the complainant; and the Master should have found that there is no proof whatsoever showing the amount paid, if any, to municipal authorities for the "franchises" claimed to be owned by it; and the Master should have found that there is no proof whatsoever in the record as to the cost, if any, or value of any intangible gas capital acquired by merger or from predecessor companies; and the Master should have found that an allowance out of earnings for 1919 and each previous year should have been made to cover depreciation in the amount of at least five (5) cents per thousand cubic feet of gas sold, as had been the practice of the complainant in previous years; and the Master should have found that the tangible property, including plant and distributing system, acquired by complainant at the time of merger July 18, 1904, and still owned and used by it on January 1, 1920, reasonably cost, without any depreciation, not more than $280,108, and the Master should have found that since August 1, 1904, there has been
139 erected, installed or acquired by the complainant, and there was in use in its gas business on January 1, 1920, certain additional land, plant, apparatus, mains and other property of which the actual cost to the complainant company, less withdrawal since August 1, 1904, and exclusive of working and construction capital, was and is not more than $829,480.22; and the Master should have found the sum of $80,000 as a reasonable allowance for working and construction capital and that for interest and taxes during construction there should be allowed as of December 31,

1919, and as of the present time, the sum of six thousand ($6,000) dollars; and the Master should have found that the item of "engineering and superintendency" was included by complainant in the cost of the "tangible" property; and the Master should have found that on the basis of organization, legal, general and preliminary expenses prior to August 1, 1904, and on the basis of what the books themselves show for expenses incurred since that time, there should be allowed as of December 31, 1919, and as of the present time for organization, legal, general and preliminary expenses the sum of ten thousand ($10,000) dollars, which, together with the reasonable worth of all other intangible and tangible property ($843,530) produces an aggregate of $939,530 as the sum representing the complainant company's total investment in the property used and useful in its gas business on January 1, 1920; and the Master should
140 have found that the fair value of the property used and needed in the manufacture and distribution of the gas sold by complainant company as of January 1, 1920, and at the present time was and is not more than the sum of $939,530; and the Master erred in stating that the reasonable worth of the tangible and intangible property acquired by merger and predecessor companies was $670,488.86, as said amount includes alleged "intangible" gas capital, which the Master himself admits in Finding No. 38 was unascertained; and the Master erred in not allowing depreciation which has been uniformly accepted by the courts and public service bodies.

34. The defendants except to finding marked "35" of the Master's report which finds that:

"35. I find that $5.00 per thousand cubic feet of gas sold fairly represents the actual and necessary investment in property used and needed for the manufacture, transmission and distribution of gas under the conditions such as those under which the complainant company carries on its gas operations, and such investment may, for the purposes of this case, be taken to be at least that sum."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

35. The defendants except to finding marked "36" of the Master's report which finds that:

"36. Upon the trial before me, no claim was made by any of the defendants that any of the property owned or used by
141 the complainant company was not and is not used and useful in its gas business."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

36. The defendants except to finding marked "37" of the Master's report which finds that:

"37. Upon acquiring the capital stock and outstanding capital obligations of the Newtown and Flushing Gas Company in 1904, the complainant company paid for the same by issuing its capital stock for the par value of $600,000, and its first mortgage bonds of the par value of $650,000, making in all $1,250,000."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that there is no proof whatsoever as to what property, if any, was paid by the complainant company in its stock issue of $600,000 and its First Mortgage Bonds of the par value of $650,000, and the Master should have found that the directors and officers of the Newtown & Flushing Gas Company and the New York & Queens Gas Company, complainant herein, prior to and at the time of the merger were the same; and the Master should have found that all the property acquired at the time of the merger on July 18, 1904, by the complainant company from its predecessors, concerning which proof was offered had without depreciation cost originally the sum of $280,108; and
142 the Master should have found that at the time of the merger of the complainant into and with the Newtown & Flushing Gas Company, complainant itself owned or held no cash or property whatsoever; and the Master should have found that the complainant has offered no proof as to the cost or value, if any, of the intangible property or rights claimed to have been acquired by the merger into and with the Newtown & Flushing Gas Company; and the Master should have found that the complainant failed and refused to produce witnesses now living who were officers and familiar with the operations of the predecessor companies, who could have testified and given evidence as to the actual cost or value, if any, of the property and rights now used by the complainant company, but acquired from its predecessors through merger, or otherwise, into and with the Newtown & Flushing Gas Company.

37. The defendants except to finding marked "38" of the Master's report which finds that:

"38. The actual cost, when acquired, of the property now used by the complainant company but acquired by some predecessor company in earlier years, cannot be ascertained."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas the Master should have found that the complainant failed and refused to produce witnesses now living who were officers
143 and familiar with the operations of the predecessor companies to testify as to the cost or value, if any, of the property and rights acquired by merger or otherwise from predecessor companies; and the Master erred in failing to allow the defendants to introduce documentary proof in reports made to public boards and commissions as to the extent of the property and rights acquired from predecessor companies and the cost or value, if any, thereof.

38. The defendants except to finding marked "39" of the Master's report which finds that:

"39. I find that the fair and reasonable market value of the land (unimproved) owned by the complainant company and used and useful in its gas business as of January 1, 1920, was and is at least $45,153.90."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

39. The defendants except to finding marked "40" of the Master's report which finds that:

"40. I find that, exclusive of the working capital and the undistributable structural costs hereinafter referred to, the cost to reproduce the plant, distributing system and other tangible property of the complainant company as of January 1, 1920, or as of the present time, was and is, without any deduction for depreciation, at least the sum of $2,100,774.90, made up as follows:

(*a*)	Building and apparatus	$505,960.00
(*b*)	Street Mains	1,071,139.00
144 (*c*)	Services	175,563.00
(*d*)	Meters	174,163.00
(*e*)	Gas appliances	85,427.00
(*f*)	Arc lamps	3,173.00
(*g*)	Tools and Implements	1,002.00
(*h*)	Laboratory equipment	2,449.00
(*i*)	Office furniture and fixtures	6,023.00
(*j*)	Stable equipment	5,424.00
(*k*)	Omissions and contingencies	25,298.00
(*l*)	Land	45,153.90

In the foregoing, I have not included any allowance for organization and development expenses prior to construction: the cost of financing; interest during construction; engineering, superintendence and general contractor's expense and profit; taxes on land during construction; administrative, legal and miscellaneous expenses during construction; or for so-called 'going value.' Unquestionably, in the reproduction of a plant distributing system and gas enterprise of this character, as of the present time, items of expenses would necessarily be incurred along the lines indicated by these items, all except 'going value' being comprised within the category of what is commonly called 'undistributable structural costs.' Under the circumstances of my determination of this case, however, I have not felt called upon to determine and allow definite amounts to cover these additional elements of reproduction cost and expense."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

145 40. The defendants except to finding marked "41" of the Master's report which finds that:

"41. With respect to the tangible property owned and used by the complainant as of January 1, 1920, and included in the above finding as to the cost to reproduce the said property, the complainant submitted to the defendants, in advance of the trial before me, a detailed inventory of items, units, and quantities, with brief descriptions of such property and a statement of the unit prices or costs applied to each such unit, to reach the above-stated cost to reproduce the property. Such inventory was checked up by the engineers of the defendants, at least to the extent desired by them, and upon the trial no testimony was given challenging any item or quantity shown in such inventory or any unit price applied therein."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

41. The defendants except to finding marked "42" of the Master's report which finds that:

"42. Using the unit prices of labor and materials prevailing as of January 1, 1914, the cost to reproduce the tangible property of the complainant company itemized in Finding No. 40 hereinbefore, would be about one-half of the above-stated cost to reproduce the same as of January 1, 1920, to which, of course, in order to reach and state a figure reflecting all elements of reproduction cost, there would have to be computed, on a similar basis, and added, amounts covering the other items referred to in Finding No. 40."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that there is no proof
146 whatsoever in the record as to the unit prices of labor and materials prevailing as of January 1, 1914 so that this finding should be entirely stricken out; and the Master should have found that the books of the complainant company when properly proven are some proof of the cost and reproduction value of the tangible property and other elements of value referred to in Finding No. 40 on January 1, 1914 and January 1, 1920.

42. The defendants except to finding marked "43" of the Master's report which finds that:

"During the twelve months ended December 31, 1918, the twelve months ended December 31, 1919, and during the portion of 1920 covered by the proofs before me, and during all and each of the periods so indicated the operating revenues of the complainant company were not sufficient to pay the reasonable and necessary costs of the manufacture, transmission and distribution of gas, and to provide a reasonable return upon the value of the property owned and used by the complainant in the manufacture, transmission and distribution of the gas sold by it to its consumers. During the twelve months ended December 31, 1919, and during the portion of 1920 covered by the proofs before me, the said net operating revenue did not and does not as of the present time, provide any return whatever upon

the said fair present value of any of the property so owned and used by the complainant company as hereinbefore found,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the total operating revenue of the complainant company under the $1.00 statutory rate was as follows:

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1910.....	$182,788.27	1915.....	$249,313.22
1911.....	188,895.77	1916.....	265,567.33
1912.....	214,863.07	1917.....	303,457.03
1913.....	324,851.07	1918.....	344,238.59
1914.....	247,175.00	1919.....	356,919.75

And the Master should have found that the operating income of the company as shown by the books for the years 1909 to 1919, inclusive, is as follows:

1909.....	$59,310.88	1914.....	$62,475.00
1910.....	66,537.04	1915.....	76,467.96
1911.....	60,163.14	1916.....	50,864.26
1912.....	70,187.66	1917.....	53,736.70
1913.....	64,385.62	1918.....	33,350.56

And the Master should have found, that the repair account for the year following figured on the basis of per 1,000 cubic feet of gas sold is:

1915.....	6.56 cents
1916.....	5.69 "
1917.....	6.61 "
1918.....	7.33 "
1919.....	13.51 "

and that there has been no explanation offered by complainant of the increased cost of repairs in 1919.

And the Master should have found that using the average cost of repairs of previous years in the year 1919, and deducting the expenses ($15,518.73) of the rate case eliminated and the items "defensive emergency service" ($747.46), "interest on insurance" ($57.58), "increase in fire insurance" ($477.30), interest on unpaid taxes ($233.71), and federal income tax" ($443.25) from the operations of 1919, there would be an operating profit for the year 1919 of at least $12,617.36; and the Master should have found that the volume of business is increasing more rapidly than the plant investment, and that such carrying charges as interest, taxes, insur-
148 ance, depreciation and the like have in consequence decreased; that the operations of 1920, for the five months charged with the excessive repair items and the abnormal costs of

material and labor are in no way a criterion of what the actual operations of the company will be when the year's business ends on December 31, 1920, but rather that net operating revenue of the company should be taken over a period of at least ten (10) years to ascertain a fair return upon the present value of the property owned and used in the gas business by the complainant company.

And the Master should have found that the complainant has failed to prove that the increase in business will not sufficiently overcome abnormal conditions of operation in 1919 and 1920.

43. The defendants except to finding marked "44" of the Master's report which finds that:

"44. On the basis of any findings of a net deficit from operations in 1919 of 2.54 cents per thousand cubic feet of gas sold, I find that the operating revenues of the gas business of the complainant company, during the year 1919 were not even sufficient to pay the reasonable and necessary costs of the manufacture and distribution of gas; and that in addition to being deprived of any return whatsoever upon the fair and reasonable value of its property devoted to the gas business, the complainant gas company actually suffered a loss from its gas operations in 1919 of 2.54 cents per thousand cubic feet of gas sold and is suffering a loss at a still greater rate in 1920."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to sup-
149 port it.

And the Master should have found that using the average cost of repairs of previous years in the year 1919 and deducting the expense ($15,518.73) of the rate case eliminated and the items "defensive emergency service ($747.46); interest on insurance ($57.58); increase in fire insurance ($477.30); interest on unpaid taxes ($233.71) and federal income taxes ($443.25) from the operations of 1919, there would be an operating profit for the year 1919 of at least $12,817.36; and the Master should have found that the volume of business is increasing more rapidly than the plant investment, and that such carrying charges as interest, taxes, insurance, depreciation and the like have in consequence decreased; that the operations of 1920, for the five months charged with the excessive repair items and the abnormal costs of material and labor are in no way a criterion of what the actual operations of the company will be when the year's business ends on December 31, 1920, but rather that net operating revenue of the company should be taken over a period of years of at least ten (10) years to indicate a fair return upon the present value of the property owned and used in the gas business by the complainant company.

And the Master should have found that the complainant has failed to prove that the increase of business will not sufficiently overcome abnormal conditions of operation in 1919 and 1920.

44. The defendants except to finding marked "45" of the Master's Report which finds that:

150 "45. The reasonable and proper rate of return upon the capital invested in the plant, distribution system, properties and business of the complainant company, I find to be not less than eight per cent. per annum, amounting to $132,470.24, calculated upon the fair value of the property used and needed, as hereinbefore found. At no time during 1919 or thus far in 1920 has the complainant company earned any part of such a return."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it. And the Master should have found that the reasonable and proper rate of return upon the capital invested is not more than 3% per annum (3%) during said abnormal period, calculated upon a fair value of the property used and needed as heretofore found, and the Master should have found that the year 1919 and the period of five months ending May 31, 1920, were abnormal periods of time and should not be considered in fixing a basis for a reasonable and proper rate of return, but rather than an average period of time should be taken for the years 1910 to 1919, inclusive; and that over such period of time the complainant has earned more than 6% on the capital actually invested (irrespective of stocks and bonds issued) in the plant, distributing system, property and business of the complainant company. And the Master should have found that the year 1919 and the five months of 1920 were abnormal, unusual and unprecedented and establish no fair criterion of the cost of making and distributing gas in the city of New York and elsewhere.

45. The defendants except to the finding marked "46" of the Master's report which finds:

151 "As of May, 1920, the actual average rate of pay per hour for labor in the complainant's works has been necessarily increased 24 per cent. over the average rate per hour for all of 1919; the increase in the shop department has been 20 per cent., and in the office employees 10 per cent. The average increase in the prices paid for materials other than coal and oil, from 1919 to May, 1920, has been 10 per cent.,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it. And the Master should have found that there is no competent evidence in the case of what the price of labor or cost of material will be for the full year of 1920, and what will happen concerning prices of labor and material in the future is mere guess and surmise and cannot be forecast by anybody and is not properly the subject of a finding in this case.

46. The defendants except to finding marked "47" of the Master's report which finds that:

"47. Since 1914 the complainant company has paid no dividends on any of its stock, and during 1919 and 1920 it has necessarily borrowed the money to pay the interest on its bonds. During 1919

and 1920, it has necessarily borrowed money also to enable it to meet in full its current bills for coal, oil and materials."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the complainant failed to prove that the stock and bonds are duly authorized, and that the stock at no time represented property or capital actually in-
152 vested and that the bonds issued and outstanding only within recent years have actually represented the property or capital invested; and that for the entire period from August 1, 1904, to December 31, 1919, the stock, and for a long period of time the bonds, represented assumed or inflated values of and on property that did not actually exist; and the Master should have found that if the company had been economically and efficiently managed its properties in the year 1919 and caused no excessive and unnecessary expenditures to be made the interest on the bonds would have been paid without borrowed money; and that for the year 1920 it is presumptuous to say at this time that the interest on the bonds will not be paid for the complainant's own witness Secretary Speer, indicated an enormous growth in volume of business for the year 1920.

47. The defendants except to finding marked "48" of the Master's report which finds that:

"48. During the twelve months ended December 31, 1919, the revenues and expenses of the gas business of the complainant were as follows:

Revenues.

Sales of Gas	$334,614.83
Miscellaneous Operating Revenues:	
Rents from Gas Appliances	13,839.53
Gross profits from Sales of Gas Appliances	8,465.39
Interest on bank balances	308.60
Interest on consumers' final bills	5.44
Interest on Main Contracts Deposits	81.10
	$357,314.89

Expenses.

Cost of Production	$241,176.84
Cost to Distribute	91,331.63
Renewals and replacements	10,086.41
153 Taxes and interest thereon	23,794.71
Total expenses	$366,389.59
Total revenues	357,314.89
Net loss from gas business	9,074.70
Deficit below a reasonable return on complainant's investment as hereinbefore found	$141,544.94

In the above-stated finding of the revenues and expenses of the complainant company, I have eliminated, as not properly to be included for the purposes of my present inquiry whether the maximum rate prescribed by statute has been, is, and will continue for a period of indefinite duration to be, confiscatory, the company's outlays in 1919 for "defensive emergency service," amounting to $747.46, and for the expenses charged in that year on account of the present suit in equity, amounting to $15,518.73,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

48. The defendants except to the finding marked "49" of the Master's report which finds that:

"With the approval of the defendant Public Service Commission for the First District, the Consolidated Gas Company of New York, in the year 1913, acquired and now owns all of the capital stock of the New York and Queens Gas Company (except qualifying shares). The Consolidated Gas Company of New York apparently does not own any of the bonds of the complainant company,"

on the ground that the same is not supported by the evidence, is contrary to the evidence, and has no evidence tending to support it, rather the master should have found that consent of the
154 Public Service Commission had been obtained as to the ownership by the Consolidated Gas Company of all of the capital stock of the New York & Queens Gas Company (except qualifying shares); and the Master should have found that there is no proof whatsoever as to the present ownership of the bonds of the complainant company.

49. The defendants except to finding marked "50" of the Master's report which finds that:

"50. I find that the complainant company has complied with the provisions of Chapter 125 of the Laws of 1906, with reference to the candle-power and with the requirements of law regarding pressure,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it. And the Master should have found that the complainant company has not complied with the provisions of chapter 125 of the laws of 1906 with reference to candle-power, and pressure, and that the complainant violated the statute by failure to furnish its consumers with 22 candle power gas and the extent of the violations were as follows:

Year.	No. of violations.
1919	94
1918	130
1917	132
1916	145

and that in the years 1919 and 1920 the flagrant violations of such law as to candle power and pressure were:

Date.		No. of violations. Candle-power.
1919.		
Jan.	20	18.54
Jan.	22	18.88
"	23	18.52
Feb.	3	19.08
March	24	16.20
April	26	19.26
July	9	18.08
Sept.	19	19.41
"	24	18.70
Dec.	4	19.38
"	5	19.59
"	19	19.09
1920.		
Jan.	15	19.05
Feb.	2	19.14
"	17	19.07
"	28	17.24

and the Master erred in refusing to allow defendants to offer any evidence of the failure of complainant to furnish its customers with 22 candle power gas prior to the year 1919.

50. And the defendants except to the finding marked "51" of the master's report, which finds that:

"Various matters comprised within the issues referred to me by the order of May 23d, 1919, I have discussed in greater detail in a separate opinion which is herewith submitted and made a part of this report. It is my intention that the facts and the conclusions regarding the law, set forth for reasons of convenience in that separate document, shall be deemed a part hereof, with the same force and effect as though they had been physically incorporated in this report,"

And the defendants hereby except in detail to all of the statements of fact set forth by the master in his so-called separate opinion, and to the conclusions of law regarding the law set forth in his so-called separate opinion, the same as if defendants specifically except to each and every one, and also defendants request this court to return the report to another Master in order that defendants may have the facts found separately stated or this court make new findings in accordance with the order appointing a Special Master.

51. The defendants except to the finding marked "52" of the Master's report, whether the same be treated as a finding of fact or

a conclusion of law, on the ground that the same is not supported by the evidence, is contrary to evidence and there is no evidence tending to support it.

The defendants further except to the opinion of the special master accompanying his findings herein in the following particulars, to wit:

52. The defendants except to so much of the master's opinion which finds that

"the complainant company presented to me, as previously to the accountants and experts of the defendants, all of its invoices and vouchers for coal, oil and other materials and supplies purchased, together with its various payrolls, works reports, records of manufacture, office reports, and the like, together with its books of account in which the items of expenditure and revenue shown by these underlying records had been entered. All of this data covered the year 1919 and the first five months of the year 1920. To the invoices for coal, oil and other materials, were attached the certificates evidencing the receipt of the quantities indicated, and to the oil invoices were also attached the certificates of the New York Produce Exchange inspectors attesting the quantity and quality of the oil delivered.

* * * * * * *

158 There was also submitted to me the sworn testimony of qualified witnesses as to the actual cost of oil, coal and other materials from 1906 down to the present time, including the years 1919 and 1920, and the sworn testimony of experienced operating engineers as to the quantities of coal, oil and other materials, and of the labor, actually required for the manufacture of gas and the wages necessarily paid to labor during this period, including 1919 and the first five months of 1920.

The defendants also offered in evidence data showing the operating results, the unit quantities of materials used, the unit costs thereof, and other information as to the revenues and expenses of the complainant company during the years from 1906 to 1920. Various of the underlying records of 1918 and prior years were also produced in Court at the instance of the defendants, and various of the entries in the books of the complainant and its predecessor company were placed in evidence by the defendants."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

53. The defendants except to so much of the master's opinion which finds:

"the vice-president and operating manager of the complainant, Mr. Spear, stated on one of the closing days of the trial that in his judgment the sales of the complainant company during 1920 will be about 15 per cent in excess of the sales during 1919. In my opinion,

a finding to this effect is justified and required by all the evidence, although counsel for the complainant points out that from 1918 to 1919 the increase in sales was only 2.6 per cent and that the average increase during the past five years has been only 7.02 per

159 cent * * * the company's present office force is small and is compelled to work on an overtime basis to look after the present volume of sales, and additional staff may be required for increased sales; but as fairly as I can figure it, increased sales of fifteen per cent over 1919 would ordinarily make a difference of about four cents per thousand cubic feet, in the distributing cost of the gas sold by the complainant. Any such saving in the unit expenses of the general office and commercial departments will, however, be at least absorbed by the increased cost of gas manufacture and the increased cost of the labor and material entering into the work of distribution, so that the net effect on the unit distribution costs as they now appear for 1920 will be that, despite the prospective increase in sales, the gas as delivered to the consumer, including the commercial expenses, does and will cost considerably more per thousand cubic feet than in 1919 or early 1920."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

54. The defendants except to so much of the master's opinion which finds that:

160 "The books of account, vouchers, manufacturing records, works reports, and the like, of the complainant company were placed at the disposal of the defendants, more than six months in advance of the beginning of the trial before me, along with copies of the principal statistical exhibits which the complainant proposed to offer in evidence upon the trial, and were carefully and thoroughly examined and analyzed by counsel for the defendants, their accountants and engineers. These operating records show that in the year 1919 the actual cost of the gas made at the complainant's works was 63.45 cents per thousand cubic feet of gas made, and that the loss in volume based upon the quantity of gas metered at the consumers' premises, to which I shall presently refer in discussion of this so-called 'unaccounted for gas,' was 11.03 per cent of the gas made. On that basis, the complainant's actual cost of making gas in the year 1919 was 71.73 cents per thousand cubic feet of gas sold. The actual distribution expenses, including the commercial expenses (and including also an item of 0.22 cents for defensive emergency service still required in 1919 and 4.62 cents on account of the expenses of the present suit in equity, totalling 4.84 cents, both of which items it is my judgment that I ought to disregard for the purposes of my present inquiry, for reasons hereinafter indicated), aggregated 32 cents per thousand cubic feet sold; renewals and replacements three cents per thousand cubic feet sold; taxes and interest thereon 7.07 cents per thousand cubic feet sold, making a total actual cost of $1.1380 per thousand cubic feet of gas sold. The complainant's income from the sale of gas in 1919, ac

ording to these same books and records, was 99.51 cents per thou-and cubic feet, showing a deficiency below actual cost of 14.29 cents er thousand cubic feet of gas sold. As against this deficiency, how-ver, the complainant company credits the account with the profit ade on its sale of gas appliances, the moneys received as rental of ch appliances, and certain interest items, aggregating 6.75 cents er thousand cubic feet of gas sold, leaving a net deficiency during he year 1919 of 7.54 cents per thousand cubic feet of gas sold, or n money, the sum of $25,340.89."

61 on the ground that the same is not supported by the evidence and is contrary to the evidence.

55. The defendants except to so much of the master's opinion hich finds that:

"The first question to determine is whether the quantities used by he complainant company as they appear from the books and records f the company are correct and seem or are a reasonable and neces-ary use of materials and of labor, or whether there has been a waste f gas-making and unnecessary use of labor forces and the books do ot accurately reflect the quantities actually needed and used. I ave analyzed these figures in the light of the defendants' proofs nd also of the sworn testimony given by Mr. Woods, an operating ngineer of wide experience produced by the complainant company, hose testimony has not been directly attacked or contradicted by ny witness. Except for some minor variances when contrasted ith the 1919 operating results, such as his estimate of 'unaccounted-or' gas at 10 per cent (the record for 1919 shows 11.03 per cent), is slight underestimate of the required boiler fuel, and the slight ifference as to the figures given by him for the gas oil required, it ay be said that the results shown in the operating records closely ecord with the sworn expert opinion of Mr. Woods, and are con-rmed by his judgment as to the results which might reasonably be oked for and secured."

n the ground that the same is not supported by the evidence and is ontrary to the evidence.

62 56. The defendants except to so much of the master's opinion which finds that:

"Whereas the operating records showed an actual unaccounted or in 1919 of 11.03 per cent, which seems to me a reasonable figure, aving in mind all present conditions. On the whole, I am con-inced that the operating records of the complainant company have een honestly and accurately kept, and accurately reflect actual, fficient, and reasonable operating results. In arriving at a con-lusion, therefore, in this case, I have accepted the actual operating esults for the year 1919 as they appear from the books of the com-lainant company, showing the cost of manufacture to be 63.45 ents per thousand cubic feet of gas made."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

57. The defendants except to so much of the master's opinion which finds that:

163 I am unable to make such a finding because there is ample evidence in the case indicating that it is practically impossible to regulate the amount of "unaccounted-for" gas and that factors were operative in 1919 which tended to increase the percentage. Weather and other conditions affect the gas in such manner and form that it is impossible to say that "unaccounted-for" gas should be kept below a certain percentage. Some years it seems to run very high, and in other years it seems to run quite low. This variance is caused by a number of changing conditions. I feel that I am compelled, in considering the operating results of the complainant company, to accept the actual conditions as I find them during the year 1919, and to accept the "unaccounted-for" gas at the figure of 11.03 per cent, which was the exact amount of such loss in volume during that year. In this connection, of course, it should be borne in mind that in 1920 or in some subsequent year this percentage may be lessened, so that the actual cost of making the gas in such year, if based upon the rates of pay for labor and the prices of materials prevailing in 1919, might be somewhat less than the figures now shown for 1919. But here again it should be noted that although there may be a reduction in the percentage of "unaccounted-for" gas, whatever reduction may take place from such a cause will be more than absorbed and offset by the increased cost of materials and of labor. Upon the basis of 11.03 per cent of "unaccounted-for" gas, the complainant's actual cost of manufacture during the year 1919 was 71.73 cents per thousand cubic feet of gas sold.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

58. The defendants except to so much of the master's opinion which finds that:

164 "The defendants challenge only four of the items included in this general item of "distribution and other expenses". They ask me to strike out from the 1919 outlays the item of $747.46 for "defensive emergency service"; the item of $15,518.73 representing the charges made in 1919 on account of the expenses of the present rate suit; interest on insurance, amounting to $57.58; and increased fire insurance, $477.30. I cannot agree with counsel for the defendants in their claim that I ought to eliminate the items "interest on insurance, $57.58" and the item "increase in fire insurance, $477.30".

on the ground that the same is not supported by the evidence and is contrary to the evidence.

59. The defendants except to so much of the master's opinion which finds that:

I limit my statement as I have with respect to these two items last mentioned because I agree with counsel for the complainant that in establishing a new rate an allowance must be made for the necessary expense to which the complainant company has been put in establishing its right to charge an adequate and remunerative rate for the gas sold by it, despite the existing statutory limitation, which I herein find to be confiscatory. I draw a distinction between analyzing the usual and necessary operating expenses of the company for the purpose of determining whether, in the first instance, the maximum rate fixed by statute is confiscatory, and the analysis of the complainant's expenses which must be made in fixing the fair rate for the future. The latter, of course, must make provision for the complainant's reimbursement for the expense of freeing itself from a statute which the complainant has proved to be confiscatory. That, however, remains to be considered in the fixation of a new rate.

165 The two items which I have thus stricken out for the purposes of the present inquiry aggregate $16,266.19. The total amount of actual distribution expense for 1919 was $107,597.82. Deducting $16,266.19 from $107,597.82, gives $91,331.63; this divided by 336,000,000 cubic feet sold in 1919 makes the allowable distribution expense approximately 27 cents instead of 32 cents as shown on the books of the complainant company.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

60. The defendants except to so much of the opinion of the master which finds that:

The item of the cost of providing for the renewal and replacement of property withdrawn from service seems to be agreed upon by all parties at three cents per thousand cubic feet of gas sold. As to the taxes and interest thereon, amounting to $23,794.71, or 7.07 cents per thousand sold, the defendants ask me to eliminate the interest on unpaid taxes, amounting to $233.71, and the Federal income tax item of $443.25. I doubt whether these items, particularly the latter, should be included in the cost of taxes to the complainant company, but if I should eliminate either or both of them, it would make no substantial change in the tax figure, so that in arriving at my figures, I have taken the tax item as 7.07 cents per thousand cubic feet of gas sold.

166 on the ground that the same is not supported by the evidence and is contrary to the evidence.

61. The defendants except to so much of the master's opinion which finds that:

"There appears to be no dispute that the income from sales of gas amounted to 99.51 cents, nor does there appear to be any dispute as to the amount of credit for miscellaneous operating revenue, viz., 6.75 cents per thousand cubic feet of gas sold. I have reached the

conclusion, therefore, that the actual cost of making and distributing gas during the year 1919, including taxes and the renewal and replacement of property, was $1.0880, against which there is to be credited 6.75 cents, leaving a net cost of $1.0205, or a deficiency over the sum realized from gas sales (99.51 cents) of 2.54 cents per thousand cubic feet of gas sold. This sum, multiplied by 336,241,400 cubic feet of gas sold during the year 1919, gives $8,540.53 as the actual deficiency in operating expenses for the year 1919, without regard to any return upon any of the complainant's investment in the property used in its gas business. These figures show a confiscation of the complainant's property in 1919 and a confiscation thereof to an even greater extent thus far in 1920, and there might appear to be no necessity for my going further and ascertaining the present fair value of the property upon which the complainant was and is entitled to earn a reasonable return."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

167 62. The defendants except to so much of the master's opinion which finds that:

"The securities issued by the complainant for this purpose cannot, it seems to me from the present record, be considered to have been worth more than the property thereby acquired."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

63. The defendants except to so much of the master's opinion which finds that:

"Fortunately, there has been agreement between the parties upon this record as to the cost, up to and as of August 1, 1904, of the tangible properties still in existence and use, which were acquired by the complainant company on that date. The complainant and the defendants agree that the tangible property acquired on August 1, 1904, and still in existence and use, did cost, and as of that date was reasonably worth, at least, $280,108, and I accept that figure in arriving at the complainant's total investment and the present value of its property. Since that date, the net additions to the plant and property of the complainant have cost $850,389.08, and there is no dispute as to this item. These two items not in controversy cover the actual cost of the tangible property now in use, aggregating $1,130,497.08."

168 on the ground that the same is not supported by the evidence and is contrary to the evidence.

64. The defendants except to so much of the master's opinion which finds that:

"The $650,000 of bonds originally issued by the complainant company upon the purchase of the securities of the Newtown and

Flushing Company are probably now in the hands of persons who at that time had no connection with the Newtown and Flushing Company. * * *

"As I have already pointed out, one difficulty here is that I have not before me the satisfactory basis for a finding that the securities issued by the complainant company were worth any more than the book value of the tangible and intangible property acquired, or that under the circumstances already referred to, such property, at the time it was acquired, had cost or was worth more than was shown by the books of the company from which it was acquired."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

65. The defendants except to so much of the master's report which finds that:

"At the time of the merger of the Newtown and Flushing Gas Company into the New York and Queens Gas Company, the total property and assets of the former (exclusive of working capital) were carried on the books of the former at $694,678.00. Since that time, plant and equipment so acquired by the complainant on August 1, 1904, has been retired, at a book cost totalling $24,189.14. The tangible property acquired on August 1, 1904, and still in service, is agreed to have cost before August 1, 1904, and to have been worth on that date, the sum of $280,108 exclusive of franchises and rights and 'going value' and the undistributed structural items under consideration. The deduction of these two items from the book total of $694,678.00 leaves only $390,380.86 as representing the book cost to the Newtown and Flushing Gas Company of the franchises and rights, the 'going value,' and the undistributable structural items hereinbefore mentioned. There is sufficient evidence to warrant my conclusion upon the present record that the item of 'franchises, good will, etc.,' on the books of the complainant and its predecessors, covered, among other things, preliminary and development expenses and the various other items which Mr. Miller puts in at a total of $320,350, and also the cost of franchises and rights,' which Mr. Miller puts in at $500,000; and I think it will be fair for me to say, for the purposes of the present case, that for all of these items just referred to, the New York and Queens Gas Company actually paid no more than their book cost to the Newtown and Flushing Gas Company and its predecessors, viz: $390,380.86, and that these elements had cost the Newtown and Flushing Gas Company and its predecessors, and were worth, on August 1, 1904, at least that sum."

169

on the ground that the same is not supported by the evidence and is contrary to the evidence.

66. The defendants except to so much of the master's opinion which finds that:

"To the cost of the present property acquired in 1904 and the net additions to such property since 1904, totalling $1,520,877.94, there must be added an item for materials and supplies, cash on hand and in banks, and the like, commonly called working capital."

170 * * * I have reached the conclusion that $135,000 would be a fair sum to be allowed for working capital. I therefore reach the conclusion that the tangible and intangible property, including working capital, used and useful during the year 1919 and as of January 1st, 1920, by the complainant company in the conduct of its gas business, represents an actual investment, and is reasonably and fairly worth at this time, at least the sum of $1,655,877.94, and that it is on at least this amount that the complainant company was and is entitled to have its rate such as to yield a fair return.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

67. The defendants except to so much of the master's report which finds that:

In view of some statements made by me on the record with reference to the value of land and my statement that I would fix the value of land at about $44,000, I should add that upon analyzing the figures I found that land acquired prior to August 1st, 1904, is included in the agreed item of $280,108 at $19,423, plus grading and filling, $5,000, making $24,423 for land unimproved and that additions to real estate since 1904 have cost the complainant $20,630.90, a total of a little more than $45,153.90.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

171 68. The defendants except to so much of the master's opinion which finds that:

Statements made by me on the record indicate my views as to the claim made by counsel for the defendants that the complainant company was not entitled to equitable relief because of its alleged failure to comply with the statutory requirements as to candle power, and I therefore deem it unnecessary to say anything further herein upon that subject, which I discussed at considerable length in my opinion as Special Master in the Consolidated Gas Company case. In view of the similarity of the record facts, I refer to that opinion for a fuller statement of my views upon the subject. I am clear that this complainant has complied with the candle-power provisions of the statute.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

69. The defendants except to so much of the master's opinion which finds that:

In my opinion the property now used by the complainant company is worth at least that sum.

on the ground that the same is not supported by the evidence and is contrray to the evidence.

70. The defendants except to so much of the master's report which finds that:

172 The complainant company offered testimony as to the present reproduction cost of the tangible property of the complainant company. The proof was undisputed that the complainant owns and uses the items of tangible property which it inventoried as of January 1, 1920, and that, exclusive of working capital and the undistributable structural costs, the cost of reproducing the tangible property, as of January 1, 1920, would be at least $2,099,621, as compared with the complainant's actual and unimpaired investment in the same tangible items of only $1,130,497.08. In other words, leaving out working capital and the undistributable working costs, it would cost nearly twice as much to reproduce the tangible property today as it did actually cost the complainant and its predecessors.

Of course, to this figure of $2,099,621, to reach a complete figure of present reproduction cost, there must be added amounts, based on the present cost of such items, for organization and development expenses prior to construction; cost of financing; engineering, superintendence and general contractors' expense and profit; interest during construction; taxes on land during construction; the cost of franchises and rights; administrative, legal and miscellaneous expenses during construction; certainly the sum of $135,000 for working capital; and perhaps also a suitable amount for "going value." The above-stated investment figure of $1,130,497.08 likewise does not include any allowance for the cost of these items prior to August 1, 1904, although they were, of course, principally incurred before that time. In so far as these undistributed elements arise in connection with the present cost to reproduce this property, I have not thought it necessary to make a finding as to any of them, and in so far as they arise in connection with the complainant's present aggregate investment, I have declined to make any finding assigning to them a value in excess of the item representing their cost to the complainant and its predecessors, viz: $390,380.86, in which they are included to an extent deemed adequate for the purposes of this case.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

173 71. The defendants except to so much of the master's report which finds that:

Under any basis of determining present value, the complainant's property is now worth at least the amount of such investment therein, and the sound rule of law and policy seems to require the allowance of a reasonable return upon at least that sum.

In determining that the complainant's property has a fair present

value of at least the amount of the complainant's actual investment therein as found by me, viz., at least $1,655,877.94,

on the ground that the same is not supported by the evidence and is contrary to the evidence.

72. The defendants except to so much of the master's report which finds that:

From the testimony given upon the trial, I was strongly impressed that in respect of a very large proportion of gas property, there is no ascertainable "life expectancy." The withdrawal of such property from service comes about from inadequacy or obsolescence which cannot be forecast in terms of years or even satisfactorily guessed at. Certain parts of operating machinery and equipment are of course subject to the effects of use. The replacement of these wearing parts enters into the cost of repairs. As to the substantial units of structures, apparatus, mains, and equipment, their withdrawal from the property accounts comes about from causes not attributable to the condition of the property itself or any diminution in its operating efficiency but varying utterly with the particular plant, time, local conditions and service demands and hence capable of being forecast only as the occasion for such change in plant or equipment becomes imminent.

174 on the ground that the same is not supported by the evidence and is contrary to the evidence.

73. The defendants except to so much of the master's report which finds that:

The loss due to such supersession cannot properly be said to have accrued during the period the superseded unit was in service. It occurred when supersession took place. It became a proper charge against the economies to be realized therefrom. It furnished no basis for the imposition of an additional charge against the user of the superseded unit during the period of its useful service over and above the higher cost of operating it. Such a charge could not be justified either on the ground that the unit was losing potential life, or that the capital invested in it was being consumed, because neither is true.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

74. The defendants except to so much of the master's report which finds that:

In order to justify the deduction of "theoretical depreciation," I was asked in this case to assume that a "depreciation reserve" equal to the computed "theoretical depreciation" had been collected from the public, and then to deduct from the company's investment the amount of such assumed reserve. No such reserve had, in fact, been collected or accumulated by this company. The rate chargeable did

not permit it, and there is no reason to believe that the Legislature, in prescribing the rate, ever contemplated it. As I have set forth in Findings Nos. 32 and 27 of my Report and as I have elsewhere indicated herein, the complainant gas company has maintained its property and investment intact in the past through renewals and replacements, at an average actual cost of approximately three
175 cents per thousand cubic feet of gas sold, and no reason appears for believing that it cannot continue to do so on that basis. Even assuming that the statute permitted such a rate, to have imposed on the company's consumers an additional burden nearly twice as great, representing a purely theoretical item of operating cost, merely to accumulate a useless reserve to justify a drastic deduction from investment in some ultimate proceeding as to rates, could not have been justified on any sound theory in the past and cannot now be sustained as to the future.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

75. The defendants except to so much of the master's report which finds that:

In order to justify the assumption that a "depreciation reserve" was or should have been collected, defendants' witness Hine testified in this case that such a reserve was necessary "so that when the property is retired for any cause whatsoever the fund can be charged with the cost of the property". He testified also that the reserve should be in his opinion "invested in the property", and that when the funds were needed for renewals and replacements they would be provided "by issuing securities against construction work which had been done originally out of this fund, for the money laid aside for this fund, just to reimburse the treasury on account of these expenditures". This view seemed to me to disregard the obvious fact that having deducted the amount of the reserve temporarily invested in property from that on which he proposed the company should be allowed to earn a return, he, to all intents and purposes, destroyed the earning power of such property and investment: that therefore he could not issue any securities against such property, there being no earnings therefrom with which to pay interest on the securities;
that the reserve could never thereafter be availed of for the
176 purpose for which it was alleged to have been created, and that it would be, in fact, as if it had never been created. Thus he not only failed to sustain his contention that a "depreciation reserve" was necessary for the purposes which he alleged, but he proposed to treat the reserve as if he himself believed it to be both unnecessary and ineffectual, except for the purpose of justifying a deduction from the complainant's investment.

It is obvious that the collection of an unnecessary reserve and its periodic deduction from the value of the property in service would operate to effect a piece-meal purchase on the part of the public, of the property used by the utility in its service. In other words, it is really asking the consumer to pay for the plant, instead of paying a

return on the investment. If such a consummation is desirable, of which there is no evidence, it should be effected openly, and not surreptitiously under the guise of providing for so-called "theoretical depreciation".

on the ground that the same is not supported by the evidence and is contrary to the evidence.

76. The defendants except to so much of the master's report which finds that:

His testimony in this respect was not contradicted by that of any witness. This sum, however, does not, in my opinion, measure any impairment in the present value of the property used and useful in the gas business. It represents merely an unmatured obligation to maintain the property in efficient operating condition out of future earnings, the expert witnesses of both the complainant and the defendants agreeing that it was and is maintained in efficient and first-class condition.

on the ground that the same is not supported by the evidence
177 and is contrary to the evidence.

Dated, August 6, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York.

WILBER W. CHAMBERS,
Solicitor for Defendant Newton.

Office & P. O. Address, Capitol, Albany, N. Y.

TERENCE FARLEY,
Solicitor for Defendant Nixon.

Office & P. O. Address, No. 49 Lafayette St., New York City.

W. H. VAN STEENBERG,
Solicitor for Defendant O'Leary.

Office & P. O. Address, 27 Cedar St., New York City.

178 [Endorsed:] District Court of U. S. New York & Queens Gas Co., Complainant, against Charles D. Newton, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of Queens County, State of New York, and Lewis Nixon, Constituting the Public Service Commission for the First District, Defendants. E. 16-44. Exceptions to Special Master's Report and Opinion. Charles D. Newton, Attorney-General of the State of New York; Wilber W. Chambers, Solicitor for defendant Charles D. Newton, Office & P. O. Address, Capitol, Albany, N. Y.; Terence Farley, Solicitor for defendant Lewis Nixon, Office & P. O. Address, No. 49 Lafayette St., New York City.

179 VII*b*.

United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission for the First District, Defendants.

Notice of Filing of Exceptions.

Please take notice that the within exceptions of the complainant to the report and opinion of the Special Master herein were filed in the Office of the Clerk of the United States District Court for the Southern District of New York on the 9th day of August, 1920.

Dated New York, August 9, 1920.

Yours, etc.,

SHEARMAN & STERLING,
Solicitors for Complainant.

55 Wall Street, Borough of Manhattan, City of New York.

To

Charles D. Newton, Esq.,
Attorney-General, State of New York.

Wilber W. Chambers, Esq.,
Solicitor for Defendant Charles D. Newton.

Terence Farley, Esq.,
Solicitor for Defendant Lewis Nixon.

William J. Morris, Esq.,
Solicitor for Defendant Denis O'Leary.

180 United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Complainant's Exceptions to Report and Opinion of Special Master.

Now comes the complainant, New York and Queens Gas Company, and excepts to the Findings of Fact and Conclusions of Law filed herein by Hon. Abraham S. Gilbert, the Special Master herein, in the following particulars, to wit:

(1) Excepts to the failure of the Master to find that the actual and reasonable cost to the complainant company of the items referred to in Finding No. 28, which enter into the cost of distribution, was, during the year 1919, not less than 32 cents per thousand cubic feet of gas sold (Complainant's Exhibit 64, showing Cost of Production and Distribution for the Year ended December 31, 1919; Teele's testimony, folios 362 et seq.).

181 (2) Excepts to the failure of the Special Master to find that the actual and reasonable cost to the complainant company of the items referred to in Finding No. 28, which enter into the cost of distribution, was, as of May 25, 1920, and as of the time of the making of the report by the Special Master, not less than 39.82 cents per thousand cubic feet of gas sold (Complainant's Exhibit 90; testimony of witness Spear, fols. 2879-2938, pp. 960-980, particularly fols. 2935-2938, pp. 979-980).

(3) Excepts to the failure of the Special Master to find that the reasonable cost of the gas delivered to its consumers by the New York and Queens Gas Company during the year 1920 was $1.138 per thousand cubic feet of gas, from which should be deducted 6.75 cents per thousand cubic feet for miscellaneous operating revenue, making the net cost of gas delivered to the consumer, in 1919, $1.0705 per thousand cubic feet (Complainant's Ex. 64; Teele's testimony, fols. 362 to 465, pp. 121 to 151), and that as of May 25, 1920, and as of the time of the filing of the Master's Report, the reasonable cost of such gas was $1.3417 per thousand cubic feet, from which should be deducted 6.75 cents per thousand cubic feet for miscellaneous operating revenue, making the net cost of such gas

$1.3417 per thousand cubic feet (Complainant's Ex. 90; testimony of witness Spear, fols. 2879-2938, pp. 960-980, particularly fols. 2935-2938, pp. 979-980).

(4) Excepts to the failure of the Special Master to find that the net deficit to the complainant from its gas operations in 1919 was 7.54 cents per thousand cubic feet of gas sold, irrespective of
182 any return upon any of the property used in its gas operations (Complainant's Ex. No. 64, Teele's testimony, fols. 362 to 465, pp. 121 to 151) and that as of the present time, such net deficit is at least 27.23 cents per thousand (Complainant's Ex. 90; Spear's testimony, fols. 2879-2938, pp. 960-980).

(5) Excepts to the failure of the Master to find that the complainant was, on January 1, 1920, and now is, entitled to include in the amount upon which it is entitled to a fair return, the sum of $165,000 for working capital. (Miller's testimony, fol. 2102, p. 701, fols. 2127-2133, pp. 709-711.)

(6) Excepts to the failure of the Master to find that the tangible and intangible property (including land, plant, distributing system, franchises and rights) acquired by the complainant at the end of July, 1904, and still owned and used by it on January 1, 1920, actually cost, prior to August 1, 1904, and was reasonably worth at the time of such acquisition by the complainant, the sum of $1,100,485, and that with the actual cost of the net additions thereto from August 1, 1904, to January 1, 1920, exclusive of working capital amounting to $850,389.08, the total cost of such property owned and used by the complainant as of January 1, 1920, was the sum of $1,950,847.08, and that with working capital, for which $165,000 is a reasonable allowance, the total cost thereof was, as of January 1, 1920, $2,115,847.08; and that the fair value of the property used and needed in the manufacture and distribution of the gas
183 sold by the complainant as of January 1, 1920, and the present time, was and is in excess of the sum of $2,115,847.08, and the complainant was and is constitutionally entitled to have its rate such as to yield a fair return upon at least that sum. (Complainant's Ex. 96; Miller's Testimony, fols. 4337-4352, pp. 1446-1451; Miller's testimony, fols. 2101-2102, p. 701.)

(7) Excepts to the Master's failure to find as follows:

Upon acquiring the capital stock and outstanding capital obligations of the Newtown and Flus-ing Gas Company in 1904, the complainant company paid for the same by issuing its capital stock for the par value of $600,000, and its first mortgage bonds of the par value of $650,000, making in all $1,250,000. Although the original cost to the Newtown and Flushing Gas Company or the predecessor companies of all the property at that time in existence, including the franchises and rights, thus acquired by the complainant, cannot now be ascertained, I am satisfied, and so find, that it had theretofore cost, and was worth, in 1904, at least what the complainant company paid for it as represented by the par or face value of such stock and bonds, and that such stock and bonds so paid over for the

property so acquired were, at that time, worth at least $1,250,000. (Complainant's Ex. 114, Spear's Testimony, fols. 6660, 6680, pp. 2220, 2227.)

(8) Except to the Master's failure specifically to find as additional items of value to the items found in Finding No. 40, as included in the cost to reproduce the property of the complainant as of January 1, 1920, used and useful in its gas business the following:

Organization and development prior to construction	$135,000
Cost of financing	150,000
Engineering, superintendence and general contractor's expense and profit	200,000
Interest during construction	101,096
Taxes on land during construction	345
Administration, legal and miscellaneous expenses during construction	45,000
Working Capital	165,000
"Going Value"	500,000

(Miller's Testimony, fols. 2101-2133, pp. 701-710.)

(9) Excepts to the Master's failure to find that the reasonable and proper return upon the capital invested in the complainant's property, upon the basis of the cost thereof, at the rate found by the Master in Finding No. 45, amounted to $169,267.77. (Complainant's Ex. 96 of Summary of Cost of plant and distribution system to and including December 31, 1919.)

(10) Excepts to the Master's failure to find as a part of the reasonable and necessary operating expenses found in Finding No. 48, and to the Master's elimination in his Opinion under the title "Eliminated Items," at fols. 103-105, of all of the expenditures made by the complainant during 1919 of $747.46 for defensive emergency service and of $15,518.73 for the prosecution of the present rate case. (Complainant's Exhibits 64 and 65; Teele's Testimony, fols. 362 to 465, pp. 121 to 151).

185 (11) Excepts to the Master's finding at folio 110 of his Opinion, under the title "Franchises and Rights Acquired by the Complainant," that "At the time of the merger, the complainant * * * had no assets of any kind or description," on the ground that the franchise owned by the complainant to do business (Complainant's Ex. 1, fols. 41-43, pp. 14-15), and the services and expenditures in connection with the complainant's incorporation created and constituted valuable property rights.

Dated, New York, August 9, 1920.

SHEARMAN & STERLING,
Solicitors for Complainant.

55 Wall Street, Borough of Manhattan, City of New York.

186 [Endorsed:] 8-10-'20. Index No. —. U. S. District Court, Southern District of N. Y., County of ——. New York and Queens Gas Company, Complainant, against Charles D. Newton, et al., Defendants. (Copy) Complainant's Exceptions to Report & Opinion of the Special Master. Shearman & Sterling, Solicitors for Complainant, 55 Wall Street, Borough of Manhattan, New York City, N. Y. Due and timely service of a copy of the within —— on the — day of —— 191-, is hereby admitted. —— ——, Attorney for ——. ——. Public Service Commission for the First District, Office of Counsel. Rec'd. Aug. 10, 1920. Referred to Mr. Neumann.

187 VIII.

District Court of the United States, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Dennis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Notice of Final Hearing.

Take notice that this cause and the issues therein will be brought on for final hearing at a Stated Term of the District Court of the United States for the Southern District of New York to be held in United States District Court, Room Number 235, in the Post Office Building, Park Row, in the Borough of Manhattan, City of New York, on August 19, 1920, at 10:30 o'clock in the forenoon of that day; and that at said time and place we shall move the said Court for an order sustaining the complainant's exceptions to the Master's report herein filed, and confirming said report in all other respects, and shall also move, upon the pleadings herein, the order appointing the Special Master, the testimony and exhibits received
188 by the Special Master, the report and opinion of the Special Master, and exceptions thereto filed herein, and upon all of the proceedings herein, for a final decree in accordance with the prayer of the bill of complaint herein, and for such other and further relief as to the Court may seem just and proper and as the nature of this case may require.

Yours, etc.,

SHEARMAN & STERLING,
Solicitors for Complainant.

55 Wall Street, Borough of Manhattan, City of New York.

Dated, New York, August 10, 1920.

WILLIAM L. RANSOM,
CHARLES A. VILAS,
JACOB H. GOETZ,
Of Counsel.

To:

Wilbur W. Chambers, Esq.,
Solicitor for Defendant Charles D. Newton,
51 Chambers Street, New York City.

William J. Morris, Esq.,
Solicitor for Defendant Dennis O'Leary,
Court House, Long Island City, N. Y.

Terence Farley, Esq.,
Solicitor for Defendant Lewis Nixon,
49 Lafayette Street,
New York City.

189 [Endorsed:] 8-10-'20. Index No. —. Year 19—. District Court of the U. S. Southern District of N. Y. New York and Queens Gas Company, Complainant, against Charles D. Newton, as Attorney-General of the State of New York, et al., Defendants. Notice of Final Hearing. Shearman & Sterling, Attorneys for Complainant, 55 Wall Street, New York. Public Service Commission for the First District, Office of Counsel. Rec'd Aug. 10, 1920. Referred to Mr. Neumann.

190 IX.

United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Plaintiff,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendant-.

Motion by the plaintiff for a permanent injunction, upon the Report and Opinion of the Special Master (hereinafter printed at page 27 et seq.). The plaintiff and the defendants had each filed exceptions to the Report and Opinion, in the respects indicated in the Opinion of the Court.

Shearman & Sterling (John A. Garver, William L. Ransom, Charles A. Vilas, and Jacob H. Goetz, of counsel, all of New York City), for the plaintiff.

Charles D. Newton, Attorney-General (Wilber W. Chambers, Charles J. Tobin, and Clarence C. Cummings, Deputies Attorney-General, of counsel), for the defendant Attorney-General.

Terence Farley, Counsel to the Public Service Commission for the First District (Ely Neumann and Edward M. Deegan, of counsel), for the defendant Public Service Commission.

191 MAYER, *District Judge:*

The bill prays for a decree which shall declare confiscatory and, therefore, unconstitutional, so much of Chapter 125 of Laws of New York of 1906 as prohibits the charging of more than one dollar per thousand cubic feet of gas sold, for gas furnished to the inhabitants of the Third Ward of the Borough of Queens, commonly known as Flushing and its environs.

As a necessary accompaniment, the bill further prays that defendant public authorities shall be enjoined from enforcing the rate prescribed by the statute.

The Special Master has submitted a full report, dealing as he was requested and as he properly should, with the various questions of fact and law presented for his consideration, so that the Court should be advised in respect of any question which it might deem necessary for decision.

At the outset, however, it is desirable to make clear that this Court is not a rate making body and that on final decree, the question on the pleadings and the proof is whether the statutory rate is confiscatory and, therefore, whether the defendant public officers should be enjoined from enforcing it. Questions which might be pertinent, where it is sought to fix a rate which shall be as nearly accurate as possible, may prove academic in a case where the basic question is the constitutionality of the statute prescribing the rate.

It is, of course, elementary that a Court approaches the consideration of a case of this kind with an attitude of cautious in-
192 quiry, always mindful of certain fundamental canons of construction e. g., the presumption of constitutionality, the conviction beyond a fair doubt that the statute is unconstitutional, and the like.

In that spirit of caution, the Court may eliminate for the purposes of the case some contentions which might be successfully pressed in a rate case pure and simple. The subject is delicate in the sense that it affects a large number of persons who, if possible, should be led to understand that the result which may place a heavier burden on them is just and that after making every fair allowance it nevertheless appears that there is no escape from relieving a public utility corporation from the operation of a statute which has become unconstitutional by reason of conditions and facts, never contemplated nor susceptible of prophecy fourteen years ago.

During those fourteen years, the definite trend of legislation,

National and State, has been in the direction of regulation by responsible public agencies.

The necessity of thus dealing with the subject has been accentuated by the unexpected and radical economic changes due to the war.

But, in addition, there are constant changes which no one can safely predict. It will suffice to illustrate with the price of oil. Increased demand for oil for use in industries and purposes not realized in 1904 has been perhaps the greatest factor in enhancing its price. No change in this regard seems to be in sight.

193 These plain conclusions, based on experience simple to understand, point to the desirability of confining a Court decision within the limits of the relief asked for in the bill, leaving to the Legislature the task of providing the machinery whereby rates may be flexible and may be made higher or lower from time to time, as facts and conditions may warrant.

Examining, then, this record and the Special Master's report, it is apparent that discussion is necessary only in respect of the more important features. Many of the details have been carefully and correctly disposed of by the Master in his comprehensive report, which fully, though concisely, has dealt with the essential features of the testimony. Repetition, in this opinion, of certain findings and of the reasons in support thereof is not requisite and it is enough to indicate approval of those findings.

1. The year 1919 is in this case "a sufficient basis for the calculation of the cost of production and the 'rate base' for a future long enough to call for some judicial action."

Municipal Gas Company v. Public Service Commission, 225 N. Y. 89.
Consolidated Gas Co. of New York v. Newton, et al., F. R.
Kings County Lighting Company v. Nixon, et al., F. R.

The opinions of Judge Cardozo, Judge Learned Hand and Judge Hough, in the cases just cited, fully set forth the reasons for this conclusion and with those reasons on this point I am in full accord.

194 2. The Admissibility of the Books of Account.—This subject is fully dealt with in the opinions of Judge Learned Hand and of Judge Hough, in the cases supra. Common law proof of each and every of the thousand set items of the plaintiff's books of account would result in a practical denial of justice. The defendants had full facility to examine into and test the accuracy of the books. Capable cross examination rarely fails to disclose errors, omissions and inaccuracies, and injustice is rarely done in a case like this where there has been such full opportunity for examination.

3. The first inquiry is as to the cost of production of gas, the second as to cost of distribution. If the cost of production and distribution exceeds the statutory rate, that is the end of the case.

The Cost of Production.—Some attack has been made in respect of the cost of oil. An examination of the record shows clearly that

the oil accounts were carefully kept and checked. Most of the slight errors during the course of a month were corrected and the most generous acceptance of the contentions of the defendants would result in a variance of a few gallons which, translated into money, would be equivalent to a fraction so neglible as to amount to an infinitesimal part of a mill.

The cost of other materials and of labor is attacked not on the basis of evidence adduced but, as it were, on general principles.

195 The suggestion is that certain increased costs are suspicious. Yet there is nothing suspicious in the testimony, and it is a matter of common knowledge that during the year 1919 the cost of materials such as are here concerned, and of labor, rose materially in this and other industries. An examination of the testimony, including the exhibits, leads readily to the conclusion that the Special Master was right in his figures. It was made entirely plain that these costs, in the main, were greater in the first five months of 1920 than in 1919. The point of the inquiry in respect of 1920 was to ascertain whether there was any likelihood that the cost of 1919 had decreased or would decrease and no such hope was realized.

4. Unaccounted-for Gas.—There is however, one item which by way of extra caution should be reduced. The "unaccounted-for" gas, so-called, for 1919, was 11.03 per cent. This percentage varies. Some years it may be more, others less. Therefore, the estimate of an expert like Mr. Woods is valuable. This plant, in his opinion should show a loss of about ten per cent and I accept that figure, for the purposes of this case, instead of 11.03 per cent.

In his finding No. 25, the Master found that "During the year 1919 this cost of water-gas manufacture was 71.73 cents per thousand cubic feet of gas sold." This figure was made up of 63.45 cents for cost of production plus 8.28 cents, cost attributable to loss by way of "unaccounted-for" gas. My figure of 10% instead of the Master's 11.03% changes the 8.28 cents to 7.45 cents. Therefore, the total as found by me, under this head, is 70.90 cents instead of the Master's figure of 71.73 cents.

196 5. Cost of Distribution.

(*a*) Defensive Emergency Service.—The Master excluded this item. In my opinion he is right. See, also, Judge Learned Hand's opinion in the Consolidated Gas case, supra.

(*b*) Expenses of Litigation.—These were also excluded by the Master, but were allowed by the Court in the Consolidated Gas case. I should follow the decision on this point in the Consolidated Gas case, were it not that I am firm in the conviction that while this item may properly be considered in fixing a rate it is not to be included in determining whether the rate is confiscatory. I agree with the Master, both in this conclusion and his reasons therefor.

(*c*) Interest on Unpaid Taxes.—I am of the opinion that this is not a proper charge in this case under the head of cost of distribution and other expenses, and I have excluded it.

(*d*) The Federal Tax on Bondholders' Income should not be charged as an expense; nor was it included by the Master.

(*e*) Whether or not the amount of income from insurance participation should be charged as an expense is a debatable question and for the purposes solely of this decision I have resolved the doubt in favor of the defendants.

(*f*) The items (*c*) and (*e*) figure out 0.09 cents, i. e. 9/100ths of one cent. The total cost of distribution and other expenses as worked out on Mr. Teele's sheet was 32 cents. From this total must be deducted an aggregate of 4.93 cents. This last figure is made up as follows: 0.09 for the two items, (*c*) and (*e*); 0.22 for item (*a*) and 4.62 for item (*b*). Added together the total of these is 4.93 cents. Deducting then from 32 cents the sum of 4.93 cents leaves, under the heading of cost of distribution and other expenses, 27.07 cents. Add to this the item for replacement of 3 cents and for taxes 7.07 cents and the total is 37.14 cents.

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6. If then the 70.90 cents and 37.14 cents be added together, expressed in dollars, the total is $1.0804 instead of $1.0880, as found by the Master in finding No. 30. Deducting from $1.0804 the figure of .0675 (for miscellaneous operating revenue as found in finding No. 30) the net cost of gas delivered to the consumer in 1919 was $1.0129.

In other words, after making the various allowances, supra, in favor of defendants, to an extent greater than found by the Master, it appears that in 1919 the net cost of gas delivered to the consumer was approximately 1.29 cents in excess of the rate of $1.00 provided for by the statute.

In arriving at this figure it will be appreciated that I have stripped the constituent items down to their lowest minimum.

7. If the figure of 99.51 cents, representing the average selling price of gas be taken, then the deficiency is 1.78 cents per thousand cubic feet of gas delivered. The figure of 99.51 cents results from the fact that under the statute, plaintiff is required to deliver gas to the City of New York as a municipality at the rate of 75 cents. This rate has not been attacked by suit. The City in its corporate capacity is entitled to have gas furnished to it at a lesser rate than the private consumer. This fact, however, does not afford any reason why the private consumer should make up the deficiency caused by the lower rate of 75 cents to which the City of New York is entitled. In other words, the fact that the average selling price of plaintiff's gas is 99.51 cents is irrelevant to the ultimate question in the case. In determining whether the statute is confiscatory the inquiry must start with the proposition that plaintiff under the statute may charge the private consumer (as distinguished from the municipality) $1.00 and then the question is whether the cost of production and distribution is in excess of that dollar.

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8. It having appeared, supra, that the cost of production and distribution in 1919 was in excess of the statutory rate even though to

a slight extent, and that conditions in the early months of 1920 showed no prospect for a lesser cost, but on the contrary indicated increased cost, it makes little difference what elements are included or eliminated from the rate base or what theories shall obtain in respect thereof. If every debatable figure and question involved in the rate base were resolved in favor of defendants, plaintiff, under the statute, would still fail to receive the return to which it is entitled. For the purposes of this case, it does not make any difference whether the correct rule is reproduction value with or without so-called theoretical depreciation, or actual cost, with or without theoretical depreciation; nor does it make any difference whether the rate of return shall be six, seven or eight per cent. Any expression of opinion which goes beyond the requirements of the case would be mere dictum and in the circumstances would announce little more than an individual opinion. Besides, these questions of reproduction
199 value, actual cost and theoretical depreciation, and the like, are as much, and, perhaps, more, in the nature of economic questions than questions of law, and there is no need of discussing them when their determination is not required for the purposes of the case.

For the reasons outlined, plaintiff is entitled to be relieved from the operation of the statute, so far as it requires the furnishing of gas at the dollar rate to private consumers.

JULIUS M. MAYER,
District Judge.

November 3, 1920.

200 *Addendum.*

Form of Decree. The details of the decree will be considered after the usual notice of settlement. In order to guide counsel I may now state that I do not intend to fix a rate pending appeal. If it be assumed that the Court has the power so to do, yet my view is the same as that of Judge Hough, i. e., that it is no part of the duty of the Court to fix such a rate. Once the statute is declared unconstitutional, the responsibility of selling the gas to the consumer at a fair rate rests upon the plaintiff, until such time as proper and constitutional regulatory statutes may be enacted. Further, it is apparent that this whole subject needs prompt and intelligent treatment at the hands of the Legislature. The Court, in my opinion, should not fix a rate pending appeal, and, thus, perhaps furnish a cause for the postponement by the Legislature of the speedy consideration of this important subject. I see no occasion for the Court to pass on many of the findings of the Master which are unnecessary for the purposes of this decree, but which were properly made by the Master in his desire to present to the Court all of the questions of fact and law which the Court might regard as germane and necessary to a decision.

It will probably save counsel some time and labor if they will confer with me as to the details of the decree on November 8th at 5 p. m. I should like the Special Master also to be present.

J. M. M.
D. J.

201 United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Plaintiff,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York; and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Supplemental Memorandum on Settlement of Decree.

William L. Ransom, Charles A. Vilas, and Jacob H. Goetz, for the plaintiff.

Ely Neumann and Edward M. Deegan, for the defendant Nixon.

Wilber W. Chambers, for the defendant Newton.

MAYER, *District Judge:*

After the opinion herein was filed, my attention was called to some slight errors in calculation.

At a conference of counsel with the Court, the Special Master being present pursuant to the Court's request the Court asked the Special Master to check up the figures. This he has done

202 and I file herewith his informal memorandum. I have revised the opinion on file accordingly. In order that the changes may clearly appear, they have been noted in ink on the original filed opinion. The net result is a difference of 53/100ths of a cent in favor of plaintiff, making the cost of production and distribution $1.0129 instead of $1.0076.

Taking up the decree proposed by plaintiff: substitute the word "plaintiff" for "complainant", wherever it appears. Then take up the paragraphs as follows:

Paragraphs I and II. I will not depart from my view that the Court need not determine a rate base where the evidence shows that the cost of production and distribution exceeds the statutory rate I have stated and now repeat that dicta tend only to confuse and embarrass, not merely the disposition of the particular case under consideration, but of similar litigations. There is force, however, in the contention that the Court should find that plaintiff owns pro-

erty of some value. The actual cost of the tangible property aggregates $1,130,497.08. In respect of this figure there is no controversy (see Page 38 of printed Report of Special Master*). This figure, of course, does not include various other controverted items referred to in the Master's Report. Thus, the sum of $1,130,497.08 is the absolute minimum of actual investment and I hold also, on the evidence in the case, that it is the minimum of reproduction value.

If it were necessary to find the reproduction value the figure
203 would be much greater. It is, however, sufficient, for the purpose of this case, that the Court shall find said sum of $1,130,497.08 as the smallest amount upon which a return should be figured. All other findings touching the rate base have become immaterial to this case. At any rate of return from 8% down to 6%, the statutory rate of $1.00 is confiscatory on the evidence in this case.

Therefore, except as just indicated, I will deal as follows with the exceptions which relate to the rate base: "exceptions numbered (here set forth numbers) are not passed upon, because immaterial to this decree"; or if plaintiff prefers, I can follow Judge Hough's method of sustaining defendants' exceptions without prejudice because immaterial.

Paragraphs I and II, therefore, should be redrafted to conform with the above. I do hope counsel can agree promptly as to the form of these paragraphs and save me the labor of checking up the exceptions.

Paragraphs III and IV. These should read "since at least January 1, 1919".

Paragraph V. Here change "in respect" (line 16) to "with respect". On last line (of page), after "said Act" insert "in so far as it fixes or prescribes a rate for gas manufactured or sold by plaintiff." Otherwise, this paragraph will remain unchanged.

Paragraph VI. Here let the phrase be as follows: "together with the names and addresses of the consumers from whom such moneys are so collected, in so far as such names or addresses are known to the complainant or appear upon its books and records; and such accounts." Also insert "employees" after "defendants".

204 Paragraph VIII. Strike out "and before the fifteenth day of December 1920".

Paragraph IX. Add at the end the following: "until the excess monies, so received and collected, together with interest thereon, shall aggregate the sum of $200,000, in which event, the defendants or any of them may make application to this Court, on three days notice, for an additional bond or security and in such form and manner as this Court may direct".

*(See pages 64, 66-7, 69-70, et seq., hereof, post; see also, Paragraphs I and II of the Judgment and Decree of November 19, 1920, printed on pages 19 and 20 hereof, post.)

Paragraph X. Change "some" to "any".

Paragraph XI. Change "some" to "any". Let the last part read "* * * United States Supreme Court to advance the said appeal upon the calender of the said court".

If the defendants do not move promptly, this Court's attention may be called to that fact and it will deal with the matter as may then appear. It is important in the interest of the consumers, as well as of plaintiff, that the appeal should be expedited. The record is comparatively brief for a rate case and the questions in the case at bar are much more limited in number than in most cases of this kind.

Paragraph XII. Add at beginning "From and after the date hereof and".

Paragraph XIII. Add at end thereof "by reason of any acts or events occurring after the date of this decree".

Paragraph XIV. Add at end thereof "in accordance with the Rule of the Supreme Court of the United States on this subject."

Finally, as to Insurance Participation certificates, the sub-
205 ject-matter need not be further discussed, except to state that perhaps this income should be credited as an expense; but I shall leave the question open as I did in my opinion. It is unimportant in this case.

I shall not reopen other questions. I have endeavored to make clear that this is not a rate case, that I am not fixing a rate, and that the Legislature or any public body dealing hereafter with the subject may be advised that this Court's opinion and decree are confined to the issues raised in this law suit.

Submit decree at my Chambers in accordance with above by Thursday, 2 P. M.

JULIUS M. MAYER,
District Judge.

November 16, 1920.

206 (*Letter Filed with Supplemental Memorandum.*)

November 9, 1920.

Hon. Julius M. Mayer.
Post Office Building.
New York City.

In re New York & Queens.

My Dear Judge:

I have just gone over the figures in the New York and Queens matter with Judge Ransom.

His accountants, figuring it somewhat differently than you did, arrived at the cost of unaccounted for gas on the basis of 10% gas at 7.45¢ instead of 7.13¢ as figured in your opinion. I think

contention is correct. This difference of 7.45¢ instead of 7.13¢ makes the cost of production in 1919, 70.90¢ instead of 70.58¢.

Referring now to the three items which defendants contended should be deducted (see page 73 of their brief), Judge Ransom points out to me that I did not take in as an expense the item of $443.25, bondholders' interest for the very simple reason that it was not included as an expense by Mr. Teale who made up the figures for the Gas Company. In other words, the attorneys for the defendant made the same error here as they did as to the defensive emergency fund which I had already omitted. This item of $443.25 must, therefore, be disregarded. If you deduct it now it will be charged twice against the Gas Company.

As to the item of interest on insurance participation, the amount stated in the defendants' brief is clearly an error, the correct amount being, as stated by you, .02¢ per thousand or $57.58 in all, instead of $534.88 as stated in the defendants' brief.

207 There should, therefore, be deducted from cost of distribution only the following items: $233.71 interest on unpaid taxes, and $57.58 interest on insurance participation, making a total of $291.29 representing .09¢ per thousand cubic feet.

To summarize, therefore, the corrections indicated result in showing the cost of production of gas sold to be 70.90¢ instead of 70.58¢; the cost of distributing gas to be 27.07¢ instead of 26.86¢ as figured by you. To this must be added the items of replacement of 3¢ and taxes 7.07¢ making a total cost of distribution, plus replacements and taxes of 37.14¢ instead of 36.93¢ as stated by you in your opinion (Paragraph F).

Yours very truly,

A. S. GILBERT.

208 District Court of the United States, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Plaintiff,

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

This cause came on to be heard at the August, 1920, Term of this Court, and was argued by counsel; and thereupon, upon consideration thereof, it is

Ordered, adjudged and decreed as follows:

1. The plaintiff's exceptions to the Report and Opinion of the Special Master as filed herein on August 6, 1920, relative to items

entering into the cost of manufacture and distribution of gas by it, are overruled, without prejudice, however, to the allowance of any such items of expense in a determination as to the rate reasonably to be charged for gas furnished by the plaintiff to its consumers. The plaintiff's exceptions relative to the amount and value of property upon which the plaintiff claims to be entitled to a fair return through the rates chargeable to its consumers, are overruled,
208¼ inasmuch as a determination of the full value of such property is unnecessary for the reasons set forth in the Opinion filed herein by Mayer, D. J., on November 3, 1920, and the Supplemental Memorandum filed by Mayer, D. J., on November 16, 1920.

II. The defendants' exceptions relative to "unaccounted-for-gas," the net cost of gas delivered to consumers, and the rate collected from private consumers, are sustained to the extent indicated in paragraphs "4," "5," "6," and "7" of the Opinion filed by Mayer, D. J., on November 3, 1920, and the corresponding findings of the Special Master are modified accordingly. The Court further finds that as of the time of inquiry herein the plaintiff owned and used in its gas business tangible property in which its actual and uncontroverted investment was at least the sum of $1,130,497.58; that this sum represents an absolute minimum of the plaintiff's investment in tangible property, aside from working capital and other items controverted as to amount by the defendants; and that the present value of such property, on a cost of reproduction basis, is at least $1,130,497.58 and would be much greater, if it were necessary to find the full reproduction cost. So much of the defendants' exceptions as are inconsistent with the above-stated finding of this Court is hereby to that extent overruled. All exceptions filed by the defendants and not hereinbefore referred to are not passed upon because immaterial to this decree.

III. Chapter 125 of the Laws of 1906 of the State of New York in so far as it prohibits the plaintiff from charging or receiving more
than at the rate of One Dollar ($1.00) per thousand cubic
208½ feet for the sale of gas in the Third Ward of the Borough of Queens, has been, since at least January 1, 1919, and now is, confiscatory, and deprives the plaintiff of its property without due process of law, contrary to Section 10 of Article I of the Constitution of the United States and to the Fourteenth Amendment thereof.

IV. The said statute has been since at least January 1, 1919, and now is, invalid as violative of the said provisions of the Constitution of the United States; except by injunction the plaintiff has no adequate remedy, at law or otherwise, for any injury resulting from the enforcement of said statute; and the plaintiff is entitled to the relief hereinafter prescribed.

V. The defendants Charles D. Newton as Attorney-General of the State of New York, Denis O'Leary as District Attorney of the County of Queens, State of New York, and Lewis Nixon constituting the Public Service Commission of the State of New York for the First District, and each of them, and their, and each of their successors

office, their deputies and attorneys, and their, and each of their successors, servants and employees, and any and every person acting or purporting to act under and by virtue of the authority of Chapter 125 of the Laws of 1906 of the State of New York or any other provision of law, be, and each of them is, hereby restrained and enjoined from enforcing, and from attempting to enforce, against the plaintiff the provisions of Chapter 125 of the Laws of 1906 or any of them, with respect to the rates which the plaintiff may charge or receive for gas manufactured or sold by it in the Third Ward of the Bor-
209 ough of Queens, or from bringing any action or proceeding in mandamus or by injunction or otherwise for the purpose of compelling compliance by the plaintiff with the said Act, in so far as it fixes or prescribes a rate for gas manufactured or sold by the plaintiff, or from doing any act or thing interfering with the right or authority of the plaintiff forthwith to charge, bill, collect and receive for such gas any rate which it might lawfully charge or receive if the provisions of the said Act relative to the rate to be charged or received by the plaintiff were not operative.

VI. In the event that an appeal from this decree is taken by the defendants, or any of them, within the time hereinafter prescribed, the plaintiff shall thereafter and until the bond provided for in Paragraph VIII hereof shall have been cancelled and annulled by order of this Court, keep true and correct accounts and records of all gas sold by it and of all moneys received by it for gas sold by it, so as accurately and completely to show the moneys received by it, for gas sold by it from and after this date, in excess of the sums which would have been received for such gas if the same had been sold at the rate of One Dollar ($1.00) per thousand cubic feet of gas sold, together with the names and addresses of the consumers from whom such moneys are so collected in so far as such names or addresses are known to the plaintiff or appear upon its books and records; and such accounts and records shall, upon application to this Court, be at all reasonable times open to the inspection and audit of the defendants, their employees, or their successors or representatives.

210 VII. If, within the time hereinafter prescribed, an appeal from this decree is taken by the defendants, or any of them, the plaintiff shall, on the 15th day of December, 1920, and on the 15th day of each month thereafter, until the bond provided for in Paragraph VIII hereof shall have been cancelled and annulled or until this Court shall order otherwise, file in the office of the Clerk of this Court a statement, sworn to by its vice-president, secretary or treasurer, showing the moneys received by it during the preceding month, for gas sold by it, in excess of the sums which would have been received for such gas if the same had been sold at the rate of One Dollar ($1.00) per thousand cubic feet, such verified statement also to certify that the sum so shown is all that has been so collected during the preceding month.

VIII. If, within the time hereinafter prescribed, an appeal from this decree is taken by the defendants, or any of them, then within

ten days thereafter, the plaintiff shall file with the Clerk of this Court, in form and tenor first approved by this Court, its bond or undertaking, with the Consolidated Gas Company of New York as surety, in the sum hereinafter prescribed, conditioned for the repayment to the consumers of the plaintiff, in the event that this decree is reversed on appeal and it is ultimately decided that the plaintiff is not entitled to judgment in this action, of the respective sums of money received and collected by the plaintiff from such consumers in excess of the sums which would have been received if such gas had been sold and billed at the rate of One Dollar ($1.00) per thousand cubic feet, together with interest at the rate of six (6) per cent upon any such excess so collected and repaid, the obliga-
211 tion of such surety upon and under such bond or undertaking to be in the sum of Two Hundred Thousand Dollars ($200,000).

IX. Upon filing such bond and thereafter, unless and until this Court shall otherwise direct, the plaintiff shall be entitled to and may retain and use any and all moneys received and collected by it in excess of the sums which would have been received and collected at the said rate of One Dollar ($1.00) per thousand cubic feet of gas sold. When the excess moneys so received and collected shall aggregate the sum of Two Hundred Thousand Dollars ($200,000) the defendants, or any of them, may make application to this Court, on three days' notice, for an additional bond or security and in such form and manner as this Court may direct.

X. If an appeal from this decree is taken by the defendants, or any of them, and the final judgment entered herein sustains the invalidity of Chapter 125 of the Laws of 1906 as to the plaintiff, the said bond or undertaking shall thereupon and thereby be cancelled or annulled, and the plaintiff and the said Consolidated Gas Company of New York shall thereupon and thereby be relieved from any and all liability thereunder, and appropriate directions accordingly shall be made by this Court.

XI. The plaintiff shall be required to do the acts and things specified in Paragraphs VI, VII, VIII and IX, hereof only in case an appeal from this decree is taken by the defendants, or any of them, within thirty (30) days from the entry of this decree, and that the defendants so appealing, and each of them, shall
212 perfect and prosecute any such appeal and print and file the record and all necessary papers to that end, promptly and without delay, and shall, with all convenient speed thereafter, serve a notice of application to the United States Supreme Court to advance the said appeal upon the calendar of the said Court.

XII. From and after the date hereof and during the pendency of any appeal taken and prosecuted as aforesaid, the plaintiff shall cause to be placed, in red ink or color conspicuously on the face of each gas bill sent out by it to any consumer charged at a rate in excess of One Dollar ($1.00) per thousand cubic feet of gas sold, the words, "Preserve this bill in order to protect your rights" and

also the words, "This bill is rendered subject to the notice on the back hereof"; and on the back of each such bill, the plaintiff shall cause to be printed or attached, in conspicuous type, a notice in substantially the following form:

"For the gas supplied on and after November —, 1920, the price of — is charged. Pursuant to the judgment entered by the United States District Court for the Southern District of New York on November —, 1920, the amount collected in excess of One Dollar ($1.00) per 1,000 cubic feet will be subject to the further direction of the Court."

The plaintiff shall cause notices to similar effect to be placed on each prepayment meter in service and on the back of each prepayment meter receipt issued by the plaintiff during the period above indicated.

213 XIII. At any time while the injunction hereinbefore granted remains in force, any party hereto, or his successors or assigns, may apply, upon notice, at the foot hereof, to vacate, modify or extend the foregoing injunction because of any change of circumstances since the entry hereof; or to vacate the requirements of Paragraphs VI, VII, VIII, and IX, hereof, if the conditions prescribed in paragraph XI, hereof as to the prosecution of such appeal are not fulfilled by the defendants; or for any additional relief to which he may deem himself entitled by reason of any acts or events occurring after the date of this decree.

XIV. The plaintiff shall recover its taxable costs and disbursements of the defendants, to be borne equally by them; and the allowance and expenses of Abraham S. Gilbert, the Special Master appointed to hear and report herein, shall be fixed by the Court, upon motion made by any party hereto, or by the said Special Master, and shall be paid by the defendants equally, in accordance with the rule of the Supreme Court of the United States on this subject.

New York, November 19, 1920.

JULIUS M. MAYER,
U. S. D. J.

214 X.

United States District Court, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Dennis O'Leary, as District Attorney of Queens County, State of New York, and Alfred M. Barrett, constituting the Public Service Commission of the State of New York for the First District, Defendants.

The petition of Charles D. Newton, as Attorney-General of the State of New York, and Alfred M. Barrett, constituting the Public

Service Commission of the State of New York for the First District; and Dennis O'Leary, as District Attorney of the County of Queens, shows to this court:

First. That Charles D. Newton, is the Attorney-General of the State of New York, Alfred M. Barrett is the Commissioner, constituting the Public Service Commission of the State of New York for the First District, and Dennis O'Leary is District Attorney for the County of Queens, defendants in this action.

Second. That this is an action in equity to have declared unconstitutional chapter 125 of the Laws of 1906 of the State of New York, on the ground that the rate fixed by that act for gas sold to
215 private consumers in the City of New York is now confiscatory.

Third. The case was tried before a Special Master. The trial began on or about April 15th, 1920, and continued until June 28th, 1920. The record before the Special Master consists of approximately 2,400 pages of testimony and approximately 200 exhibits.

Fourth. The Special Master's report was filed in the office of the Clerk of the United States District Court for the Southern District of New York on or about July 16, 1920. The defendants filed exceptions to the Special Master's report in the office of the Clerk of the United States District Court on or about August 6, 1920.

Fifth. The exceptions to the Special Master's report filed by the defendants came on for hearing before the District Court Judge (Julius M. Mayer sitting) on August 19-21, 1920. The opinion and decree of the District Court were filed in the office of the Clerk of the United States District Court for the Southern District of New York on November 19, 1920.

Sixth. The said decree restrains the defendants from enforcing in any way chapter 125 of the Laws of 1906, of the Laws of the State of New York, and declares that the said statute violates the Fourteenth Amendment of the Constitution of the United States.

Seventh. The above-named defendant Charles D. Newton, as Attorney General of the State of New York; Alfred M. Barrett, constituting the Public Service Commission of the State of New
216 York for the First District, and Dennis O'Leary, as District Attorney of the County of Queens, feeling aggrieved by the decree entered in the above-entitled cause on the 19th day of November, 1920, do hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors herewith filed, and pray that their appeal be allowed and citation be issued as provided by law, and that a transcript of the record of proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Supreme Court

at Washington, D. C., under the rules and regulations of such court made and provided, on the — day of ——, 1921, and your petitioner prays that an order be made dispensing with security.

Dated, New York, December 15, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York,

By WILBER W. CHAMBERS,
Solicitor for Defendant Newton.

ALFRED M. BARRETT,
Public Service Commissioner, First District.

DENNIS O'LEARY,
District Attorney of Queens County.

217 United States District Court, District of New York.

STATE OF NEW YORK,
Southern District of New York,
City and County of New York, ss:

Alfred M. Barrett, constituting the Public Service Commission of the State of New York for the First District, being duly sworn, says: I am one of the defendants in the above entitled action. I have read the foregoing petition and the same is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true.

ALFRED M. BARRETT.

Sworn to before me this 6th day of December, 1920.

HARRY B. MORITZ,
Notary Public, Queens County, No. 1646.

Certificate filed in New York County.
County Clerk No. 263.
Register No. 1865.

218 [Endorsed:] District Court of U. S., Southern District of N. Y. New York & Queens Gas Co., Complainant, vs. Charles D. Newton, as Attorney-General of State of New York, Dennis O'Leary, as District Attorney of Queens Co., et al., Defendants. Petition & Allowance of Appeal. Wilber W. Chambers, Solicitor for deft. Charles D. Newton Attorney-General. Capitol, Albany, N. Y.

Xa.

219 United States District Court, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Dennis O'Leary, as District Attorney of Queens County, State of New York, and Alfred M. Barrett, Constituting the Public Service Commission of the State of New York, for the First District, Defendants.

The defendants Charles D. Newton, as Attorney General of the State of New York, Alfred M. Barrett, constituting the Public Service Commission of the State of New York, for the First District, and Dennis O'Leary, as District Attorney of the County of Queens, conceiving themselves aggrieved by the decree dated November 19th, 1920, in the above entitled cause, do hereby appeal from said final decree of November 19, 1920, to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and pray that their appeal be allowed, and that citation be issued as prescribed by law, and that a transcript of record of proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Supreme Court situated at Washington, D. C., under the rules of said court in such
220 cases made and provided on or before the 15 day of January, 1921, unless further attended.

And your petitioner further prays that the bond to cover the costs of the appeal be dispensed with.

Dated, New York, December 17, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York.

WILBER W. CHAMBERS,
Solicitor for Defendant Newton, Office & P. O. Address, Capitol, Albany, N. Y.

TERENCE FARLEY,
Solicitor for Defendant Barrett, Office & P. O. Address, #49 Lafayette St., New York City.

WILLIAM C. MORRIS, JR.,
Solicitor for Defendant O'Leary, County Court House, Long Island City, N. Y.

221 Appeal allowed and bond to cover costs of appeal is dispensed with. Return of record on appeal to be filed on or before the 15 day of January, 1921, unless time further extended.

Dated, New York, December 17, 1920.

JULIUS M. MAYER,
U. S. D. J.

XI.

222 District Court of the United States, Southern District of New York.

NEW YORK & QUEENS GAS COMPANY, Complainant,

vs.

CHARLES D. NEWTON, as Attorney General of State of New York; Alfred M. Barrett, Constituting the Public Service Commission of the State of New York, for the First District, et al., Defendants.

Assignment of Errors.

Charles D. Newton, Attorney-General of the State of New York.
Wilber W. Chambers, solicitor for defendant Newton, office & P. O. address, Capitol, Albany, N. Y.
Terence Farley, solicitor for defendant Barrett, office & P. O. address, # 49 Lafayette St., New York City.
William H. Van Steenbergh, solicitor for defendant O'Leary, office & P. O. address, County Court House, Long Island City, N. Y.

223 District Court of the United States, Southern District of New York.

NEW YORK & QUEENS GAS COMPANY, Complainant,

vs.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Alfred M. Barrett, Constituting the Public Service Commission of the State of New York, for the First District, Defendants.

Assignment of Errors.

And now come the defendants Charles D. Newton, as Attorney-General of the State of New York, and Alfred M. Barrett, constituting the Public Service Commission of the State of New York, for the First District, in the above entitled cause, and file the following assignment of errors upon which they will rely upon their prosecution of the appeal from the decree made in this cause by this Honorable Court on the 19th day of November, 1920.

1. That the District Court of the United States, Southern District of New York, erred in not granting defendants' motion to
224 dismiss the bill of complaint, upon the ground that it failed to state facts sufficient to constitute a cause of action; among other things, for lack of an allegation that complainant had theretofore completely or substantially complied with the requirements of chapter 125 of the laws of 1906, the act which it assails in this action.

2. That the said Court erred in sustaining the report of the Special Master, denying the motion of the defendants at the end of complainant's case to dismiss the bill of complaint and overruling the exceptions of the defendants to such denial.

3. That the said Court erred in sustaining the report of the Special Master, denying the motion made by defendants at the end of the whole case to dismiss the bill of complaint and overruling the exceptions of the defendants to such denial.

4. That the said Court erred in not holding that the books of account of complainant which were introduced in evidence, were improperly admitted and the ruling in admitting them was erroneous and calls for a new trial, because the books were not books of original entry; that the one who made the entries therein was not produced and their accuracy proven or his death or unavoidable absence established.

5. That the said Court erred in not holding that the books
225 of complainant offered in evidence were not kept in conformity with the uniform system of accounts of the Public Service Commission, and that proof of compliance with the Uniform System of Accounts of the Public Service Commission would not be proof of their accuracy and would not make them competent in this suit until properly proven, because they were not books of original entry and their accuracy was not proven.

6. That the said Court erred in not holding that there was an absence of competent proof by the complainant to establish the amount of gas made and sold by it, because the only evidence on the subject were the books which were improperly admitted in evidence.

7. That the said Court erred in not holding that there was an absence of competent proof by the complainant to establish its costs of the manufacture and distribution of gas, because the only evidence on the subject were the books which were improperly admitted in evidence.

8. That the said Court erred in not holding that the complainant had failed to prove that its business had been run efficiently, honestly, economically and prudently.

9. That the said Court erred in not holding that the statute
226 in question should not be considered confiscatory merely upon financial results obtained in the abnormal year 1919 and part of the abnormal year 1920.

10. That the said Court erred in confirming the Master's report insofar as he found that the best criterion for judgment as to the operations of the complainant, was the year 1919, for the reason that said year was entirely abnormal due to the conditions arising out of the World War; the prices that obtain for materials and labor were unusual and temporarily very high and the period chosen is entirely too short for the determination of the questions here involved.

11. That the said Court erred in failing to hold that the test of this statute should be made upon the entire period covered by the complaint in this case, to wit—from 1906 to date, and in failing to hold that the period covered by the proofs herein of one year and five months, was and is too short for the formation of a proper judgment on the issues herein. The evidence shows, and the Court may take judicial notice, that the prices for material and labor which obtained in the abnormal years considered by the Court, were purely transitory and temporary, and that at the present time there is a marked recession of all prices and wages which will cause the
227 statutory rate herein questioned to be amply sufficient for all of the needs of the complainant company, even assuming the correctness of its exaggerated claims.

12. That the said Court erred in holding that there are constant changes in the prices of materials which no one can safely predict. On the contrary it can be safely predicted today, and the Court should have taken judicial notice of the fact, that prices of all materials are rapidly decreasing and will continue to decrease for sometime in the future.

13. That the said Court erred in holding that no change in the price of gas oil seems to be in sight. On the contrary, the Court should have taken judicial notice of the fact that the automobile industry, among others competing with the gas business for the products of petroleum of which gas oil is one, are no longer making the tremendous demands upon the market which they have made in the past, and that consequently there is a vastly increased and continually increasing supply of petroleum available for the productions of gas oil, and that the inevitable result of this condition will be a steadily diminishing price for gas oil.

228 14. That the said Court erred in holding that the oil accounts of the complainant were carefully kept and checked, that most of the slight errors during the course of a month were corrected, and the most generous acceptance of the contentions of defendants would result in a variance of a few gallons, which translated into money would be equivalent to a fraction negligible as to amount to an infinitesimal part of a mill, for the reason that the said finding of the court is contrary to the evidence and the weight thereof. The proof upon which the defendants' contentions are based shows conclusively that the errors and inaccuracies in the records of the complainant as to the question of gas oil are so material and so flagrant as absolutely to discredit the entire oil account of the complainant company.

15. That the said Court erred in holding that there is nothing suspicious in any of the increased prices claimed to have been paid by the complainant company in 1919 as compared with other years. On the contrary, the evidence not only from the books of the company, but as testified to by the witness Woods, leads to the inevitable conclusion that the figures of complainant for labor and materials for the year 1919 were padded for the purpose of this case, particu-

larly in such items as gas making labor, repair labor, repair materials, repairs and various other matters upon which the
229 operating expenses of the company are vitally dependent.

16. That the said Court erred in holding that the Special Master was right in his figures as to the cost of materials entering into the manufacture and distribution of gas in 1919. The Special Master on the contrary merely took the figures of the complainant as offered without addition, diminution or apparent analysis, without giving any proper heed to the valid claims of the defendants as to their inaccuracy and with entire disregard for the extreme faultiness of the proof presented.

17. That the said Court erred in holding that the proof presented as to the cost of production and distribution in the first five months of the year 1920, gave no hope of decreasing prices. On the contrary, the proof presented showed and the Court may take judicial notice, that the peak of high prices was reached before the expiration of the first five months of 1920, and that today prices are rapidly receding.

18. That the said Court erred in holding that 10% was the proper percentage of unaccounted for gas for the complainant company. The proof shows that unaccounted for gas in 1919 of 11.03% amounted in cents per M cubic feet to 8.27 cents, as compared with 4.40 cents per M in 1916, 4.11 cents per M in 1917 and 5.27
230 cents per M in 1918. The Court should have found that this excessive increase in gas unaccounted for of 3 cents per M or over 60%, was uncalled for, unexplained and was sufficient to cast doubt upon the entire good faith of the complainants herein. No figure higher than 7% should have been allowed or, in cents per M more than 5.27 cents. The amount of gas lost and unaccounted for does not vary with the price or the quality of materials purchased, and the comparatively level percentage of gas unaccounted for as shown in defendants' Exhibit A13, conclusively proves that the 60% increase in 1919 was not an honest figure.

19. That the said Court erred in holding that the cost of manufacture of gas for the year 1919 was 70.58 cents per M cubic feet sold. The evidence to sustain this finding of the court is, most of it incompetent and all of it unreliable and unsatisfactory. There should have been deducted from the operating expenses for that year large amounts for the excessive price of oil, for the excessive amounts of generator and boiler coal used, for the excessive amount claimed for gas making labor, and for excessive amounts in the repair account.

231 20. That the said Court erred in holding that the cost of distribution for the year 1919 was 36.93¢ per M cubic feet sold. The evidence upon which this is based is most of it incompetent and all of it unreliable and unsatisfactory.

21. That the said court erred in holding that the net cost of the gas per M cubic feet delivered to private consumers in 1919 was

$1.0129, and that there was a net deficit per M cubic feet sold of .0129 of a cent in excess of the rate of $1 provided for by the statute. The evidence upon which this was based is most of it incompetent and all of it unreliable and unsatisfactory, and the court should have made many deductions from the operating and distributing expenses in accordance with the proof submitted by the defendants. If there is substituted for excessive cost of repairs in 1919 the average of such repairs in previous years, and if there is deducted the expense of the rate litigation ($15,815.73), and if the gas unaccounted for was taken at a reasonably low figure in accordance with the proof, there would appear an operationg profit of at least $12,000, which would give an adequate return for this period of abnormal prices and would make the average return for the past ten years, which should have been taken, amply sufficient.

22. That the said court erred in holding that conditions in the early months of 1920 showed no prospect for a lesser cost, but, on the contrary, indicated increased cost, for the reason that the proof does not sustain the finding, but, on the contrary, conclusively indicates that prices have begun to recede before the expiration of the first five months of 1920, and the court may take judicial notice, that prices are now rapidly receding.

232 23. That the said Court erred in holding that it makes little difference what elements are included or eliminated from the rate base, or what theories shall obtain in respect thereof, in view of its finding that there was a net deficit in the actual production and distribution of gas. The said Court's premise that there was such a net deficit is faulty and is not sustained by the evidence. The Court should have carefully considered and decided the important questions raised as to the rate base herein.

24. That the said Court erred in holding that if every debatable figure and question involved in the rate base were resolved in favor of defendants, plaintiff under the statute would still fail to receive the return — which it is entitled. The said finding is contrary to the evidence and the weight thereof, and is moreover based upon the false assumption that the year 1919 is a sufficient basis for declaring the statute herein confiscatory. The Court should on the contrary have examined the operating accounts and the rate base of the complainant in all of the years from the period 1906 to 1918 chosen by the complainant in its complaint, and should have made a finding as to the rate base and should have passed the various theories
233 presented in connection therewith, and should have found after such examination that the complainant company throughout the period from 1906 to 1919 inclusive, taken as a whole or in individual years, has made much more than a fair return upon its property actually and necessarily used in the public service.

25. That the said Court erred in failing to hold that the Master committed error in finding that in addition to the physical property of the complainant company, it was in the actual enjoyment of

franchises and rights, certain of them perpetual in character, for the reason that the said finding is contrary to the evidence and the weight thereof. All of the existing franchises including those claimed to have been acquired from the Newtown and Flushing Company are only to lay and operate mains and pipes in the streets, highways and public places in the Third Ward, Borough of Queens, former Village of Flushing, Village of Whitestone and in the town of Flushing outside of the then (May 1st, 1897) incorporated villages. The franchises moreover to operate in the former Village of Whitestone will expire by its terms December 30, 1922.

26. That the said Court erred in failing to hold that the Master committed error in finding that the complainant manufactures and distributes gas under and by virtue of the franchises and rights of the Newtown and Flushing Gas Company together with addi-
234 tional rights and franchises from time to time acquired by complainant, for the reason that the said complainant has since its incorporation acquired no additional franchises or rights.

27. That the said Court erred in failing to hold that the Master committed error in finding that the daily capacity of the complainant is not more than 2,250,000 cubic feet of gas and that by the addition of high pressure blowing apparatus this capacity will be increased to not exceeding 2,750,000 cubic feet of gas, for the reason that the said finding is contrary to the evidence and the weight thereof. The working capacity of the plant does not exceed 1,698,000 cubic feet of gas per day, and there is no evidence that the high pressure blowing apparatus mentioned by the Master has actually been installed.

28. That the said Court erred in failing to hold that the Master committed error in finding that complainant owns and uses 658,727 feet of mains of various sizes, and 7,998 services through which it furnishes gas to approximately 11,000 consumers, for the reason that the said finding is contrary to the evidence and the weight thereof; that the complainant actually owns not more than 657,584 feet of mains of various sizes and not more than 7,641 services from which it furnishes gas to approximately 10,357 consumers.

235 29. That the said Court erred in holding that the use of the store room and office building and shop building in Flushing, make for the more economical, efficient and satisfactory use of gas to consumers, for the reason that the said finding is contrary to the evidence and the weight thereof.

30. That the said Court erred in failing to hold that the Master committed error in not finding that the complainant company unreasonably and unduly, by vexatious legal processes, delayed the extension of its mains to Douglaston and Douglas Manor, a distance from Flushing of about six miles, and by reason of such delays, the cost of such extension was vastly increased and the revenues derived from *from* the territory there served, is and has been very much smaller than it would have been if complainant had made the addition promptly in accordance with its legal obligations.

31. That the said Court erred in failing to hold that the Master committed error in finding as a fact that the Public Service Commission has no right to fix rates in excess of those fixed by statute.

32. That the said Court erred in failing to hold that the Master committed error in finding that in order to produce water gas of the statutory standard of 22 candle power under the conditions
236 obtaining in a plant such as that of complainant, there is required the use per M cubic feet of gas made of approximately 4.2 gallons of gas oil of the gravity and quality now being supplied to the complainant, and that the complainant did in fact use on the average 4.19 gallons per M cubic feet of gas made during the year 1919, for the reason that the said finding is contrary to the evidence and the weight thereof. The number of gallons of gas oil required to make one thousand cubic feet of gas it variable and is ofttimes as low as 3.6 gallons, so that there can be no set rule for the number of gallons of gas oil required. The number of gallons required depends upon the quality of the oil and the skill of the operator, together with the efficiency of the machine used. The years 1918 and 1919 and the period ending May 31, 1920, were abnormal, unusual and unprecedented, and should not have been used as the basis for any calculations as to the oil necessary in making one thousand cubic feet of gas, but an average should have been taken over the years from 1910 to 1919 as indicated by reports of the complainant company filed with the defendant Public Service Commission.

33. That the said Court erred in failing to hold that the Master committed error in finding that the reasonable and necessary average cost of gas oil to complainant during the year 1919 was 6.7
237 cents per gallon, and the price during 1920 has been slightly higher averaging 7.283 cents per gallon for the first five months of that year, that the present price at which contracts may be made for the delivery of gas oil along side the plant of complainant company, is substantially in excess of 7.3 cents per gallon (including lighterage costs), and is in fact in excess of 10 cents per gallon; that the trend of oil prices during 1919 and 1920 has been and has remained sharply upward, and that the evidence adduced affords no reason to believe that upon the expiration of the contract under which the complainant is receiving its gas oil, during 1920, it will be possible to secure a new contract or a supply of gas oil at a price less than 10 cents per gallon. The said finding is contrary to the evidence and to the weight thereof. The years 1918 and 1919 and the first five months of the year 1920, were abnormal, unusual and unprecedented. The price paid for gas oil since 1917 is no criterion of what the price of oil will be in the future. The average cost of gas oil for the year 1919 to complainant was 6.66 cents per gallon and complainant company has an interlocking directorate with the Standard Oil Company from which it purchased all of its oil. If it were not for such interlocking directorate, it could have obtained its oil from some other company at a cost less than
238 the prices paid in the year 1919. The price of gas oil prevailing in this abnormal period should not be a guide for the

court in determining the necessary cost of manufacture of gas by complainant company. Prices have long since reached their peak and are now rapidly receding. The automobile industry which, in view of the court, competed with the gas industry for the by-products or distillates of petroleum, is now at a stand still, prices of gasoline are already receding, the stocks of gasoline on hand are larger than ever in the history of the country, and the court may take judicial notice, that the prices of all raw materials are now and will for many months to come decrease substantially until they get to a normal basis such as existed prior to the World War.

34. That the said Court erred in failing to hold that the Master committed error in finding that it was necessary for the complainant to use approximately 37 lbs. of anthracite coal of the grade recently supplied, of which approximately 34 lbs. are used in the generators and approximately 3 lbs. are used under the boilers, and that in addition there is required to be used under the boilers 19 lbs. of bituminous boiler coal or its equivalent in water gas tar, and that the necessity of compressing gas to send to Douglaston, increases the amounts of coal necessarily used by complainant, for the rea-

239 son that the said finding is contrary to the evidence and the weight thereof. During the years 1910 to 1919 inclusive and including the first five months of 1920, the company did not use more than 32½ lbs. of generator coal per M cubic feet of gas made, and did not use more than 16 lbs. of bituminous boiler coal under the boilers. Nor was there any evidence that more generator or boiler fuel *were* necessary by reason of the extension of gas mains to Douglaston. The court should have found that the amount of coal necessarily used depends upon the quality of the coal, the type of machine and the skill of the operator, and that no set rule can be laid down.

35. That the said Court erred in failing to hold that the Master committed error in finding that the average price of anthracite generator coal used by complainant during the year 1919 was $8.28 per gross ton plus $1.08 cost of cartage and handling from the dock in Flushing to the coal storage bin of the complainant, making in all $9.36 per gross ton, and that at the present time the price of such coal is at least $10.25 per gross ton plus $1.25 for such cartage and handling, making in all at least $11.50 per gross ton, for the reason that the same is contrary to the evidence and to the weight

240 thereof. The year 1919 and the first five months of the year 1920, were an abnormal period and the prices during that period or during any of the time covered by the evidence in this case, should not be a criterion for judging the necessary cost of generator coal. The price for such coal should be based upon the average from the years 1910 to 1919 inclusive. Particularly, in view of the fact that the proof showed, and the Court may take judicial notice, that prices of all raw materials are being rapidly depressed and will continue to go down until they reach the normal prices prevalent prior to the World War. That the said period of the year 1919 and of the first part of the year 1920, was particularly abnormal as to coal, for the reason that during that period there were strikes

transportation difficulties and other abnormal conditions which prevented the sale of coal at a reasonable price. The proof further showed that the cost of cartage and handling coal from the docks to the works was excessive because such handling was interrupted during the year 1919 by construction work and the cost of handling coal would be very much less if complainant company were to construct sidings from the railroad company to the plant which would result in a saving of at least 50 cents per ton. The proof further showed that complainant company purchases all of its coal through the Consolidated Gas Company and makes no effort to obtain its
241 coal through any other source, or at a price lower than that quoted by the company with which the Consolidated Gas Company does business.

36. That the said court erred in failing to hold that the Master committed error in finding that the average cost of boiler fuel to the complainant for the year 1919 was $6.472 per gross ton plus $1.08 the cost of cartage and handling from the dock in Flushing to the coal storage bin/s of complainant, making $7.552 in all, and that at the present time the price of such coal is at least $10.2479 plus $1.25 for cartage and handling, making at least $11.4979 in all, and that the exact extent of the increase which has taken place in 1920 does not appear in the record, for the reason that said finding is contrary to the evidence and the weight thereof, and that there is no competent proof in the case to show what the price of boiler fuel was. The year 1919 and of the first five months of 1920, were abnormal periods and the prices during said periods are no criterion of the price of boiler fuel, particularly in view of the fact that during that period the price and delivery of such coal was subject to unusual conditions due to strikes and transportation difficulties which will not
242 occur again. Prices are rapidly receding and will soon reach the level which prevailed prior to the World War, as the Court may take judicial notice. The cost of handling is excessive by at least 50 cents a ton over what it would have been had complainant constructed a siding from the railroad to its plant. Complainant moreover purchased all of its boiler coal through the Consolidated Gas Company and made no effort to obtain better prices by making independent contracts.

37. That the said Court erred in failing to hold that the Master committed error in finding that in 1918 the cost of labor handling fuel at complainant's plant amounted to 2.08 cents and in 1919 to 2.45 cents, and at the present time to 3.13 cents per M cubic feet of gas made, for the reason that the said finding is contrary to the evidence and the weight thereof. The period taken by the Master is abnormal and unprecedented. The proofs show that the wages paid to labor are decreasing and the Court may take judicial notice, that they will decrease materially and rapidly as time goes on. A large amount of unemployment already exists, and is increasing daily, and the wages of unskilled labor such as are involved in the handling of fuel will be the first to show a marked reduction. There was moreover, no competent proof as to the wages paid in this connection.

243 38. That the said Court erred in failing to hold that the Master committed error in finding that iron mass city water and incidental minor and material supplies cost complainant in the year 1918, .83 cents and in 1919, 1.34 cents per M. cubic feet made, for the reason that the said finding is contrary to the evidence and the weight thereof. That complainant's own expert witness testified that the cost of these items was not more than 1.25 cents per M cubic feet and the total shown by complainant's books is only 1.23 cents for the year 1919. The period taken moreover, is abnormal and unprecedented, and the Court may take judicial notice that the prices of the materials herein involved are rapidly receding.

39. That the said Court erred in failing to hold that the Master committed error in finding that under the conditions in complainant's plant, there would be produced about .7 gallons of water gas tar per M cubic feet of gas made, and that such tar as of December 31, 1919, had a market or sale value of approximately 4.25 cents per gallon, that in 1919 complainant realized .7 gallons of water gas tar per M, and in 1918, .5 gallons for the reason that said finding is contrary to the evidence and to the weight thereof. There is no com-

244 petent evidence of the amount of water gas tar realized as a residual, nor any evidence to support the sale value per gallon of such residual, nor any evidence of the gallons of drip oil produced. The figures found are based entirely upon hypothetical figures which were incompetent, irrelevant and of no value. The amount of water gas tar realized for the years 1918 and 1919 are matters of mere supposition, for the reason that while a great quantity of tar and drip oil was on hand, only a small part of the same had been sold during the years 1918 and 1919. The proof moreover indicated that the .8 gallons of water gas tar was realized by complainant as a residual in making one thousand cubic feet of gas. The prices found by the Master are the lowest prices received by complainant in the past year.

40. That the said Court erred in failing to hold that the Master committed error in finding that in 1918 the cost of gas making labor in complainant's plant was 4.67 cents, of repair labor 1.7 cents, of repair material 1.82 cents, and of miscellaneous works expense .37 cents per M cubic feet of gas made; that in 1919 the cost of gas making labor was 6.31 cents, of repair labor 2.66 cents, of repair material 4.69 cents, and of miscellaneous works expense .39 cents per M cubic feet of gas made; and that at the present time these

245 items cost at least the sums shown for the year 1919, for the reason that said finding is contrary to the evidence and the weight thereof. The years 1918 and 1919 and the portion of 1920 as to which evidence was presented, were an abnormal and unprecedented period. The prices have already reached their peak and are rapidly on the decrease, particularly in these items which involve unskilled and non-union labor and products involving the use of iron or steel.

41. That the said Court erred in failing to hold that the Master committed error in finding that by reason of extension of mains into

outlying portions of the territory, the sales of complainant company will reach approximately 386,000,000 cubic feet, an increase of approximately 15%, for the reason that said finding is contrary to the evidence and the weight thereof. The proof showed on the contrary that by reason of the extension through outlying territory, the increase in sales would be at least 28%.

42. That the said Court erred in failing to hold that the Master committed error in finding that complainant's plant ought reasonably to have a reserved manufacturing capacity equal to the capacity of its largest unit (1,500,000 cubic feet per day) for the reason that said finding is contrary to the evidence and the weight thereof. The proof shows that complainant has a reserve capacity of over
246 2,300,000 cubic feet of gas in excess of the maximum gas sent out during the severe winter of 1919 to 1920, and that said reserve capacity is more than ample for all uses of the complainant.

43. That the said Court erred in failing to hold that the Master committed error in finding that the plant, machinery and equipment used in the gas business of the complainant company, have been and are maintained in excellent operating condition, and that proper repairs, renewals and replacements have been made as and when needed and the same are now in as high a state of efficiency as if new, for the reason that the said finding is contrary to the evidence and the weight thereof. No property which is not new is as good as new. Depreciation starts to take effect as soon as a plant is put in operation and such depreciation is bound to affect the efficiency of the plant. The proof shows, moreover the cost of repairs for the year 1919 was 13 cents per M cubic feet of gas sold as against 6 cents per M for the previous year, and that the said increase of over 100% is not accounted for by any similar increase in cost of materials and labor, but on the contrary has plainly been padded for the purposes of this case. Moreover the proof showed that more money was spent in the first five months of 1920, than the amount which complainant's witness testified would be necessary to
247 make all of the property as good as new.

44. That the said Court erred in failing to hold that the Master committed error in finding that complainant company was on January 1st, 1920, and now is entitled to include in the amount upon which it was and is entitled for a fair return, the sum of $135,000 for working capital, for the reason that the said finding is contrary to the evidence and the weight thereof. This finding of the Master is a pure guess based upon no ascertainable proof or line of reasoning. The largest amount to which complainant was entitled as working and construction capital, was not more than $80,000, and defendants' Exhibit A-112 correct- and accurately indicates the amount of working and construction capital for the year 1904 to 1919, inclusive, upon which complainant is entitled to a fair return.

45. That the said Court erred in failing to hold that the Master committed error in not finding that the testimony of the witness Woods was entirely unworthy of credence. The so-called testimony

of the witness Woods as to the amount of materials used in the manufacture of gas was plainly at variance with similar testimony given by him in other cases, and the variations were not satisfactorily explained. Moreover, in respect to the estimates of labor costs, there were similar variations unaccounted for by the
248 witness Woods, sought to be reconciled and the company's book figures confirmed while using 1920 high prices of labor in confirmation of the extravagant labor costs of complainant during the year 1920.

46. That the said court erred in failing to hold that the master committed error in ruling that the defendants must put in evidence the books of account of complainant company prior to the year 1919, upon which certain tabulations of the defendants were based. The master should have held that the said books were introduced in evidence under legal duress and compulsion, and that no entry in the said books can be deemed to be proof against the defendants herein.

47. That the court erred in failing to hold that the master committed error in finding that the tangible and intangible property acquired by complainant at the end of July, 1904, and still owned and used by it on January 1, 1920, was reasonably worth at the time of such acquisition at least the sum of $670,483.86, exclusive of working capital, and that there have since been additions to this plant which, less withdrawals since August 1, 1904, and exclusive of working capital, cost $850,389.08, making the total cost of such property at the present time at least $1,520,877.94, and with the addition of $135,000 for working capital, at least the sum of $1,655,-
877.94, as of January 1, 1920, and that the fair value of the
249 property used and needed in the manufacture and distribution of gas sold by complainant company as of January 1st, 1920, and the present time, was and is at least the sum of $1,655,-877.94. The said finding is not supported by the evidence, but is contrary to the evidence and to the weight thereof. There is no proof whatever in the record as to the cost or value of the respective franchises acquired by complainant or as to the amount paid, if any, to municipal authorities for the franchises claimed to be owned by it. The Master should have found that the tangible property, including plant and distributing system acquired by complainant at the time of the merger in July 18, 1904, and still owned and used by it on January 1st, 1920, reasonably cost, without depreciation, not more than $280,108. He should further have found that there have been additions to plant, less withdrawals since August 1st, 1904, which cost not more than $829,480.22 without allowance for depreciation. There is no basis in the record for the finding of more than $80,000 as a reasonable allowance for working and construction capital, nor is there evidence to support a finding of more than $6,000 for interest and taxes during construction. There is no basis in the evidence for the inclusion of an item of engineering

and superintendence, inasmuch as these items were included
250 by complainant in the cost of the tangible property, and there should have been allowed on the basis of the books of complainant not more than $10,000 for all organization, legal, general and preliminary expenses. The weight of proof is that the total intangible and tangible property of complainant company as of January 1st, 1920, was of a value of not to exceed $939,530.

47*a*. That the said Court erred in failing to hold that the Master committed error in finding that $5 per M cubic feet of gas sold fairly represents the actual and necessary investment in property used and needed for the manufacture, transmission and distribution of gas under conditions such as those in which complainant company carries on its gas operations, and that such investment made for the purposes of this case be taken to be at least that sum. There is absolutely no scintilla of evidence to support this finding of the Master, which is contrary to the entire weight of evidence and is evidently evolved from the Master's own inner-consciousness.

47*b*. That the said Court erred in failing to hold that the Master committed error in finding that the actual cost — of the
251 property now used by complainant company when acquired by some predecessor company in earlier years, cannot be ascertained for the reason that said finding is contrary to the evidence and the weight thereof. The complainant herein failed and refused to produce persons who were officers and familiar with the operations of the predecessor companies, and the Master erred in failing to allow the defendants to introduce documentary proof in reports made to public bodies as to the extent of the property and the rights acquired from predecessor companies, and the cost or value thereof, if any.

48. That the said Court erred in failing to hold that the Master committed error in finding that the fair and reasonable market value of the land (unimproved) owned by the complainant company and used and useful in its gas business as of January 1st, 1920, was and is at least $45,153.20. The said finding is contrary to the evidence and to the weight thereof.

49. That the said Court erred in failing to hold that the Master committed error in finding that the cost to reproduce the plant, distributing system and other tangible property of complainant company as of January 1st, 1920, or as of the present time, was and still is, without any deduction for depreciation, at least the
252 sum of $2,100,774.90, and in finding each of the items set out in finding marked 40, which go to make up the sum of $2,100,774.90 aforesaid. The said finding is not supported by the evidence, is contrary to the evidence and there is no evidence tending to support it.

50. That the said Court erred in failing to hold that the Master committed error in finding that no testimony was given challenging any of the items or quantities shown in the inventory of complain-

ant, or any unit price applied therein. Some direct evidence was introduced by the defendants challenging many of these items and the credibility of the witness called to substantiate the items was attacked and practically destroyed on cross-examination by the defendants.

51. That the said Court erred in failing to hold that the Master committed error in finding that the cost to reproduce the property of the complainant as of January 1st, 1914, would be about one-half of the cost stated above as of the present time. There is no evidence to sustain such finding or to give the unit prices of labor and material prevailing as of January 1st, 1920.

253 52. That the said Court erred in failing to hold that the Master committed error in finding that as of May 1920, the actual average rate of pay per hour for labor in the complainant's works has been necessarily increased 24% over the average rate per hour for all of 1919, that the increase in the shop department has been 20%, and in the office employees 10%, and that the average increase in the prices paid for materials other than coal and oil in 1919 to May 1920, has been 10%. The said finding is contrary to the evidence and the weight thereof, and that there is no competent evidence to support it. There is moreover, proof in the record and the Court may take judicial notice, that prices of labor and materials have been rapidly receding and will continue to recede for some time to come, so that the finding as to prices on a particular day in May are immaterial and irrelevant.

53. That the said Court erred in failing to hold that the Master committed error in finding that since 1914 complainant company has paid no dividends upon any of its stock, and during 1919 and 1920 it has necessarily borrowed the money to pay the interest on its bonds, and that during 1919 and 1920 it has necessarily borrowed money also to enable it to meet in full its current bills for

254 coal, oil and materials. The said finding is contrary to the evidence and the weight thereof. There was no proof that the stock and bonds of the company were duly authorized, or that the stock at any time represented property or capital actually invested, or that the bonds except those issued within very recent years actually represented property or capital invested. It further appears that for the entire period from August 1, 1904 to December 31, 1919, the stock, and for a long period of time the bonds, represented no property or capital of any kind, or an extremely inflated and artificial value of what little property did exist. The proof further showed that had the company been economically managed in the year 1919, and had it not undertaken excessive and unnecessary expenditures, it could easily have paid the interest upon its bonds without borrowed money. Furthermore, the tremendous increase in business which complainant's own witnesses foretold for the year 1920, together with the rapidly falling prices of labor and materials will make it easily possible for the complainant company if properly managed to pay interest upon its bonds for the entire year 1920.

54. That the said Court erred in failing to hold that the Master committed error in finding that the Consolidated Gas Company of New York apparently does not own any of the bonds of the
255 complainant company, on the ground that there is no proof in the case as to the present ownership of such bonds.

55. That the said Court erred in failing to hold that the Master committed error in finding that the complainant company has complied with the provisions of chapter 125 of the laws of 1906, with reference to the candle power and with requirements of law regarding pressure, for the reason that the said finding is contrary to the evidence and the weight thereof, and there is no evidence tending to support it. The proof shows that in 1919 there were 94 violations, in 1918 130 violations, in 1917 132 violations and in 1916 145 violations of the statute with reference to candle power. The proof further shows that during the years 1919 and 1920, the following flagrant violations of the candle power requirements were committed:

Date	No. of violations, candle power.
1919.	
Jan. 20	18.54
" 22	18.88
" 23	18.52
Feb. 3	19.08
March 24	16.20
April 28	19.26
July 9	18.08
Sept. 19	19.41
" 24	18.70
Dec. 4	19.38
" 5	19.59
" 19	19.09
1920.	
Jan. 15	19.05
Feb. 2	19.14
" 17	19.07
" 28	17.24

56 56. That the said Court erred in failing to hold that the Master committed error in finding that various matters discussed in his so-called opinion and the findings of fact and conclusions of laws set out in such opinion, are to be deemed a part of the report which he is directed to make and have the same force and effect as though physically incorporated in such report. The said finding is error in law inasmuch as the filing of said opinion is not authorized or justified in this case, and this case should be sent back to another Master to submit a report in accordance with the instructions of the court.

57. That the said Court erred in failing to hold that the Master exceeded his instructions and his jurisdiction insofar as he recom-

mends in finding 52 that the statute herein questioned be declared unconstitutional.

58. That the said Court erred in failing to hold that the Master committed error in finding that the increase of sales for the year 1920 would be only 15%, and that the decrease of 4 cents per M in distribution expenses caused by this increase of production, would be more than absorbed by the increased cost of labor and materials, for the reason that said finding is contrary to the evidence and the weight thereof. The proof showed that the increase in the production and sales of gas would be at least 28%, that the decrease in gas would be far greater than 4 cents per M cubic feet sold, and there is no evidence upon which can be based a conclusion that
257 this decrease in distribution expenses will be absorbed by the increased cost of labor and materials. On the contrary, the proof shows and the court may take judicial notice, that prices are rapidly decreasing as are the wages of labor, so that the actual cost of manufacturing and distributing gas during the year 1920 will be far below that of 1919.

59. That the said Court erred in failing to hold that the Master committed error in finding in his opinion that the testimony given by Mr. Woods, one of the expert witnesses for complainant, confirm the operating results shown by the books of complainant company, and that the operating records of complainant company closely accord with the sworn expert opinion of Mr. Woods, for the reason that the said finding is contrary to the evidence and the weight thereof. The testimony which he had given in other cases was so palpably altered to suit the exigencies of this case, the records of the company were so full of irregularities and unexplained increases, that the court should have found that both the records of complainant and the testimony of Mr. Woods were unworthy of credence, and the figures presented should have been carefully analysed and reduced to the utmost extent, instead of being taken as conclusively true without proper analysis as was done by the Master.

258 60. That the said court erred in failing to hold that the master committed error in finding that the operating records of the complainant company have been honestly and accurately kept, and accurately reflected efficient and reasonable operating results, for the reason that the said finding is contrary to the evidence and there is no evidence tending to support it.

61. That the said court erred in failing to hold that the master committed error in finding that, as a matter of law, in respect to the property of complainant company no deductions should be made for depreciation. The courts have consistently held that all physical property which may be involved in a rate litigation is subject to depreciation as soon as it is put in service and it was reversible error for the master not to follow the unvaried decisions of the courts in this matter.

62. That the said court erred in holding that the actual cost of the tangible property aggregates $1,130,497.08 and that this is the

absolute minimum of actual investment and is the minimum of reproduction value, for the reason that the said court did not, in this finding, take into account and allow for any accrued depreciation.

259 & 260 63. That the said court erred in holding that the actual cost of the tangible property aggregates $1,130,-197.08 and that this figure is uncontroverted, for the reason that said finding is contrary to the evidence and the weight thereof.

64. That the said court erred in failing to hold that the master erred in admitting in evidence complainant's Exhibit 77, a tabulation offered by Witness Woods to prove so-called hypothetical cost of making gas, for the reason that said tabulation was incompetent, immaterial, irrelevant and not properly proven.

65. That the said court erred in failing to hold that the master committed error in failing to dismiss the complaint at the termination of complainant's case for the reason that complainant failed to prove the cost of its property or to introduce any evidence as to its property used in the public service, except an estimate of the reproduction cost new of said property.

Dated, December —, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York.
WILBER W. CHAMBERS,
Solicitor for Defendant Charles D. Newton.
TERRENCE FARLEY,
Solicitor for Defendant Alfred M. Barrett.
WILLIAM H. VAN STEENBERGH,
Solicitor for Defendant Denis O'Leary.

261 XII.

By the Honorable One of the Judges of the District Court of the United States for the Southern District of New York to the New York and Queens Gas Company, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, D. C., in the District of Columbia, on the 15 day of January 1921, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Southern District of New York, wherein Charles D. Newton, as Attorney-General of the State of New York, Denis O'Leary, as District Attorney of Queens County, State of New York, and Alfred M. Barrett, constituting the Public Service Commission of the State of New York, for the First District, are appellants, and to show cause, if any there be, why the decree entered on the 19th day of November, 1920, in the United States District Court for the Southern District of New York, should not be corrected and reversed and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the city

of New York, in the district above named this 17 day of De-
262 cember in the year of our Lord, one thousand nine hundred and twenty and of the Independence of the United States the One Hundred and Forty-fifth.

JULIUS M. MAYER,
United States District Judge for the Southern District of N. Y.

263 [Endorsed:] District Court of U. S., Southern District of N. Y. New York & Queens Gas Company, Complainant vs. Charles D. Newton, as Attorney-General of the State of N. Y., Denis O'Leary, Dist. Atty., Queens County, et al., Defendants. Citation. Wilber W. Chambers, Solicitor for deft. Charles D. Newton, Attorney-General, Capitol, Albany, N. Y.

264 District Court of the United States, Southern District of New York.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Alfred M. Barrett, Constituting the Public Service Commission of the State of New York for the First District, and Dana Wallace, District Attorney of Queens County, Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent.

It is hereby stipulated and agreed, by and between the parties hereto that the record on appeal to the Supreme Court of the United States herein shall consist of the following papers, towit:

(1) Pleadings, decree, etc.

a. Bill of complaint.

b. Subpœna.

c. Marshal's returns.

d. Answers of defendants.

e. Order appointing special master.

f. Order of substitution.

g. Report and opinion of special master.

h. Defendants' exceptions to special master's report, and opinion.

i. Complainant's exceptions to special master's report and opinion.

j. Notice of final hearing.

k. Opinion of Judge Mayer and decree.

l. Petition and allowance of appeal.

m. Assignment of errors.

a. Citation.

(2) Testimony in extenso.

(3) Exhibits:

265 (*a*) Complainant's exhibits
Numbers 17, 18, 19, 47 to 51, inclusive, 57 to 62, inclusive, 64, 65, 69, 71 to 86, inclusive, 89 to 99, inclusive, and 105 to 115, inclusive.

(*b*) Defendants' exhibits A to K, inclusive, O to V, inclusive, and Y, and Numbers A-8 to A-64, inclusive, A-68 to A-70, inclusive, and A-72, A-89 to A-96, inclusive, A-97 to A-112, inclusive.
Dated, April 1, 1921.

WILBER W. CHAMBERS,
Solicitor for Defendant Newton.
TERENCE FARLEY,
Solicitor for Defendant Barrett.
JOHN P. O'BRIEN,
Solicitor for Defendant Wallace.
SHEARMAN & STERLING,
Solicitors for Complainant.

266 District Court of the United States, Southern District of New York.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Alfred M. Barrett, Constituting the Public Service Commission of the State of New York for the First District, and Dana Wallace, District Attorney of Queens County, Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent.

The foregoing record, consisting of the following pleadings and decree,

(1) Pleadings, decree, etc.

(*a*) Bill of complaint.

(*b*) Subpœna.

(*c*) Marshal's returns.

(*d*) Answers of defendants.

(*e*) Order appointing special master.

(*f*) Order of substitution.

(*g*) Report and opinion of special master.

(*h*) Defendants' exceptions to special master's report and opinion.

(*i*) Complainant's exceptions to special master's report and opinion.

(*j*) Notice of final hearing.

(*k*) Opinion of Judge Mayer and decree.

(*l*) Petition and allowance of appeal.

(*m*) Assignment of errors.

(*n*) Citation.

(2) Testimony in extenso.

(3) Exhibits:

a. Complainant's Exhibits Numbers 17, 18, 19, 47 to 51, inclusive, 57 to 62, inclusive, 64, 65, 69, 71 to 86, inclusive, 89 to 99, inclusive, and 105 to 115, inclusive.

b. Defendants' exhibits A to K, inclusive, O to V, inclusive,
267 and Y, and numbers A-8 to A-64, inclusive, A-68 to A-70, inclusive, A-72, A-89 to A-96, A-97 to A-112, inclusive, is hereby approved as a true and complete and properly prepared record of the evidence in the above cause.

Dated, New York, April 4, 1921.

JULIUS M. MAYER,
U. S. District Judge.

268 [Endorsed:] District Court of U. S., Southern District of N. Y. Charles D. Newton, as Attorney-General of the State of New York, et al., Appellants, vs. New York & Queens Co., Respondent. Stipulation. Wilber W. Chambers, Solicitor for Applt. Newton, Office & P. O. Address, Capitol, Albany, N. Y. Terence Farley, Solicitor for Applt. Barrett, Office & P. O. Address, #49 Lafayette St., New York City. John P. O'Brien, Corporation Counsel, Solicitor for Applt. Wallace, Municipal Bldg., New York City.

269 District Court of the United States, Southern District of New York.

CHARLES D. NEWTON, as Attorney-General of the State of New York: Alfred M. Barrett, Constituting the Public Service Commission of the State of New York for the First District, and Dana Wallace, as District Attorney of Queens County, Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent.

It is hereby stipulated, consented and agreed between the solicitors for the respective parties above named that the testimony taken before the special master herein, as now printed and on file with the clerk of the United States District Court for the Southern District of New York, shall be the record on appeal herein and the provisions of paragraph "B" of Equity Rule 75 in regard to the reduction of

the record and preparation of the case on appeal be and they hereby are waived.

Dated, New York, April 4, 1921.

WILBER W. CHAMBERS,
Solicitor for Appellant Newton.
TERENCE FARLEY,
Solicitor for Appellant Barrett.
JOHN P. O'BRIEN,
Solicitor for Appellant Wallace.
270 SHEARMAN & STERLING,
Solicitors for Respondent.

271 [Endorsed:] District Court of U. S., Southern District of N. Y. Charles D. Newton, as Attorney-General of State of N. Y., et al., Appellants, vs. New York & Queens Gas Company, Respondent. Stipulation re: Printing Testimony in Record, &c. Wilber W. Chambers, Solicitor for Applt. Newton, Office & P. O. address, Capitol, Albany, N. Y. Terence Farley, Solicitor for Applt. Barrett, Office & P. O. address, #49 Lafayette St., New York City. John P. O'Brien, Solicitor for Applt. Wallace, Office & P. O. Address, Municipal Bldg., New York City.

272 District Court of the United States, Southern District of New York.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Alfred M. Barrett, Constituting the Public Service Commission of the State of New York for the First District, and Dana Wallace, District Attorney of Queens County, Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of said District Court in the above entitled matter, as agreed on by the parties, being the pleadings and decrees as follows:

(1) Pleadings, decree, etc.

(*a*) Bill of complaint.

(*b*) Subpœna.

(*c*) Marshal's returns.

(*d*) Answers of defendants.

(*e*) Order appointing special master.

(*f*) Order of substitution.

(*g*) Report and opinion of special master.

(*h*) Defendants' exceptions to special master's report and opinion.

(*i*) Complainant's exceptions to special master's report and opinion.

(*j*) Notice of final hearing.

(*k*) Opinion of Judge Mayer and decree.

(*l*) Petition and allowance of appeal.

(*m*) Assignment of errors.

(*n*) Citation.

(2) Testimony in extenso.

(3) Exhibits:

a. Complainant's Exhibits Numbers 17, 18, 19, 47 to 51, inclusive, 57 to 62, inclusive, 64, 65, 69, 71, to 86, inclusive, 89 to 99, inclusive, 105 to 115, inclusive.

(*b*) Defendants' exhibits A to K, inclusive, O to V, inclusive, and Y, and Numbers A-8 to A-64, inclusive, A-68 to A-70 in-
273 clusive, A-72, A-89 to A-96, A-97, to A-112, inclusive.

Dated, New York, April 1, 1921.

WILBER W. CHAMBERS,
Solicitor for Appellant Newton.
TERENCE FARLEY,
Solicitor for Appellant Barrett.
JOHN P. O'BRIEN,
Solicitor for Appellant Wallace.
SHEARMAN & STERLING,
Solicitors for Respondent.

274 UNITED STATES OF AMERICA,
Southern District of New York, ss:

CHARLES D. NEWTON, as Attorney-General of the State of New York; Alfred M. Barrett, Constituting the Public Service Commission for the First District, and Dana Wallace, as District Attorney of Queens County, Appellant-Defendants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent-Complainant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 5th day of April in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the said United States the one hundred and forty-fifth.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX GILCHRIST, JR.,
Clerk.

275 [Endorsed:] District Court of U. S., Southern District of N. Y. Charles D. Newton, as Attorney-General of the State of New York, et al., Appellants, vs. New York & Queens Gas Co., Respondent. Stipulation. Clerk's Certificate as to Appeal Record. Wilber W. Chambers, Solicitor for Applt. Newton, Office & P. O. address, Capitol, Albany, N. Y. Terence Farley, Solicitor for Applt. Barrett, Office & P. O. address, #49 Lafayette St., New York City. John P. O'Brien, Corporation Counsel, Solicitor for Applt. Wallace, Office & P. O. Address, Municipal Bldg., New York.

1 United States District Court, Southern District of New York.

In Equity.

NEW YORK & QUEENS GAS COMPANY, Complainant,

vs.

CHARLES D. NEWTON, as Attorney General of the State of New York; Dennis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Public Service Commissioner of the State of New York, First District, Defendants.

Before Abraham S. Gilbert, Special Master.

New York, July 15, 1919.

Appearances:

Shearman & Sterling, Solicitors for Complainant.
William L. Ransom,
Charles A. Vilas,
J. H. Goetz,
Of Counsel.

Charles D. Newton, Attorney General of the State of New York.
Wilber W. Chambers, Deputy Attorney General, of Counsel.
W. H. Van Steenburgh, Solicitor for Dennis O'Leary, District Attorney for the County of Queens.
Terence Farley, Solicitor for the Public Service Commission.

Adams & Chambers appointed Stenographers.

2 The Master: We will take up the New York & Queens case first.

Mr Ransom: I would suggest an adjournment of a month.

Mr. Chambers: No, we will not be through with this case.

The Master: We can adjourn it again at the end of a month, Mr. Chambers, if necessary.

Mr. Chambers: If he stipulates that it is to be held until the conclusion of this case.

The Master: It is going to be held. The New York and Queens case will stand adjourned over for one month, it being the understanding that I will not take up the New York and Queens case until I get through with the Consolidated case.

Adjourned to Friday, August 15, 1919, at 10:30 A. M.

New York, August 15, 1919.

Adjourned to Monday, September 15, 1919, with the same understanding.

New York, September 15, 1919.

Adjourned to Wednesday, October 15, 1919, with the same understanding.

New York, October 15, 1919.

Adjourned to Saturday, November 15, 1919, with the same understanding.

New York, November 15, 1919.

Adjourned to Monday, December 15, 1919, with the same understanding.

New York, December 15, 1919.

Adjourned to Thursday, January 15, 1920, with the same understanding.

New York, January 15, 1920.

3 Adjourned to Monday, February 16, 1920, with the same understanding.

New York, February 16, 1920.

Adjourned to Monday, March 15, 1920, with the same understanding.

New York, March 15, 1920.

Adjourned to Thursday, April 15, 1920, to meet at the office of the Special Master, No. 43 Exchange Place, New York City, with the same understanding.

NEW YORK & QUEENS GAS CO.

vs.

NEWTON et al.

New York, April 15, 1920.

Met pursuant to adjournment.

Present:

The Master.
Mr. Ransom and Mr. Vilas, of Counsel for Complainant.
Charles J. Tobin, of Counsel for Defendant Newton, etc.
Mr. Van Steenburgh, Solicitor for Defendant O'Leary, etc.
Mr. Neumann, of Counsel for Defendant Nixon, etc.

(Informal discussion off the record.)

The Master: Is any one going to be associated with you, Mr. Van Steenburgh?

Mr. Van Steenburgh: I don't know whether Mr. Morris will be here or not.

The Master: I have been trying to get an idea of how long this case was going to take and what the case was about. I had about decided to adjourn it until the 15th of May.

4 Mr. Ransom: That would be quite an injustice to the complainant.

The Master: Then you had better get some other master appointed. I don't want to do any injustice to anybody.

Mr. Ransom: Wouldn't it be possible to go on some day next week? I think we can put in our direct case in a very short time. If we could have one afternoon next week, or morning, I think we could make a substantial degree of headway. Then after we get in these things, our exhibits and our inventory and things of that sort, if your Honor then felt that some adjournment to a day early in May was reasonable, it would be a little different. We could then go over outright to the 15th of May, and in the meantime our inventory would be in.

The Master: What inventory, a detailed inventory?

Mr. Ransom: We have a very detailed inventory.

The Master: Has it been furnished to the other side?

Mr. Ransom: Yes, it has been furnished to the defendants.

Mr. Tobin: We have not got it yet.

The Master: You saw you have not got it?

Mr. Tobin: We haven't our full data from the other side as yet.

Mr. Ransom: There is not anything I can imagine we have not furnished them, because Judge Mayer's order was only signed yesterday.

The Master: I will tell you what I will do: Will you require any large room? Will there be any great number of people in attendance, as on the Consolidated case?

Mr. Ransom: No.

5 The Master: Then we can hold the hearing in the library here, and if you are willing to be interrupted by telephones and other things of that sort, I will set it down for some afternoon next week.

Mr. Tobin: I would like to make a statement. I have just come into this case. As you know, Mr. Chambers has been trying practically all these cases as representing the Attorney General. I haven't even got a picture of it, and as he told me yesterday before I left Albany, all the information we have asked from the Company has not as yet been supplied, so it is going to be an extreme hardship for me to go on next week. If it can be put over some day beyond next week I can stick right here, because it is Mr. Chambers' plan to finish up his work in the Consolidated Gas case. He is working on it now, and he has also taken on another case, and has turned this case over to me, and he intends to sit in this case occasionally as we go along and give such help as I may need. I would like to put it over until some day beyond next week.

Mr. Ransom: What I mean is, we could go ahead some day next week and put in the formal proof on franchises and deeds and put in the inventory—the inventory has been furnished—revenues and expenses, cost of distribution and formal exhibits, of which your Honor is doubtless very familiar. Those are ready and they could be put in and cross examination deferred. It is true that under Judge Mayer's order signed yesterday we have to furnish the data of installation and age of the property.

The Master: What is your capacity over there?

Mr. Ransom: About 2,000,000.

The Master: What do you figure it is worth?

Mr. Ransom: You mean the whole plant?

6 The Master: Yes, how much do you say it is worth, the water gas plant, a 2,000,000 water gas plant?

Mr. Ransom: The plant?

The Master: Yes, and the land on which it stands. How much do you claim that is worth?

Mr. Ransom: The total property of the company?

The Master: Including distributing mains.

Mr. Ransom: Including everything, the total value of the property which we have shown as of January 1st, 1920, exclusive of the going value is $2,907,062.

The Master: For a 2,000,000 capacity plant?

Mr. Ransom: Yes, just under three million dollars.

The Master: What about the plant alone?

Mr. Ransom: Our plant alone practically is worth $561,000.

The Master: The water gas plant?

Mr. Ransom: Yes, the water gas plant.

Mr. Tobin: Once we get started it is not going to take us long.

Mr. Neumann: Speaking for the defendant Nixon, I might say this: That it will be impossible for our statistical bureau to get anywhere near ready in the short space of time we have in this case.

The Master: Why not?

Mr. Neumann: They have been working and are working on the Company's books—that is through no fault of the men working on them.

Mr. Ransom: That is a matter of the defendants' case, not the complainant's.

The Master: How long have these books been accessible to the defendants?

7 Mr. Ransom: They went through them last September, and we confirmed that by letter on the 1st of October, 1919.

Mr. Neumann: And you have kept our bureau busy on the Consolidated Gas Company's case ever since. As Judge Mayer said upon the argument the other day, these defendants have a certain amount of capacity and they cannot go beyond it, and you know that better than any one else because you were connected with the Commission yourself, and we are in just this position, Judge Ransom, that if you force this trial on now the result will be that when it comes to the defendants' case we will have to ask for a long time to prepare it. Do you want to force us on now, or give us sufficient time to get ready so that the case can go forward?

The Master: I want to ask Mr. Van Steenburgh this: Have you had a chance to prepare?

Mr. Van Steenburgh: I haven't had as much chance as I want to have to prepare. It occurs to me, listening to this discussion, that as a practical proposition, Mr. Master, it would be just as well to put it over beyond another week as the Attorney General's office has asked, and then go to it and make as much progress as we possibly can, and not to take two bites out of the cherry, and do something some day and something else some other time.

The Master: Have you put any accountants on these books?

Mr. Van Steenburgh: I could tell better after I have heard some of the complainant's case.

Mr. Ransom: That is why I want to put it in now.

The Master: I don't know why we have to hear the complainant's case first. They have to show how much it costs to make the gas.

8 Mr. Van Steenburgh: They have to show in the first place the present value of their plant, what it is worth as a going concern, and in addition to that we have a right to go in and see whether that condition or claim of theirs is justified by the proof they offer.

The Master: I have been eight or nine or ten months in this Consolidated case and I think I know something about it. Without knowing anything about this case, I think I should know what goes into a thousand feet of gas, and what it costs to make it. Am I right?

Mr. Van Steenburgh: Yes.

The Master: Have you prepared anything on that?

Mr. Van Steenburgh: Not yet.

The Master: Why not?

Mr. Van Steenburgh: This is not the only thing I have in my office to attend to.

The Master: Haven't you employed some expert or engineer to show what goes into a thousand feet of water gas?

Mr. Van Steenburgh: I can tell you that better later on.

The Master: I am going to take whatever proof Judge Ransom wants to offer next week, and then I will dispose of further questions.

Mr. Tobin: I cannot be here next week, if the Master please.

The Master: Then let somebody else be here.

Mr. Tobin: I just came in today.

The Master: Where is your home?

Mr. Tobin: My home is in Albany.

Mr. Neumann: This is over the objection of the counsel for the Public Service Commission.

Mr. Ransom: Can it be next week Friday?

The Master: I think the latest day possible next week. I
9 think Friday, so as to avoid the possibility of getting mixed up in the Court of Appeals.

Mr. Tobin: Could you not possibly put it on the first part of the next week?

Mr. Ransom: I will consent to the following Monday if that will be any accommodation to Mr. Tobin. If you put it down for the 26th I will consent to that.

The Master: All right, make it on the 26th at 2 o'clock, and in the meantime I will look at this order of Judge Mayer's.

Mr. Ransom: It seems to me that if we are going to have a short adjournment now, they ought to go ahead with the inventory and the cost of production and distribution and revenues and expense statements and things like that that we have furnished to them.

Mr. Tobin: Your information is not complete yet.

Mr. Ransom: The only thing we lack is the installation property.

The Master: I have set it down for the 26th at 2 o'clock.

Mr. Neumann: On the understanding that we will have some time to prepare our case?

The Master: On the understanding that this case is going to proceed at 2 o'clock on the 26th.

Mr. Neumann: Then I would like to have my objection noted to the case going on, because I want to say our office will not be ready to put in the defendant Nixon's case for at least two months.

The Master: Then I am inclined to think that the defendant Nixon won't put in any case.

Mr. Neumann: I respectfully except.

Mr. Tobin: Then you will give an opportunity to the company to give the information referred to?

Mr. Ransom: You have the papers now.

Mr. Tobin: That was not the point you made first, Judge
10 Ransom. You were very careful to say you wanted to put these in to give us an opportunity.

Mr. Ransom: Yes.

Mr. Tobin: Then it might be in the discretion of the Master to let us go on. That is the way you put it.

The Master: Let me get this record straight: I am setting this

matter down for April 26, at 2 P. M., at which time I shall expect counsel for the complainant to put in all the documentary evidence that he can possibly have ready at that time.

Mr. Ransom: It can all be ready.

The Master: Before that time I *except* Judge Ransom to comply with the order of Judge Mayer of April 5, 1920, in so far as he expects to comply with it, and I will on that day hear any argument about the compliance of that order, and I will then make such certificate as I think the situation warrants.

Mr. Ransom: I might say with respect to the item with which we have not complied, it is that relating to the installation or acquisition or the age of the property. That item we expect to comply with in a few days.

The Master: I will dispose of the compliance or non-compliance of Judge Mayer's order on the 26th. At that time, when all of this documentary proof is in and the question of the compliance with Judge Mayer's order is out of the way, I will have a little better idea as to what ought to be done with reference to an adjournment for the purpose of permitting counsel to prepare for trial. For the information of counsel I might say I am not going to give any two months' adjournment. We might as well understand that now.

This is a case that apparently involves a very small plant,
11 comparatively speaking, and if the Public Service Commission force is not adequate to handle it they can get some one else.

Mr. Neumann: I respectfully except to that ruling.

Mr. Tobin: I take it that carries with it that on the introduction of the documentary evidence you are going to give us sufficient time after that is introduced to cross examine on it?

Mr. Ransom: I want to say that almost all of the documentary evidence that we will produce has been furnished to the defendants at least two weeks ago; and so far as the checking of the inventory and the checking of the statements of account is concerned, that is already in progress so far as the defendant Commission is concerned and ought to be in progress so far as the other defendants are concerned.

The Master: I won't require any cross examination on the 26th, if that is what you want, and I will expect Judge Ranson to have his documents ready at that time.

Adjourned to Monday, April 26, 1920, at 2 o'clock P. M.

12 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, etc., et al.

Before Abraham S. Gilbert, Special Master.

New York, April 26, 1920.

Met pursuant to adjournment.

Present:

William L. Ransom, Charles A. Villas and J. H. Goetz, of Counsel for Complainant.

W. W. Chambers, Charles J. Tobin and Clarence R. Cummings, of Counsel for defendant Newton.

Ely Neumann and Edward M. Deegan, of Counsel for defendant Lewis Nixon, Public Service Commissioner.

William J. Morris, Jr., and W. H. Van Steenburgh, of Counsel for defendant Dennis O'Leary.

Mr. Tobin: If your Honor please, we ask for a dismissal of the complaint on the ground that it does not show sufficient facts to constitute a cause of action.

Second, that it is not affirmatively shown that the complainant has complied with the statute. We deem that they should show——

The Master: You mean with reference to candle power?

Mr. Tobin: Yes, sir.

Mr. Chambers: And other things.

Mr. Tobin: They have not shown what the candle power is required by the statute, and also as to the quality of the gas. We ask that the complaint be dismissed.

13 The Master: Motion denied.

Mr. Tobin: Exception.

Mr. Neumann: May I add that the complainant has failed to comply with the statutory requirements—

1. As to price.
2. As to pressure.
3. As to candle power.

And, upon the further ground that the complaint fails to allege that the company has been economically and efficiently managed.

Mr. Chambers: We join in that objection.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Morris: If your Honor please, the defendant O'Leary joins in that, although what I have to say now possibly seems to be appropriate for a later date. I represent Dennis O'Leary as District Attorney of the County of Queens. I am one of the Assistants there, and as I have stated to counsel, we are in no position, in view of the number of men we have, and our finances—it would be impossible

for us as a District Attorney's office to give up our time entirely to these gas rate cases. I have formally requested the Corporation Counsel's office to come in in the seven cases in which we are at the present time. I have taken the matter up with the Mayor with the idea of having him designate the Corporation Counsel to represent the District Attorney. In view of that fact, if it would not be too much of a hardship on all the attorneys and the witnesses who have been brought here, I would ask your indulgence for an adjournment so that the Corporation Counsel can be formally brought into it by stipulation and by request.

The Master: I cannot do that. We are only going to take documentary proof today.

14 I have denied the motion to dismiss. In this case motions made by any one defendant will be deemed to have been made by all the defendants, so it will not be necessary for all defendants to repeat the same grounds of motion. If, when one defendant has made a motion of any kind, other defendants desire to add to it, I will take anything that is to be added, but there will be no necessity for repeating the same ground again.

The motions to dismiss on all the grounds stated by counsel are denied, with an exception to each defendant.

Mr. Chambers: The defendant Newton is not ready for trial.

The Master: You are ready enough to allow them to put in this documentary proof.

Mr. Chambers: Another thing, they have not served us with the information required by the bill of particulars.

The Master: I will take that up later. I am going to let Mr. Ransom put in his formal documentary proofs, and then I will take up the question of a bill of particulars or other data.

Mr. Ransom: I offer in evidence certified copy of the Articles of Incorporation of the New York & Queens Gas Company. If counsel are willing, I will have copies marked instead of originals.

The Master: Is there any objection to that procedure, marking copies instead of originals?

Mr. Chambers: No, not as to this paper.

Mr. Neumann: Will counsel make the statement that the copies are exact copies of the originals?

Mr. Ransom: They are.

Mr. Neumann: We do not want a repetition of what happened in the Consolidated case.

15 Certified copy of Articles of Incorporation received in evidence and marked Complainant's Exhibit 1.

Mr. Ransom: The next is certified copy of the Certificate of Incorporation of the Flushing Gas Light Company.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: What is the point?

Mr. Chambers: Why not offer the Certificate of Incorporation of the New York & Richmond?

Mr. Neumann: Where is the connection?

The Master: The first paper that was offered was the charter of the New York & Queens. Now, you are offering the charter of the Flushing Company?

Mr. Ransom: Yes, one of the companies from which franchises came into the possession of the New York & Queens Company.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 2.

Mr. Ransom: Next I offer in evidence Certificate of the existence of the Flushing Gas Light Company, extension from October 1, 1875, to October 1, 1895. That document also includes the extension of the same company from October 1, 1895, to October 1, 1915.

Mr. Chambers: We object to that upon the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Paper received in evidence and marked Complainant's Exhibit 3.

16 Mr. Tobin: It would save some time to us if we had had copies of what they are going to offer, instead of having them put in here in this way.

The Master: Based on my experience in the Consolidated case I think the best way to do is to take it all in.

Mr. Ransom: Next I offer in evidence Certificate of Incorporation of the Flushing Gas & Electric Light Company.

Mr. Tobin: We object to that as incompetent, irrelevant and immaterial.

Mr. Neuman: I object to it on the same grounds as stated.

The Master: Objection overruled. I shall assume that there is some connection.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 4.

Mr. Ransom: Next I offer in evidence Certificate of Incorporation of the New York & Queens Gas & Electric Company.

Mr. Chambers: I make the same objection as last stated.

The Master: Same ruling.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 5.

Mr. Ransom: I next offer in evidence Certificate of Incorporation of the College Point Gas Company.

Mr. Tobin: I object to it on the same grounds as before.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

17 Paper Received in evidence and marked Complainant's Exhibit 6.

Mr. Ransom: I next offer in evidence Certificate of Incorporation of the Whitestone Gas Company.
Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit 7.

Mr. Ransom: I next offer in evidence Certificate of Incorporation of the Long Island Illuminating Company.
Mr. Tobin: I object on the same grounds as before.
Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 8.

Mr. Ransom: I offer in evidence Certificate of Incorporation of the Newtown & Flushing Gas Company.
Mr. Tobin: I object on the same grounds.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 9.

Mr. Ransom: I offer in evidence certified copy of a deed dated July 20, 1897, from the Flushing Gas Light Company to the Flushing Gas & Electric Light Company, recorded in the
18 office of the Clerk of the County of Queens, Liber 1158, page 402, on July 28, 1897.
Mr. Tobin: I object to it as incompetent, irrelevant and immaterial, and no connection shown at the present time. There is no evidence of title.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Cummings: Do you offer the whole instrument?
Mr. Ransom: Yes.
Mr. Cummings: For all purposes?
The Master: The objection is overruled.

Paper received in evidence and marked Complainant's Exhibit 10.

Mr. Ransom: I offer in evidence a certified copy of Certificate of Merger of the Flushing Gas & Electric Light Company with and into the New York & Queens Gas & Electric Company, dated June 16, 1899, filed in the office of the Secretary of State of the State of New York, on June 17, 1899.

Mr. Tobin: We make the same objection.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 11.

Mr. Ransom: I offer in evidence original assignment of the New York & Queens Gas & Electric Company to the Newtown & Flushing Gas Company of all its franchises in the Borough of Queens, dated July 23, 1900.

Mr. Tobin: I make the same objection. I can't see any occasion for the introduction of that.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

19 Mr. Neumann: Exception.

Received and marked Complainant's Exhibit 12.

Mr. Ransom: I offer in evidence original assignment of the Whitestone Gas Company to the Newtown & Flushing Gas Company of the Newtown & Flushing franchises, this assignment being dated July 20, 1900.

Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 13.

Mr. Ransom: I offer in evidence certified copy of Certificate of the Merger of the College Point Gas Company into the Newtown & Flushing Gas Company, dated March 22, 1901.

Mr. Tobin: I object to it on the same grounds.
Mr. Neuman: I make the same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 14

Mr. Ransom: I offer in evidence certified copy of the merger o the Newtown & Flushing Gas Company with and into the New Yor & Queens Gas Company, dated July 18, 1904.

Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 1

20 Mr. Ransom: I ask that there be considered in evidence the acts of the Legislature of the State of New York which became a law February 16, 1848, entitled, "An Act to Authorize the Formation of Gas Light Companies."

The Master: Your request is noted.

Mr. Ransom: I think it ought to be considered in evidence as an exhibit.

The Master: Why?

Mr. Ransom: Because while the matter is not free from doubt statutes that come within the class of somewhat special acts, I think, need to be in evidence.

The Master: It can't do any harm to consider it and give it a number. We will call it Exhibit 16.

Mr. Tobin: I make the same objection.

Mr. Neumann: The same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Act of February 16, 1848, considered in evidence as Exhibit 16.

Mr. Ransom: I make the same request with respect to Section 15, Article 2, of the Stock Corporations Law relating to the merger and consolidation of gas companies.

The Master: That is a general act.

Mr. Ransom: I think perhaps it is——

The Master: I will not cumber the record with it.

Mr. Ransom: I make the same request regarding Chapter 566 of the Laws of 1890, Section 60 and Section 61, now known as Article 7 of the Transportation Corporations Law.

Mr. Tobin: I object to that.

The Master: They are general statutes.

21 Mr. Ransom: I ask that there be considered in evidence Chapter 125 of the Laws of 1908, which is the statute here under attack.

The Master: I will mark that as Exhibit 17.

Mr. Neumann: That means the whole and every part of that statute?

The Master: I assume so.

Mr. Neumann: You are offering the whole, are you?

Mr. Ransom: I am offering it as a whole.

Chapter 125 of the Laws of 1906 received in evidence and considered marked Exhibit 17.

Mr. Ransom: I offer in evidence Chapter 612 of the Laws of 1916, which amended in certain respects Chapter 125 of the Laws of 1906.

The Master: We will consider that as Exhibit 18.

Chapter 612, Laws of 1916, received in evidence and considered marked Exhibit 18.

Mr. Ransom: I also offer in evidence Chapter 666 of the Laws of 1917, which in certain respects amended Chapter 125 of the Laws of 1908.

The Master: Consider that as Exhibit 19.

Chapter 666, Laws of 1917, received in evidence and considered marked Exhibit 19.

Mr. Tobin: What bearing has that?

Mr. Ransom: I think it will appear from an examination of the complaint and the statute.

I offer in evidence the original franchise from the Commissioners of Highways of the Town of Newtown, County of Queens, State of New York, to Charles F. Smith, dated April 21, 1897.

Mr. Tobin: I make the same objection.

Mr. Neumann: I object to it on the same grounds.

The Master: Objection overruled.

Mr. Tobin: Exception.

22 Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 20.

Mr. Ransom: I offer in evidence original assignment of the franchise constituting the exhibit last received, from Charles F. Smith to the New York & Queens Gas & Electric Company, dated June 16, 1899.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 21.

Mr. Ransom: I offer in evidence the original franchise from William L. Cornell and others, Commissioners of Highways of the Town of Flushing, County of Queens, State of New York, to the Flushing Gas Light Company, dated May 1, 1897.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 22.

Mr. Ransom: I offer in evidence certificate showing a resolution adopted by the Trustees of the Village of Flushing at a meeting held August 27, 1889.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 23.

23 Mr. Ransom: I offer in evidence an original agreement made November 23, 1897, between the Flushing Gas & Elec-

tric Light Company, and the Village of Flushing.
Mr. Tobin: I make the same objection.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 24.

Mr. Ransom: I offer in evidence certified copy of a franchise granted by the Village of Whitestone to the Flushing Gas & Electric Light Company, certified to by the Assistant Deputy Comptroller of the City of New York as passed on December 30, 1897.
Mr. Tobin: I make the same objection
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 25.

The Master: Are you claiming as part of your rate base a value to these franchises?
Mr. Ransom: Yes.
Mr. Neumann: I want to make the additional objection that the paper does not on its face show any authenticity.
Mr. Ransom: I offer in evidence a certified copy of a resolution granting a franchise from the trustees of the town of Flushing, County of Queens, to the College Point Gas Company, at a meeting held on Saturday, May 5, 1866, certified to by the Deputy Comptroller of the City of New York.
24 The Master: Well, I don't think you have accurately described the paper. The paper apparently granted a franchise to Messrs. Poppenhauser, Fink & Schleiser to lay pipes for the College Point Gas Company.
Mr. Neumann: I make the same objection, and that it is not a proper method of proof.
Mr. Tobin: The introduction of all these papers, I think, has been unfair to us, to ask us to sit here and have them passed in without giving us an opportunity to specifically object. I think we should be given some opportunity to object specifically, and to object to any specific paper.
The Master: I will give you that opportunity.
Mr. Ransom: These are documents, of course, which have been on file for a good many years in the files of the Public Service Commission.
Mr. Tobin: Yes, but we don't know what bearing they have on this case.
The Master: After you look at them, if you have any more specific objection, I will let you state the ground of your objection. This paper will be received.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 26.

Mr. Ransom: I next offer in evidence certified copy of the franchise granted under the foregoing resolution, Exhibit 26 in evidence, certified to by the Deputy and Acting Comptroller of the City of New York.

Mr. Tobin: I object to that on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

25 Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 27.

Mr. Ransom: I offer in evidence certified copy of a franchise granted by the Board of Highway Commissioners of the Town of Jamaica to the Long Island Illuminating Company, dated January 16, 1896, certified by the Assistant Deputy Comptroller of the City of New York.

Mr. Neumann: I make the same objection.

Mr. Tobin: Objected to on the same grounds.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit 28.

Mr. Ransom: I next offer in evidence franchise granted by the Town Board of the Town of Jamaica to the Long Island Illuminating Company, for the Town of Jamaica, dated January 10, 1896, certified by the Assistant Deputy Comptroller of the City of New York.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 29.

Mr. Ransom: I next offer in evidence certified copy of a lease from the Long Island Illuminating Company to the Newtown & Flushing Gas Company, covering its franchises, the date of such lease being April 10, 1901.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I object to it. This certification is a certification by a notary public that he has compared this document.

26 I took it that when Judge Ransom said he offered a certified copy, he meant a certification by proper author-ty, and not by a notary public.

Mr. Ransom: Perhaps I had better have this marked for identification.

Paper marked Complainant's Exhibit 30 for identification.

Mr. Ransom: I offer in evidence original consent of the stockholders of record of the Long Island Illuminating Company to the lease which is the preceding exhibit for identification, to the Newtown & Flushing Gas Company.

The Master: Are you testifying to the genuineness of the signature?

Mr. Ransom: I think I have to ask that that be marked for identification.

The Master: We will have that as part of Exhibit 30 for Identification.

Mr. Tobin: We ask that we may have an opportunity to object to the exhibits as to form, and also as to contents.

Mr. Ransom: I offer in evidence certified copy of a deed dated October 24, 1859, from Charles Miller to the Flushing Gas Light Company, recorded in the office of the Queens County Clerk, October 28, 1859, in Liber 173 of Deeds, page 139.

Mr. Chambers: Objected to as incompetent, irrelevant and immaterial, and no evidence of title.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 31.

Mr. Ransom: I offer in evidence certified copy of a deed from Thomas Leggett and others to the Flushing Gas Light Company, dated October 7, 1862, recorded in the office of the Clerk of
27 Queens County, October 30, 1862, Liber 200, page 79.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 32.

Mr. Ransom: I offer in evidence certified copy of a deed from Albert Haydock and another, executor of the Will of Thomas Leggett, and Patience H. Leggett, widow, to the Flushing Gas Light Company, dated February 20, 1867, recorded in the office of the Clerk of the County of Queens on February 28, 1867, in Liber 251 of Deeds, page 24.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 33.

Mr. Ransom: I offer in evidence certified copy of a deed from Benjamin W. Downing to the Flushing Gas Light Company, dated December 16, 1869, recorded in the office of the Clerk the County of Queens, on April 13, 1870, in Liber 320 of Deeds, page 201.

Mr. Tobin: I make the same objection.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 34.

28 Mr. Ransom: I offer in evidence certified copy of a deed of John Griffin to the Flushing Gas Light Company, dated May 23, 1874, recorded in the office of the Clerk of the County of Queens on May 26, 1874, in Liber 439 of Deeds, page 195.
Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 35.

Mr. Ransom: I offer in evidence certified copy of a deed from Patrick Clark to the Flushing Gas Light Company, dated May 26, 1895, recorded in the office of the Clerk of the County of Queens on March 29, 1895, in Liber 1061 of Deeds, page 171.
Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 36.

Mr. Ransom: I offer in evidence original deed from Henry R. Wilson and his wife to the Newtown & Flushing Gas Light Company, dated June blank, 1901, recorded in the office of the Clerk of the County of Queens, July 23, 1901, in Liber 1259, page 289.
Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 37.

29 Mr. Ransom: I offer in evidence original deed from Mary E. Rogers to the New York & Queens Gas Company, dated May 20, 1909, recorded in the office of the Clerk of the County of Queens on June 29, 1909, in Liber 1632, page 208.
Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 38.

Mr. Ransom: I offer in evidence original deed from Elizabeth J. Kirby and her husband, to the New York & Queens Gas Company, dated March 20, 1911, recorded in the office of the Clerk of the County of Queens, on March 23, 1911, in Liber 1739, page 453.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 49.

Mr. Ransom: I offer in evidence original deed from John F. Rogers and others to the New York & Queens Gas Company, dated February 4, 1911, recorded in the office of the Clerk of the County of Queens on March 25, 1911, in Liber 1739, at page 451.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 40.

30 Mr. Ransom: I offer in evidence original deed from Celia F. Rogers to the New York & Queens Gas Company, dated March 20, 1911, recorded in the office of the Clerk of the County of Queens March 25, 1911, in Liber 1739, page 450.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 41.

Mr. Ransom: I offer in evidence original deed from Mary Powers to the New York & Queens Gas Company, dated July 16, 1912, recorded in the office of the Clerk of the County of Queens, July 24, 1912, in Liber 1823, page 378.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 42.

Mr. Ransom: I offer in evidence original deed from the Flushingside Realty & Construction Company to the New York & Queens Gas Company, dated September 16, 1912, recorded in the office of the Clerk of the County of Queens, in Liber 1834 at page 435, on September 28, 1912.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 43.

31 Mr. Ransom: I offer in evidence original deed from William P. McMahon and others to the New York & Queens Gas Company, dated June 8, 1915, recorded in the office of the Clerk of the County of Queens, June 11, 1915, in Liber 2008, page 340.
Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 44.

Mr. Ransom: I offer in evidence original deed from William Raynor to the New York & Queens Gas Company, dated July 22, 1915, recorded in the office of the Clerk of the County of Queens, on December 16, 1915, in Liber 2043, page 387.
Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 45.

Mr. Ransom: I offer in evidence certified copy of a deed from George Pople, to the New York & Queens Gas & Electric Company, dated October 30, 1899, recorded in the office of the Clerk of the County of Queens, in Liber 1225, page 315, on November 14, 1899.
Mr. Tobin: I object to it on the same grounds.
Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Tobin: Exception.
Mr. Neumann: Exception.

Paper received in evidence and market Complainant's Exhibit 46.

32 HERBERT W. ALRICH, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Alrich, where do you reside?
A. 412 West 148th Street, Manhattan.
Q. What is your business?
A. I am a civil engineer employed by the Consolidated Gas Company of New York.

Q. How long have you been connected with the Consolidated Gas Company?

A. About nineteen years.

Q. Will you briefly describe your duties in the course of your employment by the Consolidated Gas Company?

A. Since my employment by the company I have been employed as a draftsman on making detail and general drawings for the construction of gas plants, gas apparatus, gas holders, the foundations for buildings and gas holders; I have worked on the estimating of cost of such structures; on the inspection and supervision of such construction work in the field; I have been employed on comparing contractors' estimates, and on the analysis of construction cost after the completion of the work.

Q. During what period of time have you had supervisory duties with respect to the construction of gas structures, apparatus and the like?

A. To some extent almost from the beginning of my employment by the company.

Q. That is dating back practically to 1901?

A. That is correct.

Q. Are you a member of any technical association?

A. I am. I am a member of the American Society of Me-
33 chanical Engineers; of the American Gas Association; of the Society of Gas Engineering of New York, and I have the gold medal of the American Gas Institute.

Q. Do your duties include civil engineering and construction engineer's services in connection with work done for and by affiliated companies of the Consolidated Gas Company, for example, the New York & Queens Gas Company?

A. My duties are in connection with the work of such companies, and of the complainant company in this case.

Q. Are you and have you been familiar with the property of the New York & Queens Gas Company?

A. I am and have been for some few years back.

Q. How many years?

A. Well, since, I think 1914 that I first examined the plant.

Q. From time to time you have had occasion to visit the plants and property of the complainant company?

A. I have. I have been there frequently.

Q. And in the course of your work have you had occasion to familiarize yourself with the land of the New York & Queens Gas Company, and the descriptions thereof contained in the deeds which have been placed in evidence?

A. I have.

Q. At my request have you prepared a chart or diagram of real property of the complainant company so as to show the property used by the complainant company in its gas business, and property owned by it as of January 1, 1920?

A. I have.

The Master: What do you mean by that question? Do you mean that this diagram shows property that they own, whether they used it or not?

34 Mr. Ransom: No, this is offered only as showing the property owned and used as of January 1, 1920.

Q. The New York & Queens Gas Company as I understand it, does not own the building which they use as an office?

A. It does not.

Q. And that is not shown on this diagram?

A. It is not.

Q. This relates to the land occupied by the plant and appurtenant structures of the company?

A. It does.

Q. (Showing paper to witness.) This is the diagram prepared by you?

A. It is.

Q. And the portion shown on this in pink tinting is the property to which you refer?

A. It is.

Q. And does the property tinted in pink on this map indicate the metes and bounds of property shown in the deeds? This is made up from the deeds?

A. It is, but it shows less than is covered by the deeds to some extent. It shows the land actually in use. The deeds to some extent convey more.

Q. That is, this is not offered as showing quite all the property which the New York & Queens Gas Company owns or claims to own at that point?

A. It does not.

Q. Or did own as of January 1, 1920?

A. No.

Q. Have you personally checked up the dimensions on this map with the tax maps of the City of New York?

A. I have.

Q. And this is known to you to be correct?

A. I know this map to be correct, yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial, and by the witness' own statement it is incomplete.

35 His own testimony was that the map does not conform to the deeds:

Mr. Ransom: No, he said there was other property which the Complainant Company owns which does not show on here in pink as used.

By the Master:

Q. Where did you get the dimensions from, Mr. Alrich?

Mr. Chambers: He said he got them from the tax maps, which are not in evidence. That would make it incompetent.

Mr. Ransom: He said he checked it from the tax maps.

A. I took the dimensions from the deeds and from a survey made for us by George W. Haviland, of Flushing.

Q. Survey of what?

A. A survey of the property of the New York & Queens Gas Company at this location.

Q. This particular piece of property that is shown in pink?

A. This particular piece, yes.

Q. You copied this survey?

A. I used his map in part as a basis.

Q. Where did you make your calculations from?

A. It does not involve calculations. The dimensions are from Haviland's survey and from the deeds.

By Mr. Cummings:

Q. You didn't go on the ground and make a survey yourself, did you?

A. I did not testify to it as a survey, I testified to it as a map.

By the Master:

Q. Did you take off the dimensions of the property yourself?

A. I did not.

36 Mr. Cummings: I object to it on the ground that he is not shown to be a land surveyor.

The Master: Well, that is not very important.

Mr. Cummings: To my mind it is.

The Master: He has not testified that he even measured it.

Mr. Chambers: He used data that is not in evidence, like the tax maps and the survey of Haviland.

Mr. Ransom: The deeds are in evidence.

Mr. Neumann: But he admits himself that the map does not follow the deeds.

Mr. Ransom: There is no obligation for us to show as of January 1, 1920, property owned by the company but not claimed as of that date to be used.

The Master: If Mr. Alrich had testified that he had measured this property, and had put his measurements down on paper, I would take it, I would not be much concerned about his ability to measure a piece of land; but he doesn't say he even did that. I won't take it at this time. Mr. Alrich can go over there and measure it and say that the measurements are right, and I will take it.

Mr. Ransom: This is a diagram made up from the deeds which are in evidence.

Mr. Neumann: But he admits that the diagram does not conform to the deeds.

The Master: The deeds show more than is shown here. You are

undertaking to put in evidence a map showing the space ac-
37 tually in occupation. Those figures he has taken from some other paper. I don't think I can take it. I don't think it is important one way or the other, but I don't think I can take it. Mr. Alrich can go over there with a tape and measure it. He doesn't have to give degrees and angles, but he can measure it from place to place. The objection is sustained.

By Mr. Ransom:

Q. Is there any dimension on this map which is not shown by the deeds that are in evidence?

The Master: Of course there are.

Mr. Tobin: I would make the inquiry as to whether this piece that is plotted here is property used for gas making purposes only. It says, "Property owned by the Company and used by the Company," and he stated that there was other property that was used in the making of gas that was not owned by the company.

The Master: I have ruled it out for the time being, Mr. Tobin.

A. The dimensions on the map are a composite of those given in the deeds. The deeds convey the property in separate parcels. The map combines them, and the map agrees with the deeds, except as far as I have excluded——

The Master: Does the company own property in addition to that?

The Witness: Yes, some additional property.

Q. Is there any dimension on this map that is not made up as a composite from the deeds, and is not entirely obtained by adding together dimensions contained in the deeds?

38 A. Or computed from dimensions in the deeds.

Q. You can take the deeds in evidence and get all that is shown on this diagram?

A. Yes.

The Master: When you make deductions.

The Witness: That is eliminating the property owned by the company that I have not shown on the map.

The Master: Then you have to make a deduction.

The Witness: Yes.

The Master: How many feet did you take——

The Witness: Why, you would deduct on Farrington Street the difference between the dimensions I give and that shown in the deeds on Farrington Street.

The Master: Where did you measure that difference, or where did you measure what you have here? You have to measure either one or the other to get this figure. You have to measure the building that is there, or you have to measure the land there, don't you?

The Witness: The conveyance from McMahon and others to the New York & Queens Company, representing the northerly part of Block 170, so states the description that the 298.32 feet that I give on Farrington Street is self-evident.

The Master: All right. What is your next course? On which end of this property have you omitted some land shown in the deeds?

The Witness: In Block 170.

The Master: At which end?

The Witness: The northerly side.

The Master: Now, you have omitted this property in here (indicating)?

The Witness: Yes.

The Master: Where did you get the dimension from the corner of Myrtle Avenue down to this point 298 feet away?

The Witness: By taking both Haviland's survey and the deeds.

Mr. Tobin: To expedite it, wouldn't it be helpful if we could have indicated on this map some reference to these deeds?

The Master: How can I order them to do that when you object to the map going in? The simple way is this: If one of you men will send somebody over with Mr. Alrich and check it up and concede it, that is the simple way, but my experience in the Consolidated case was that no concessions were ever made.

Mr. Ransom: This map was sent to the defendants several weeks ago. I ask to have this marked for identification at this time.

Map marked Complainant's Exhibit 47 for Identification.

Mr. Ransom: That is all with Mr. Alrich at this time.

The Master: If there is any cross examination of Mr. Alrich it is suspended for the time being.

Mr. Ransom: I have not finished my direct.

The Master: I am not going to have this piecemeal examination.

Mr. Ransom: I can't finish my direct because your Honor is putting me to a degree of proof that was not required in the Consolidated case.

The Master: Have you something else with Mr. Alrich?

Mr. Ransom: Yes, with regard to the structures on this land.

The Master: Go ahead with that. The only reason I am excluding it is on the question of absolute figures and distances.

Generally speaking, Mr. Alrich, the plant is located at about the point shown on this map, that is approximately correct?

The Witness: It is located exactly at this point, and in locating some of the structures upon the property I have had to employ these figures in time gone by as being correct. The gas holder would have been out in Farrington Street if these dimensions have not been correct.

The Master: I will let Mr. Alrich go on and describe the structures.

Q. Referring to this land in Block 171, Lot 40, and Block 170, Lot 31, what buildings and improvements, if any, are located on that land, and what use is made of the land and improvements?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and upon the ground that the map on which he is going to base his answer is not in evidence.

The Master: I am not talking about a map. Mr. Alrich is asked

to describe the structures on a certain block and lot number on the tax map.

Mr. Chambers: The tax maps are not in evidence.

The Master: What lot are you talking about?

The Witness: Block 170, Lot 31 on the tax map.

Mr. Chambers: The tax map is not in.

41 The Master: I don't care whether it is or not.

Mr. Chambers: If you take judicial notice of it——

The Master: I am not taking judicial notice of it. Where is that property located?

The Witness: On Farrington Street.

The Master: Bounded on the south by Myrtle Avenue, on the north by Farrington Street——

The Witness: And on the east by Byrd's Alley.

The Master: Describe the structures on the land.

The Witness: I will begin with the first building, the office, laboratory and stock room, which is located on the north side of Myrtle Avenue midway between Farrington Street and Byrd's Alley. It is a brick building with a one-story frame annex.

The building contains the superintendent's office, the laboratory with the photometer and calorimeter; it contains the stock room upstairs, and the toilet and wash room.

In the one-story frame annex is a meter room and wash room for the workmen.

In the rear of this building is a one-story brick building containing two station meters, and one of the Wylie proportional type. It contains a scrubber; a washer; a No. 7 Root's exhauster having a capacity of 13 cubic feet displacement per revolution. This exhauster is of the cycloidal impeller type, and contains two hydraulic pumps.

North of this building is the generator house containing a

42 8 foot 6 inch Lowe type double super heater water gas generator and three condensers.

Adjacent to this is another generator house containing two 7 foot 6 inch Lowe type water gas generators.

Adjacent to this building and to the north of it is a building containing a Craig-Ridgway steam hydraulic elevator for raising the charging cars to the charging floor of the generator house. It also contains an engine and a blower for the generators.

To the east of this building is a boiler house containing two 1[illegible] horsepower Babcock & Wilcox boilers; one 125 horsepower Cunningham boiler; one 150 horsepower Beggs boiler. These boilers are connected with a radial brick stack 100 feet high and 4 feet 6 inches in diameter.

Another adjacent building contains a second No. 7 Root's exhauster.

An enclosure within the generator house contains two No. 6 special Sturtevant blowers driven by Terry steam turbines.

By Mr. Ransom:

Q. What is their function?

A. To drive the blowers. The blowers are to drive the blast for the generators, the high pressure blasts.

To the east of the generator house and office are two steel rectangular purifier boxes.

Adjacent to the purifier boxes is a building built of corrugated iron which contains an engine and blower for revivification purposes, the revivification of the oxide.

North of the group of buildings I have described, and extending back to the northerly line of Block 170 is a frame coal shed
43 which in part is two stories and in the upper story is a machine shop and rooms for the repairing and cleaning of gas ranges.

On the north side of Myrtle Avenue just east of Byrd's Alley is a masonry tank 50 feet in diameter for the storage of the water which is circulated through the wash boxes of the water gas machines.

East of it is a circular masonry tar separator 35 feet in diameter. This is used for separating the tar and water as it flows from the wash boxes.

Just south of those two tanks and on the north side of Myrtle Avenue is a brick building containing the compressers used for sending the gas through the high pressure main to Douglaston. The building contains one Laidlaw-Dunn-Gordon compressor, and one smaller machine of the same type.

On the east side of Byrd's Alley is a gas holder in steel tank having a capacity of 250,000 cubic feet, which is the relief holder used in connection with this work, and to the south of it, and also on Byrd's Alley is a holder having a capacity of 100,000 cubic feet, which is the holder from which the gas is drawn and sent by the compressors to Douglaston.

The Master: What is the capacity of this plant?

The Witness: About 2,000,000 feet per day.

The Master: Maximum?

The Witness: About 2,000,000 feet per day maximum.

The Master: What are the sales per annum?

44 The Witness: That is a commercial matter I am not familiar with.

On Farrington Street at the northeasterly corner of Block 170 is a three lift gas holder having a capacity of 1,000,000 cubic feet. The tank is 123 feet in diameter.

Just south of the gas holder is a one-story brick governor house which contains the governors which control the pressure of the gas sent out into Flushing and this company's territory. It contains one 16 inch Connally automatic governor in tandem with a balance governor, and also one 12 inch governor of the same type, being two governors in tandem. This building also contains such headers and valves as provide complete control of the distribution of the gas on to the company's district.

South of the governor house there is a group of three buildings which are contiguous. The one in the rear is sheeted inside and out with sheet metal, and is a repair shop for automobiles, the company's automobiles. The front part on Farrington Street is the garage for the automobiles, and the northerly extension is used in part as a stable for such horses as the company may have, and also in connection with the garage.

The Master: Why should we not have a survey or map locating all these buildings, to save time, because counsel for defendants, if they cross examine Mr. Alrich in the way they did in the Consolidated case, will say, "Where on this map is this house," and "Mark this." Why not have a sketch that goes further and shows it all?

The Witness: I have a map with me which is not up to

45 date.

The Master: Let us get one that is up to date that will show all these buildings as they are.

The Witness: Fronting on Farrington Street, and south of the garage, is a two-story frame house in which Martin Morrison, the superintendent of the works, lives. In the center of the block, east of the main buildings comprising the manufacturing plant, is a one-story brick building used for the storage of lubricating oils.

In block 171, the northerly plot of ground, there is located one tank for the storage of gas oil, 30 feet in diameter by 30 feet deep. It has a capacity of 150,000 gallons, and in the rear of it is another oil tank for the storage of gas oil, having a storage capacity of 30,000 gallons, 16 feet in diameter and 20 feet deep. On that same parcel there is also a frame building enclosing a deep well pump, there being a driven well which supplies the fresh water for the plant. There is also a small frame building for the storage of paints and painters' materials, and another frame building for the storage of ranges being carried in stock pending repair.

There are also upon the property two small brick valve houses, and a brick pump house containing five hydraulic pumps and an oil heater. The entire property shown by the exhibit for identification is inclosed by a galvanized iron "Cyclone Wire" steel fence. The property within this fence, adjacent to the corner of Myrtle

46 Avenue and Farrington Street, is used for the revivification of oxide when it is removed from the boxes and must be spread out on the ground.

Q. Did you cover the coal piles?

A. The coal sheds I referred to were, briefly, those being in the rear of the manufacturing plant. There are, all told, four inclosures for the storage of coal. They will accommodate about 1,800 or 2,000 tons, collectively.

Q. Are all of the holders of this company located at its station?

A. They are.

Q. And how many in number?

A. There are two storage holders and one relief holder.

Q. And the capacity of the storage holders is what?

A. 1,100,000 cubic feet, and of the relief holder 250,000 cubic feet.

Q. In the first generator house did you mention the turbine blowers?

The Master: I think he did, a steam turbine.

A. I described the turbine-driven blowers. In addition to the apparatus and buildings I described are the works connections, principally underground, connecting the apparatus throughout the plant. These connections comprise gas mains, water lines, tar lines, oil lines, steam lines, some of which are overhead and some of which are underground.

Q. Have you produced here any photographs showing this plant?

A. I have.

Q. Were they taken by you or taken under your direction and in the course of your duties?

A. They were, I produce seventeen photographs (handing counsel).

Q. Numbered one to seventeen?

A. Correct.

47 By the Master:

Q. What do they purport to show?

A. They show the Flushing Works of the New York & Queens Gas Company, which I have just described.

Q. All of these buildings, you mean?

A. They show all of these buildings, and the apparatus out in the yard but not concealed by the buildings.

Mr. Tobin: If the Master please, can we ascertain as to when these photographs were taken and how they were certified to?

The Master: Yes.

By Mr. Ransom:

Q. When were these taken?

A. February 21, 1919.

Q. And you were present?

A. I was.

Q. And looked through the camera?

A. I did.

Q. And you directed their taking?

A. I did.

By the Master:

Q. Have there been any changes since that time?

A. In the construction of the fence which incloses the property, which these photographs do not show, the said fence having been built in the latter part of——

Q. I mean do those photographs actually show the property as it is today?

A. They do, with the exception of the fence.
Q. Well, you say the fence is not shown on it?
A. The fence is not shown.
Q. Then the photographs do not show the fence?
A. With that exception, it shows the plant as it is today.
Q. There is no exception about it. It does not show a fence, does it?
A. It shows a wooden fence.
48 Q. This does (indicating)?
A. It shows a wooden fence which has since been removed, and in part a wire fence.

The Master: I understood you to say these photographs did not show a fence at all.

Q. With the exception of this wire fence, these photographs, to your knowledge, correctly show the plant as it is today?
A. They do.
Q. I notice that on photograph No. 11, showing excavations for alterations for yard connection, the condition there shown, so far as the excavations of the yard are concerned, was a temporary condition?
A. It was.
Q. And likewise, the matter shown on No. 12, the same excavation?
A. That is correct.

Mr. Ransom: I offer these photographs in evidence. I have only two sets here (handing set to Mr. Chambers).
Mr. Tobin: What date did you say these were taken?
The Master: February 21, 1919. What difference does it make when they were taken?
Mr. Ransom: What is that?
The Master: What difference does it make when they were taken if they are correct now?
Mr. Neumann: Might I ask counsel whether he intended to have the pencil marks that are on the back considered as part of the photograph that you can read when you put the photograph to the light?
The Master: Counsel for the complainant need not answer that question.
Mr. Ransom: There is not anything written on the back. These are photographs taken in connection with some other work.
49 Mr. Neumann: Just look at them—each one of them.
The Master: Do not let us waste time on that.
Mr. Ransom: These photographs were not made for this case, I will admit that.
Mr. Tobin: We object to them, if the Master please.
The Master: Why?
Mr. Tobin: We do not believe they have been properly proven.
The Master: Objection overruled.
Mr. Ransom: I will give the defendants one set of these now and

have another set made, and if you will tell me who takes these now we will supply the other set.

Mr. Chambers: I will take them (taking photographs).

Mr. Neumann: That objection inures to the benefit of the defendant Nixon also?

The Master: All objections and rulings will go to the benefit of all defendants.

Mr. Ransom: These will be marked as one exhibit? They are numbered one to seventeen.

The Master: Yes.

Photographs received and marked Complainant's Exhibit No. 48 (17 photographs).

Mr. Ransom: That is all with Mr. Alrich, with the exception of proof as to Exhibit 47 for identification.

The Master: The cross-examination will be reserved.

50 MAYNARD H. SPEAR was called as a witness on behalf of the Complainant and, having been first duly sworn, testified as follows:

Mr. Ransom: I offer in evidence a copy of the Uniform System of Accounts for Gas Corporations, as prescribed by the Public Service Commission for the First District of the State of New York, including the final order and the modifying order recently made in case No. 578.

The Master: Any objection?

(No response.)

Received and marked Complainant's Exhibit No. 49.

Direct examination.

By Mr. Ransom:

Q. Mr. Spear, have you produced here a copy of the rate schedule of the New York & Queens Gas Company as filed with the Public Service Commission for the First District pursuant to its order?

A. Yes.

The Master: Isn't this a statutory rate?

Mr. Ransom: Yes, but they require, the Commission requires the filing of a schedule with respect to certain matters, as to forms of contracts and the like.

Mr. Neumann: May I see that (taking paper)?

Mr. Ransom: That was offered and received in the old case.

Mr. Chambers: Does this vary the statute? Is this in variance with the statute?

Mr. Ransom: No.

Mr. Chambers: The statute says a dollar. I do not see
51 that we are interested in any other rate. I am going to object to it as incompetent, irrelevant and immaterial, on the

ground that the statute fixes the rate, and anything outside of that would be immaterial.

The Master: That is what made me ask Mr. Ransom when he offered it.

Mr. Chambers: I mean I do not see why we should go into the trial of something else than the Dollar Rate, unless they furnished gas outside Greater New York.

Mr. Ransom: As far as the rate is concerned, it only fixes it a dollar.

The Master: What is the purpose of this?

Mr. Ransom: It is part of the conditions under which we do business—a condition imposed by State regulatory authority.

Mr. Neumann: For what purpose are you offering it, Judge; what, particularly?

Mr. Ransom: For all purposes.

Mr. Neumann: No, what particular fact are you trying to prove by that writing?

Mr. Chambers: I insist that my objection is good there.

Mr. Ransom: Your Honor previously ruled that it was admissible, and the question was argued out at great length in the Consolidated Case.

Mr. Chambers: He is now offering in evidence a Statute, Chapter 125 of the Laws of 1906, which is the law on the subject of rates in this territory, and none other is recognized by the defendant Newton.

Mr. Ransom: Any regulation that you impose by authoritative law on this company becomes a part of the conditions under which it does business.

52 Mr. Chambers: No. I disagree with you. That statute covers the subject of rates, and it is supreme.

Mr. Ransom: I wish that statute were the only condition with which this company had to deal.

The Master: I will take it. Objection overruled.

Mr. Tobin: Exception.

Mr. Chambers: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit No. 50.

Q. Mr. Spear, where do you live?

A. 252 Barclay Street, Flushing.

Q. How old are you?

A. Forty-six.

Q. What position do you now hold with the New York & Queens Gas Company?

A. Vice-President and General Manager.

Q. Since what date have you been vice-president?

A. January, 1920.

Q. When did you become general manager?

A. In 1907.

Q. Were you, during any period of time, secretary of the New York & Queens Gas Company?

A. I was.

Q. During what years?

A. Part of 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918 and 1919.

Q. What was your educational training and experience prior to entering business?

A. I took a special course in chemistry at Stevens Institute.

Q. Which you finished about when?

A. About 1894.

Q. When you went into business, with what were you first connected?

A. The Bayonne Chemical Works, as chemist.

53 Q How long were you with that concern?

A. Two years.

Q. And after that what was, consecutively, your business experience?

A. I went with the Standard Gas Light Company in 1896 to 1899, as assistant superintendent of works; from 1899 to 1901, superintendent of the Hornell Gas Light Company, Hornell, New York. From 1901 to 1902 I was engineer with the Joseph Edwards Company, New York City, 1902 to 1905 as superintendent of the Newtown and Flushing Gas Company and New York & Queens Gas Company. 1905 to 1906 manager of the Williamsport Gas Company, Williamsport, Pa.; and 1906 to date, successively, manager, secretary, general manager and vice-president and general manager of the New York & Queens Gas Company.

Q. Have you actually made gas and been in actual charge of the operation of plants?

A. I have.

Q. Have the plants that you have had charge of been exclusively water gas plants?

A. All with the exception of the Hornell Gas Light Company, which was natural gas.

Q. And in the course of your duties as secretary, vice-president and general manager of the company, have you become familiar with the Uniform System of Accounts for Gas Corporations, as prescribed by the Public Service Commission for the First District?

A. I have.

Q. State in a general way what has been your personal experience with the accounting end of the gas business.

Mr. Neumann: Objected to, on the ground it is immaterial, irrelevant and incompetent.

The Master: Objection overruled.

54 Mr. Tobin: What difference does that make?

The Master: Objection overruled.

Mr. Tobin: Exception.

The Master: State your experience with the accounting department.

A. In the Williamsport Gas Company all the books were under my charge, with the exception of the general books, which were kept in New York, and since 1913 all the general books and the subsidiary books have been under my charge, with the New York & Queens Gas Company.

By the Master:

Q. You have not made entries in them yourself?
A. Not in general books, no.
Q. In any books?
A. Well, some of the subsidiary books, yes. For instance, I approved all vouchers, all sundry creditors' vouchers, and classified them.
Q. But the actual bookkeeping work is not done by you or under your immediate direction; you have a chief bookkeeper or accountant or somebody?
A. Yes, but I am in conference with him all the time. He comes into my office and asks me questions with regard to the books, and I look over them.

By Mr. Ransom:

Q. Do you classify the vouchers for materials and supplies and the like?
A. Yes, I do.
Q. And do you make up the various reports of the company?
A. Well, they are made up under my direction.
Q. That is, you have direct and personal charge of the doing of that?
A. Yes.
Q. Are you familiar with the books of the New York & Queens Gas Company, and the method of making entries therein?
A. I am.
55 Q. Will you describe what books of account and subsidiary records were kept by the New York & Queens Gas Company during the years 1919 and 1920?

The Master: Do you believe that this will be a case where I am forced to take in general books of account, the same as I did in the Consolidated Case?
Mr. Ransom: I so think.
The Master: I should not imagine it would be very difficult to put in somewhat better proof here.
Mr. Ransom: I think we will be able to produce somewhat more detailed proof in certain respects.
The Master: You can have the man who made the entries in books, I imagine, and bring in the original papers, with a small company like this.
Mr. Ransom: We can do something like that.
Mr. Tobin: Mr. Master, I think Mr. Neumann's objection is

good—that is, his last objection. There is nothing shown yet that Mr. Spear is in real touch with the books of the company.

The Master: His objection was not good, Mr. Tobin, because the inquiry was simply, what did he have to do with them. Now he has told us what he had to do with them. There may be another objection come along based on that; but that objection was not useful.

Mr. Neumann: It was a very clumsy question, and I did not get the purport of it, myself.

56 The Master: What was the last question?

Q. (Repeated by the stenographer.)
A. General ledger No. 4——
Q. Which covers what?
A. January, 1919, to date.

Mr. Neumann: You are now reading from a memorandum, are you, Mr. Spear?
The Witness: Yes.

(Continuing:) General Journal No. 5, from September, 1918, to date; General Cash Book No. 3, July, 1916, to date; Accounts Payable Ledger, No. 4, January, 1919, to date; Operating Expense Ledger No. 2, January, 1919, to date.

Subsidiary to that, are the Accounts Receivable Ledger, Sundry Debtor Blotters, then Consumers' Ledgers A to I, inclusive, and K, and four Prepayment Ledgers, Bill Register, Pay Rolls, Vouchers and reports of various departments.

Q. Describe, if you will, the system by which entries relating to the costs of material used in the manufacture of gas find their way into what you have referred to as the Operating Expense Ledger?

A. Coal is received—take one, for example, which is Coal. The receipt of the coal is certified to on the invoice rendered by the coal company, on the back, certified as to the quality of the coal and the quantity received, and he puts it on his running daily report. The bill is sent to the accounting department, where it is entered, where the accounting department check up the additions and extensions, and the price. Then it comes to me for approval, and the classification; then goes back to the accounting department, who put it in the accounts payable and through our general books.

57 Q. How is coal received at this plant of the New York & Queens Gas Company? Is it received directly from a railroad connection up to this time, or is it brought by trucks or wagons?

A. It is brought by barge and unloaded at the dock, on Flushing Creek, and then carted from there in automobile trucks to the plant and stacked in the yard, in the coal bins.

Q. How far is the point of unloading of the barges?

A. About half a mile. At the present time they have got to cart it over that, on account of the construction of a big sewer which blocks the way. They have got to go a round-a-bout way to get to it.

By the Master:

Q. About how many barges of coal do you have in a year?

A. Of broken coal, about an average, pretty nearly, of a cargo a month, five or six hundred tons; and on boiler coal probably one every two months.

Q. When it comes on the barge alongside of Flushing Creek is it weighed there at all or is it weighed when it gets to the plant?

A. No, it is not weighed; we take the bill of lading weight.

Q. You always take the bill of lading weight?

A. We have to pay on the bill of lading weight.

Q. Do you not in any way check up your quantities?

A. Well, we check up the quantities by periodical inventory, periodical measuring of the coal pile.

Q. You do not check up the quantity in the barge for which you are charged?

A. No.

Q. Who receives the coal from the barge?

A. The superintendent of the works.

Q. Personally?

A. Yes.

58 Q. So he can tell us just how many barges of coal he got during the year—he would know?

A. Oh, yes.

By Mr. Ransom:

Q. Is Flushing Bay and Flushing Creek within the lighterage limits of New York City?

A. No.

Q. Do you know about how far or how long a trip by water it is from the lighterage limits of New York harbor?

A. I would say about five hours; four to five hours.

Q. About how many miles, do you know? Or do you know it only in terms of hours?

A. No, I would not say how many miles it is.

Q. At what point is oil received and how is oil received for the plant of the New York & Queens Gas Company?

A. It is received at the dock on Flushing Creek, and from there we have a pipe line that runs to the plant. The barge is run in by the tug and the tug stays with it, furnishing steam to the pump, and the pump is on the barge, and pumps all the oil from this barge up into our tanks.

By the Master:

Q. Is that measured?

A. Oh, yes.

Q. Where is that measured?

A. In the works.

Q. In the works?

A. Yes, the measurement is taken before we start to pump. The

barge comes in and they telephone up that the barge is in and ready to start, and the measurement is taken of the tanks and the reading of the oil meters on the machines.

Q. In the works?

A. In the works. And then when they finish they usually pump for a half or three-quarters of an hour to clear the line, and then after they stop the measurement is taken again of the tanks, and the reading of the oil meters.

59 Q. And the additional quantity would represent the amount you got out of the barge?

A. Yes.

Q. Do you pay on that measurement a certified amount or on bill of lading, or something of that kind?

A. We usually agree pretty nearly with the Standard Oil Company.

By Mr. Ransom:

Q. You have a Produce Exchange certification?

A. Yes, from Charles Martin & Company.

The Master: But you do not vary much from it?

The Witness: Very little.

Q. That is the commonly-recognized method of certification for oil delivery in this territory?

Mr. Neumann: Objected to, as incompetent, irrelevant and immaterial.

Mr. Chambers: That is objected to.

The Master: I will sustain that.

Mr. Ransom: Exception.

By the Master:

Q. Tell me this: who attends to the receiving of the oil?

A. The superintendent.

Q. Does he supervise the measurements?

A. Sometimes he does it personally; sometimes he sends an engineer down to take the measurements.

Q. Is there any record to show whether he does it himself or whether the engineer does it?

A. I do not think there would be any record to show just who took the measurements of each barge.

Q. The superintendent would have some record of its having been done, though?

A. I don't think he keeps the actual record of the measurements after the bill has been passed and the entries made.

60 Q. How many deliveries of oil do you get a year?

A. About one a month.

Q. That would be about 12?

A. Yes.

Q. Those are the two big items, are they not, of material?

A. Yes, coal and oil. Of course, we have two kinds of coal; we have the generator coal and the boiler coal.

The Master: Yes. I have been asking these questions, Judge, to indicate how you might give us better proof on this than you did in the Consolidated Case.

Mr. Ransom: Perhaps not better proof, but more proof.

The Master: Well, perhaps a little better, too.

By Mr. Ransom:

Q. Will you describe the method by which the record is kept of the amount of coal used in the generators and under the boilers.

A. The gas maker's assistants fill the large buggies of coal from the coal pile, take it by elevator to the charging floor of the generator house, and when the gas maker uses it he marks down the buggy that is used.

Q. And you have a standard sized buggy?

A. Yes. And then that record goes on the gas maker's report, which is turned in to the superintendent the following morning, and he makes up his report from those figures. In the case of boiler coal it is wheeled in in small barrels by the coal passers, dumped on the floor of the boiler room, where the fireman can use it; then that record is taken from the slate the following morning by the superintendent, for each day.

Q. What is your system of keeping track of the labor ele-

61 ments entering into your various departments?

A. The superintendent has a distribution sheet for each employee, each man at the plant, and——

Q. He has a time card, which permits of a showing of the distribution of his time?

A. Yes.

Mr. Neumann: Why not let the witness say it, Mr. Ransom? He was going along in good shape.

The Witness: Yes, he has a distribution sheet, with the man's name on it, and then it has the various accounts on the upper part, and the dates down the side. It runs for a month. He puts the man's name down opposite each account that he worked the previous day, and then once a week he totals it and makes up his pay roll from that, and the pay roll goes through the accounting department. At the end of the month this distribution sheet is checked and the distribution put on the back of the pay roll.

Q. That is true so far as the manufacturing department is concerned. What is done in the other departments—the Street Department?

A. The street department is all contract work. In the shop department they have time cards which each man makes out, and that is transferred to these distribution sheets. It is a very simple sheet. In fact, the sheet was gotten up originally for the Shop Department and applied to the works. It is carried for each one of the men, and from that it is entered in the pay roll.

Q. The pay roll for the Manufacturing Department is certified by whom?

A. By the superintendent of the works.

Q. And the pay roll for the Shop Department is certified by whom?

A. By the clerk in the shop and the superintendent of the shop.

62 Q. And the office staff and employees, how is their employment record kept?

A. On still another pay roll of the same kind.

Q. That is kept directly on the pay roll?

A. Yes.

Q. At the general office?

A. Yes.

Q. Where is the office of the New York & Queens Gas Company?

A. 88 Main Street, Flushing.

Q. Not at the works?

A. No.

Q. Will you describe the accounting method by which entries relating to repairs of meters and other miscellaneous shop items find their way into the general books of account?

A. The repairs to meters are made by the Standard Gas Light Company at the 111th Street shop, and are billed once a month as to the number of meters repaired and the kind of repairs, and that is checked from the records at the shop and the bill certified to by the clerk and the superintendent, and put through, the same as the other sundry creditors' bills.

Q. In what manner are the accounts of consumers kept, and what is done as to meter readings and the making out and collection of bills and accounting of the receipts and revenues of the company? Just describe the method pursued in reference to those.

A. The indexer is given a book for the day's work, and visits each one of the—that book is loose-leaf and has a sheet for each consumer, and is ruled off by spaces, so that the date can be put on it. Then he reads the index of the meter, putting the reading in the space provided for it, brings the book in in the afternoon, and the next morning the bookkeeper places that reading or transfers the

63 reading from the index book to his ledger, in which is also shown the previous month's index. He makes the subtraction in another column, showing the cubic feet of gas consumed, multiplies it by a dollar, and gets the amount for the bill.

Mr. Chambers: I think we ought to object to that. I think he is going too far, and you ought to get that information from the person himself. I object to it as incompetent, irrelevant, immaterial and hearsay.

The Master: I think the witness is just describing a system.

Mr. Chambers: If it is limited to that, I think that might be all right.

The Master: I think that is the purpose of it now.

Mr. Ransom: He is describing a method and course of business.

Q. Had you finished?

A. Then the bookkeeper puts the reading on the bill, figures the amount, checks it with his ledger, and the bill has already been addressed by someone else in the department there from the Elliott

addressing machine, and then it goes to another bookkeeper, who puts it in the bill register, where the total is made, and we get the total sales for the month that way. Then, when the bill is paid, any bills are paid, the coupon is taken from the bill and pinned to an adding machine record, totalling all the coupons for that day on a particular ledger; it goes to the bookkeeping department and is checked in both the register and ledger. At the end of the month both the register and the ledger are balanced and act as a check on one another. At the end of the month, any unpaid bills are entered in the outstanding book, and from that time on until those
64 accounts are changed to bad and doubtful, the payments are entered in both the outstanding book and the ledger as a check, and both balanced.

Q. Your sales territory is divided into how many districts?
A. Flushing, College Point, Whitestone, Bayside and Douglaston.

The Master: Five?
The Witness: Yes, sir.

Q. Does the New York & Queens Gas Company keep more than one set of books of account?
A. No.
Q. And did not, during 1919, or thus far in 1920?
A. No.

By the Master:

Q. What do you have, different branch offices in these five sections?
A. No.
Q. Just one main office?
A. We have one office in Douglaston, for the purpose of developing the territory. You see, we have only started to furnish gas there since last November. In College Point and Bayside the people can pay the bills at the bank, and the bank sends a statement of what they collect, and it is deposited right away. Otherwise we have no branch offices.

By Mr. Ransom:

Q. Where is your shop department?
A. Right around the corner from the office, on Amity Street.
Q. That is located in rented property?
A. Yes, sir.
Q. And your office is, likewise, located in rented property?
A. Yes.
Q. Up in the business section of Flushing?
A. Yes.
65 Q. The only land you own is the land in connection with the works, in Farrington Street and Myrtle Avenue?
A. Yes, that is right.
Q. Have you produced in court the books of account of the complainant company, concerning which you have testified?

A. I have.

Q. Is this book which you have here produced, marked General Ledger No. 4, the general ledger of the New York & Queens Gas Company, to which you have referred, covering the period concerning which you have testified (indicating book)?

A. It is.

(Examination of the witness suspended.)

PATRICK J. O'CONNOR, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. O'Connor, where do you live?

A. 48 Central Avenue, Flushing.

Q. What is your business?

A. Builder.

Q. What kind of building?

A. General building.

Q. How long have you been in that business?

A. 15 years.

Q. And have been, during that time, actually engaged in the construction of frame buildings and brick buildings and other types of buildings in that Flushing region?

A. Yes, sir.

Q. And you are and have been familiar with the prices of labor and material for buildings in Flushing and vicinity?

A. I have.

Q. Are you accustomed to estimating the cost of erecting buildings in that region?

A. I am.

66 Q. At the request of the New York & Queens Gas Company, did you examine two buildings of the New York & Queens Gas Company, one a frame building occupied by the superintendent as his residence, at the plant, and the other a brick office building with a frame addition?

A. I did.

Q. That was about when?

A. About the first of the year.

Q. Have you made an estimate of the cost of building such buildings as of December 31st, 1919, or January 1st, 1920; that is, as of the first of the year?

A. As of the first of the year, yes.

Q. And is this the estimate which you made and submitted to the New York & Queens Gas Company relative to the erection of those two buildings at that time (handing witness)?

Mr. Tobin: If the Master please, may we have some particular designation of the building, so we may know exactly?

A. Yes, that is.

The Master: A residence and an office building. Who lives in the residence, this man Morrison?

Mr. Ransom: The superintendent.

The Master: Where are these buildings located?

Mr. Ransom: At the plant.

The Master: Part of the plant?

Mr. Ransom: Well, right in the plant structure. One of them is, of course, the office building with a frame addition, and the other is on the plant property, facing on Farrington Street, right by the side of the—it is between the revivification yard and the governor house and garage.

Mr. Neumann: I move that that be stricken from the record.

Mr. Chambers: That is some of Mr. Ransom's testimony.

67 The Master: He asked the witness whether he gave that estimate.

Mr. Neumann: May my exception be noted to the refusal to strike from the record?

The Master: Yes.

Q. As to the superintendent's cottage—what kind of a building is that?

A. A frame building.

Q. Of what size?

A. 30 by, I think, 21 or 22, as I remember it. Now, I would not be sure of that.

Q. Would this refresh your recollection as to those dimensions (handing witness paper)?

By the Master.

Q. How high?

A. A two story and attic.

Q. What kind of a foundation?

A. A brick foundation.

Q. How deep?

A. Seven foot.

Q. How thick?

A. It might be an eight-inch wall.

Mr. Neumann: What is that? Might be eight-inch wall?

The Witness: Eight inch.

Mr. Neumann: What were the words before "eight inch"?

The Witness: I did not use any, sir.

By Mr. Ransom:

Q. What was your figure for the cost to build that building or such a building as of December 31st, 1919?

Mr. Chambers: Just a minute now. Are you speaking of the residence?

Mr. Ransom: Yes, the superintendent's residence.

Mr. Chambers: I object to that question on the ground it is incompetent, irrelevant and immaterial. It is obvious that
68 a residence ought not to be treated here as used and useful in making gas. Upon the further ground that his prices speak of an abnormal period, namely the present time, and we are concerned—if we are concerned at all with this building, which I say we are not—with book cost or cost to the company as of some period when we were not in an abnormal time.

The Master: Yes. I am going to take the testimony, Mr. Chambers, upon this theory: that I want to have it in the record as a basis for the statement, if it be the fact, that in this abnormal period it is very much more than it would be in normal times, and that the book value, if I find that to be the fact, or the book investment, is less than it would be today. I agree with you that the cost of reproducing, even less depreciation, in normal times, of property, is not the basis on which the rate must be made.

Mr. Ransom: The question is whether this is abnormal.

The Master: What?

Mr. Ransom: This price level has continued so long it is likely to go higher.

The Master: I do not agree with you at all. What I have been trying to say throughout the other case and this is that the investment must be taken as a normal period of investment, and if it analyzes in this case as it did in the Consolidated case, then what you actually and honestly put into it is the basis on which the rate should be made. The property ought not to be penalized because it
69 costs more to reproduce at this time. So far as making gas is concerned, there we have an entirely different situation. There I say what it costs you to make the gas, assuming we strike a high normal level, is what it costs you to make it.

Mr. Neumann: Then there is the other objection, that the residence is not a part of the costs.

The Master: I am going to reserve consideration of that until I hear a little more about it. It might be a very desirable thing to have the superintendent right on the plant and, if so, I would say this was an essential part of the plant. I will overrule the objection at this time.

Mr. Neumann: Exception.

Q. What was your figure?

The Master: For the reproduction of that house new, the beginning of the year; is that the idea?

The Witness: Yes.

A. $5,600.

Mr. Chambers: New, did you say?

The Witness: New.

The Master: That is, if you were to put up a new building of that general type, with an eight-inch brick foundation wall, seven feet deep, two story and attic, with the same kind of material as a

new building, it would cost you, at the beginning of the year, how much?

The Witness: $5,600.

Mr. Neumann: When you say the beginning of the year you mean January 1st, 1920?

The Witness: Yes, sir.

70 The Master: It would cost you more today?

The Witness: It would.

Mr. Chambers: The objection, if the Master please, goes to your question, too.

The Master: Yes.

Q. That is, as of the 31st of December, 1919, would you be willing to take a contract for work at that figure?

Mr. Chambers: I object to that.

Mr. Tobin: I object to that.

The Master: I will sustain the objection.

By the Master:

Q. Even at the first of the year, you were not crazy enough to take contracts at a fixed price, were you?

A. No, not at a fixed price, unless you could guarantee the material so you could have it.

Q. And guarantee that laborers would not go crazy, too?

A. Well, that is the point that enters into it.

The Master: That is what I mean.

By Mr. Ransom:

Q. Will you describe the other buildings—the building used as an office, with a frame extension?

A. As I have it here?

Q. As you recall it.

The Master: If the way you have it there is correct, you can say as you have it.

A. As I have it, the office building——

Mr. Chambers: No, I object, unless he saw it.

By the Master:

Q. Who wrote that down, Mr. O'Connor?

A. I dictated it and my daughter wrote it.

Q. Was it correctly written?

A. I take it so, sir.

71 Q. Looking at it now, would you say that correctly describes the building, as you recall it?

A. Yes, sir.

Mr. Chambers: Where did you get that information from?

The Witness: I was at the plant and measured the building.
The Master: And dictated it to his daughter. Now he says on looking at this estimate that he dictated to his daughter he recalls the building as he describes it there.

Q. Is that right, Mr. O'Connor?
A. That is right.
Q. Go on and tell us what it is.
A. As I have it on here; as I have written this estimate?
Q. I do not care where you get it.
A. I will read it from here. Office building, brick construction, about 25 by 30, two story and basement, with addition, frame construction, about 18 by 25, one story, would cost to replace at this time about $10,400.

By Mr. Ransom:

Q. That was as of December 31st, 1919?
A. December 31st, 1919.
Q. It would cost more at the present time?
A. It would.

Mr. Tobin: May I ask, if the Master please——
The Master: Of course, that is a new building.
Mr. Chambers: The same objection to that as to the other one.

By the Master:

Q. Let me ask you while we are here, Mr. O'Connor, so we can cut this matter short: If you were estimating the cost of reproducing this last building on a fire loss claim, allowing for the age of the building that is there, what would you have figured it on a reproduction cost, its sound value, as of December 31st, allowing for the building that was there?
A. If the building had been totally destroyed?

Mr. Chambers: I object to the question as incompetent, irrelevant and immaterial.
Mr. Ransom: I object to the question. It is incompetent and has no bearing on the issues in this case.
The Master: I am going to overrule all objections.

A. Might I ask you, if the building was totally destroyed?
Q. Yes.
A. If I was to reproduce I would have to figure for a new building, but the fire adjusters would not allow it.
Q. What would you figure ought to be allowed for the age of the building?

Mr. Ransom: I object to it as incompetent.

Q. (Continuing:) So you would be able to reproduce the building, a building of that age?
A. That is going too deep for me.

Q. You cannot answer it?
A. That is going too deep for me.
Q. Then my question does not make much difference in this record. How old a building was it?
A. Why, offhand I would say 20 or 25 years.
Q. In what condition?
A. Fairly good condition. The building was in good repair.
Q. Did it need any pointing or painting?
A. It had been kept up and pointed and painted and was in good condition.
Q. How was the superintendent's house?

Mr. Chambers: I object to that.

73 A. I would say the same. It was in good repair.
Q. How old a building?
A. I do not suppose more than, possibly, 15 years. It might be 20, don't you know.

By Mr. Ransom:

Q. Mr. O'Connor, in this photograph No. 3, is that the house referred to, also appearing in No. 2—a side view of it?
A. Yes, this here (indicating).

Mr. Neumann: Specify the house.
The Master: Which house, the superintendent's house?
Mr. Ransom: There is only one house in the picture.
The Master: The superintendent's house, you are referring to?
Mr. Ransom: Yes.

Q. No. 15 also shows the house?
A. Yes; that shows the rear end of the house.
Q. On No. 2, does that show the office building and the frame addition?
A. It does.
The Master: Over to the left hand end of the picture?
The Witness: Yes.
Q. And in the left hand side of photograph No. 1 is shown a closer view of the frame addition?
A. Right.

Mr. Ransom: I have offered this in evidence (indicating paper).
The Master: I have refused to take it.
Mr. Ransom: I ask to have it marked for identification.
The Master: What are you asking be marked, the estimate of the office building?
74 Mr. Ransom: Yes, for the superintendent's cottage and office building and frame addition.
The Master: Mark it for identification.

Paper received and marked Complainant's Exhibit No. 51, for identification.

The Master: Are you through with Mr. O'Connor?

Mr. Ransom: Yes.

The Master: Any cross-examination?

Mr. Chambers: Yes. I would like about an hour with Mr. O'Connor.

The Master: I am not going to decide in this case on a question of reproduction cost. I am telling you now, and putting it on the record, I won't do it.

Mr. Neumann: You allowed the complainant to prove that value for the present.

The Master: Yes, as indicating the futility of attempting to fix rates upon the present price of reproducing property. Since the first of the year the cost of putting up those properties has again advanced, hasn't it?

Mr. Chambers: Same objection

The Witness: Yes

The Master: How much?

The Witness: Why, 10 or 15 per cent, or more; easily 15.

The Master: How is anybody going to fix a rate valuing property on a reproduction basis? It can not be done. You would have to change the rate every two weeks.

Mr. Neumann: If the complainant is allowed to put in that testimony we should be allowed to cross-examine the witness.

75 Mr. Chambers: I want to ask him some questions.

The Master: Then we will suspend cross-examination until some future date. We will suspend with Mr. Spear today, and I will hear anything that counsel have to say with reference to the failure of the complainant to comply with any orders of the Court.

Mr. Tobin: We deem, if the Master please, that there has not been a compliance with the paragraph marked five; that is, which calls for the age of property, date of installation and acquisition.

The Master: Let us see what they give you.

Mr. Tobin: They do not give any age at all.

The Master: Let me see what they did give you.

Mr. Ransom: We have not yet furnished or undertaken yet to furnish—the matter is being prepared, and Judge Mayer's order, entered on the 14th, said within 15 days we should furnish the date of acquisition or installation of property, and we should furnish the age and, if the age was not known, that that should be so stated.

The Master: That will be the 29th of April.

Mr. Ransom: That material is now being prepared and will be ready in a few days.

The Master: Is there anything else anybody wants to talk about?

Mr. Ransom: The complainant, as already stated, is offering proof along the lines which it started to do with respect to

76 the value of this property for rate purposes. Judge Mayer has said that, if we expect to offer proof of original cost as a part of our case, we shall furnish it. We do not expect to offer proof of original cost as part of our case any more than we did in the Consolidated Case.

The Master: Yes, you did in the Consolidated Case.

Mr. Ransom: We did in rebuttal.

The Master: What?

Mr. Ransom: We did in rebuttal.

Mr. Neumann: Do you think we are going to take the burden of proof?

The Master: Wait a minute; let us understand this right now, Judge, and we will not be misled. If you rest your case here, without any evidence at all as to what you invested in these properties, I will dismiss the complaint.

Mr. Ransom: I do not think you could.

The Master: Then I will refuse to take any more proof.

Mr. Neumann: That is his position.

Mr. Ransom: If we show, as we shall, that the cost of making and distributing gas alone, without any return on any investment, is substantially more than the statutory rate——

The Master: I guess that is a complete answer, of course, but if I find there is even four cents——

Mr. Chambers: They admit 2½ per cent they make. Have you seen that complaint?

Mr. Ransom: Well, in 1918.

The Master: But in the Consolidated Gas case you had proof that you issued $38,000,000 worth of capital for property. That you got right away, the first thing you got in your case. There
77 was proof, and I said at the start I would hold that to be evidence of some cost to the Consolidated.

Mr. Ransom: We have even better proof in this case without offering either proof of original cost or proof of reproduction costs, which we will offer.

Mr. Chambers: They say they are making 2½ per cent.

Mr. Ransom: Why not be fair? We said in 1918.

Mr. Chambers: Well, that is the only time you speak of.

The Master: My only purpose here and in the Consolidated Case was to give you the way my mind is running.

Mr. Ransom: I am very glad to have it.

The Master: And you take your chances.

Mr. Ransom: I shall.

The Master: Anything else?

Mr. Tobin: That part has not been complied with. Then, if the Master please, as in paragraph 1, it may be from time to time we shall have to ask through you that certain other information be furnished, because it is such that we cannot make demand exactly at this time.

The Master: I will have to wait until complainant's time expires within which to give you all the information that is required here.

Mr. Ransom: We have furnished a complete inventory of this property and the appraisal. The Court has said if anything further is needed along those lines it will require a certificate of the Master.

78 The Master: I will handle it when we get to it.

Mr. Tobin: We shall be guided by the order in that respect, not what you are trying to read into the record.

The Master: If I find the order has not been complied with I will certify it up. I will see that it is complied with.

Mr. Ransom: It says the Special Master shall so certify.

The Master: The answer is we will get it here and there will be no certification.

Mr. Neumann: I will call on Judge Ransom to produce my letter to him of April 21st.

The Master: You produce your copy to him; what is the difference?

Mr. Ransom: I can cover that very succinctly, as I covered it before Judge Mayer. We turned over to them such books relative to the Newtown and Flushing Company as we had. The situation is, of course, that the Consolidated Company acquired this property about 1913, and the New York & Queens Gas Company came into existence in 1904. Such information and documents as there are are in the form of books, and there is not anything that I know of or can find anything about that has not been turned over to Mr. Frank with respect to the Newtown and Flushing Company.

Mr. Neumann: In order that there may be no question about it and the Master may have the situation before him, the situation is this: The New York & Queens books, for instance, will be open at a lump sum, for instance $1,000,000, the value of the
79 property, and the last entry on the predecessor company will be for $600,000, and there is nothing anywhere to explain in these books that we have had thus far the difference between $600,000 and the $1,000,000.

The Master: Very likely there is not anything.

Mr. Neumann: There are merger papers and agreements in which that is set forth, and those are the papers we want.

Mr. Ransom: The merger papers are in evidence today.

Mr. Neumann: That will indicate how the increase is arrived at. As I told Judge Mayer, we want to get down to the very things in contention.

The Master: We will get it before the case is over.

Mr. Ransom: You will not find anything that is not.

The Master: We will either find where the $400,000 went or we will assume where it went.

Mr. Tobin: That is left open, then, as I understand it?

The Master: Yes, we will have to handle that as we go along. Why is there any necessity for a long adjournment just yet? I do not see any necessity just yet for any long adjournment. So far as this proof that is being offered now is concerned, the books are methods of keeping books, the calling of witnesses making entries, or the superintendent, or whoever it is—so far as they want to go or think they have got to go, all those things we can take in, can we not?

80 Mr. Ransom: We would like to go ahead.

The Master: What harm will it do? You do not have to be prepared much for that; you know the situation of that. There may be necessity for an adjournment of a greater length of

time when you get these inventories, but I think now we can run along and get rid of a lot of these things here.

Mr. Ransom: We can go ahead on Friday.

The Master: I think I will put it on for Friday, the 30th, at 2 o'clock.

Adjourned to Friday, April 30, 1920, at 2 P. M., at the office of the Attorney-General of the State of New York, 51 Chambers Street, New York City.

Last Complainant's Exhibit, 51.

81 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, April 30, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.
Mr. Tobin and Mr. Cummings, of Counsel for defendant, Newton.
Mr. Neumann and Mr. Deegan, of Counsel for defendant Lewis Dixon, Public Service Commissioner.
(No appearance for defendant Dennis O'Leary.)

MAYNARD H. SPEAR recalled:

Direct examination.

By Mr. Ransom:

Q. Mr. Spear, when we suspended at the last hearing you had just identified General Ledger No. 4 of the New York & Queens Gas Company as the General Ledger kept by the company during the period which you specified on last Monday. Did the company have any other general ledger during that period?

A. No, it did not.

Q. Did you know in whose handwriting this book is?

A. Some of it is in Mr. Raynor's handwriting, and some in the handwriting of William Foy.

82 Q. Who is Mr. Raynor?

A. Secretary of the company.

Q. Formerly Assistant Secretary?

A. Yes, sir.

Q. And before that head bookkeeper?

A. Yes, sir.

Q. Who is Mr. Foy?

A. He is the general bookkeeper now.
Q. Do you find the handwriting of any other person or persons in that book?
A. No.

By the Master:

Q. Was that book in charge of either one of those two men you have mentioned?
A. Yes, sir.

By Mr. Ransom:

Q. It was in the charge of Mr. Raynor, as you testified, under your direction?
A. Yes, sir.

Mr. Ransom: I ask that this book be marked for identification.

Book marked Complainant's Exhibit 52 for Identification.

Q. I show you a book called General Ledger No. 5 of the New York & Queens Gas Company. Is this one of the books of that company, and the only book of its kind which was kept during that period?
A. It is.
Q. Can you say in whose handwriting the entries which you there find are?
A. William Foy and Mrs. Townsend.
Q. Who is Mrs. Townsend?
A. One of our bookkeepers.
Q. Is there any particular assignment of duties as between Mr. Foy and Mrs. Townsend?
83 A. Mrs. Townsend is a bookkeeper in the commercial department. While I was in the auditing department she helped Mr. Raynor out with these books, making entries under his direction.
Q. What is Mr. Foy's assignment of duties?
A. General bookkeeper. He devotes his entire time to the general books.

The Master: Mrs. Townsend generally is in the commercial department?
The Witness: Yes, bookkeeper.

Q. When did Mr. Foy come into the employ of the New York & Queens Gas Company?
A. I think it was April, 1919, either April or the first part of May. There are also some entries made here by Miss Mold.
Q. Is she a bookkeeper with the company?
A. No, she is my stenographer.
Q. She is still in the employ of the company?
A. She is.
Q. How long has she been in the employ of the company?

A. I would say probably seven years.

Q. Since what time, about has Mr. Raynor been employed by the company either as bookkeeper or assistant secretary or secretary?

A. He started in 1913.

Mr. Ransom: I ask to have Journal No. 5 of the New York & Queens Gas Company marked for identification.

Book marked Complainant's Exhibit 53 for Identification.

Q. You referred the other day, Mr. Spear, to a ledger called Operating Expense Ledger. Is this book the Operating Expense Ledger No. 2 of the New York & Queens Gas Company, the book to
84 which you referred, and does it cover the period which you described?

A. It does.

Q. What about the handwriting in that book?

A. Mr. Foy's handwriting is here, and Mr. Raynor's. There is one other handwriting, I think it is Miss Mold's. I am not quite sure, because there isn't much written out, it is mostly figures.

Mr. Ransom: I ask to have this marked for identification, Operating Expense Ledger No. 2.

Book marked Complainant's Exhibit 54 for Identification.

Q. You referred the other day, Mr. Spear, to a book called Accounts Payable No. 4, and described the period which it covered. I show you a book, Accounts Payable Ledger, New York & Queens Gas Company, which is marked now Book No. 3, which on the side is marked in ink No. 4. Is that the Accounts Payable Ledger No. 4 to which you referred?

A. It is. The printer made a mistake in that "3" and we put a paster on it which came off this noon.

Q. But this is the Accounts Payable Ledger which covered the period which you described on last Monday?

A. It is.

Q. And it is the only ledger of that kind which the company had covering that period?

A. It is.

Q. What about the handwriting in that book, so far as you can identify it?

A. Mrs. Townsend, Mr. Foy. Those seem to be the only two handwritings in this book.

Mr. Ransom: I ask to have Accounts Payable Ledger No. 3 marked for identification.

85 Book marked Complainant's Exhibit 55 for Identification.

Q. I show you a book called General Cash No. 3, New York & Queens Gas Company General Cash Book. Is this the General Cash Book concerning which you testified last Monday, and does this book cover the period which you then described?

A. Yes, sir.

Q. What about the handwritings in that book?
A. Miss Mold, Mr. Raynor and Mr. Foy.

Mr. Ransom: I ask to have this marked for identification.

Book marked Complainant's Exhibit 56 for Identification.

Q. Mr. Spear, in Complainant's Exhibit 52 for Identification and these ensuing exhibits I find various headings or titles or designations of accounts which are brought together in the index to Complainant's Exhibit 52 for Identification, showing the pages on which the particular accounts appear. Are those account headings taken from the uniform system of accounts?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not the proper way of proving it.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: I make the same objection.

A. Yes, with the exception that the uniform system of accounts calls for an amortization account. We carry a renewals and replacement account. Then we have an automobile repair account which they do not have.

Mr. Neumann: I renew my objection after the witness' answer.
86 The Master: And I renew my ruling.
Mr. Neumann: Exception.

Q. Is there any one account in the uniform system of accounts known to you which covers the matter of automobile repairs?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not the proper way of proving it.
The Master: What is the proper way of proving it?
Mr. Neumann: This witness doesn't know anything about the uniform system of accounts.
The Master: What is the proper way of proving it?
Mr. Neumann: By some one who is familiar with the uniform system of acounts, an accountant.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. No.
Q. There is an account in connection with stable expense in the uniform system of accounts?
A. Yes, sir.
Q. But you also keep a subdivided account called automobile repairs or expense?
A. Yes.

Mr. Neumann: I object to that on the same grounds.
The Master: Objection overruled.

Mr. Neumann: Exception.

A. (continued). That is a separate account, automobile repairs.

Q. And to that account you charge automobile repairs?

A. Yes.

87 Q. Do all vouchers for expenditures go through your hands before they are entered in the general books of the company?

A. They do.

Q. How are checks signed for outlays of money by the New York & Queens Gas Company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not the best way of proving it.

The Master: What is the best way?

Mr. Neumann: The checks themselves.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. They have to be signed by two officers of the company.

Q. What is the regular course?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The general bookkeeper brings me a statement of all the sundry creditors' bills, and I check it up, telling him what accounts to pay. Then he draws a check and submits it to Mr. Raynor, who checks the bills with the account on the stub of the check, and initials the bill so it won't be passed a second time. It then comes to me. I check the account on the stub of the bill with the bill—sometimes there are several bills, and they are all entered on this stub and totalled. I check the total to see that it is right, and initial the bill so it will not be passed again, and sign the check.

The Master: Who else signs the check?

The Witness: Mr. Raynor signs it first, and I sign it second.

Q. How is coal, generator coal, purchased by the New York & Queens Gas Company. Do you as an officer of the company,

88 or any other officer of the company as such, make a direct contract for the supply of anthracite generator coal?

Mr. Neumann: I object to that on the ground that no foundation has been laid for this witness to testify. The witness may not know anything about it. He should be qualified first.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Deegan: And the contract would be the best evidence.

The Master: Objection overruled.

Mr. Deegan: Exception.

Mr. Tobin: Is it not intended by this witness to show the method of business, and not the actual transaction, and that that is as far as these questions and answers are supposed to go?

The Master: That is my understanding, and that is why I have overruled the objection.

Mr. Neumann: They evidently seem to go deeper.

Mr. Tobin: That is the point I wanted to make, that they are not intended to prove.

The Master: I overrule the objection because I understood the question called for a course of dealing, a method.

Mr. Ransom: I am disclosing, as a first step in this case, the method under which the transactions of this company are carried out.

The Master: I understand from the witness' testimony that coal is brought from the Consolidated Gas Company.

89 Q. That is, a contract is made by the Consolidated Gas Company instead of by your company?

A. It is.

Q. How do you get the coal that you want?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. When you need anthracite coal what is the process?

A. We send one of our regular orders to Mr. Gilbert Francklyn, engineer of distribution of the Consolidated Gas Company.

Q. Is that done by you?

A. It is.

Q. You send an order for the quantity of coal which you think is needed?

A. Yes, sir.

Q. How is that coal paid for, is it paid for by your company, or is it paid for directly to the company selling the coal, or is it paid by you to the Consolidated Gas Company?

A. We are billed direct by the coal company, and a check is sent direct by us to the coal company.

By the Master.

Q. You get the deliveries direct from the coal company?

A. Yes.

Q. Your requisition goes through the Consolidated to the coal company?

A. Right.

A. And the coal company delivers the coal to you?

A. That is right.

90 Q. The price at which it is delivered has been arranged theretofore by the Consolidated Gas Company officials?

A. Yes, sir.

Q. But the coal comes to you from the coal company and you pay the coal company for it?

A. Yes, sir.

Q. At a price which had already been fixed?

A. Yes. That is only in the case of generator coal.

By Mr. Ransom:

Q. What about boiler coal?

A. I order that direct from the New York Edison Company, who have a contract for large quantities of coal.

Q. Do you use a relatively large quantity of boiler coal?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not within the province of this witness, to characterize relatively large or small. He can tell what the quantity is, and then the Master can draw his conclusion.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: It was understood that he was simply going to indicate the system or method of doing business and not show the extent of coal purchases, or the quantity of coal needed.

The Master: It will not do any harm to have him say they don't buy very much.

A. No.

Q. How is the payment for this boiler coal, such as you buy, handled?

91 A. The New York Edison Company bills us, and our check is sent to them.

Q. That is, you receive a bill from the New York Edison Company?

A. Yes.

By the Master:

Q. Who fixes that price?

A. The purchasing agent of the Consolidated Gas Company.

Q. In other words, you pay the price that the Consolidated Gas Company's purchasing agent tells you he has arranged?

A. Yes.

By Mr. Ransom:

Q. How do you get oil, how is that handled?

A. We are included in the contract made by the Consolidated Gas Company, and when we need a cargo we send an order direct to the Standard Oil Company of New Jersey.

Q. That is, your requirements are figured in on the Consolidated contract?

A. They are.

Q. What is the course by which you get oil when you need it, what do you do?

A. I send over one of our regular orders to the Standard Oil Company, ordering so much oil, and stating the date when I want delivery.

Q. That is, you send orders for oil directly to the Standard?

A. That is right.

Q. Within the quantities specified in the contract as for your company?

A. I don't quite get that.

Q. When a contract has been made up of the Consolidated with the Standard Oil Company of New Jersey, or from whatever
92 other company the Consolidated procures oil, your requirements have been included?

A. They have.

Q. And you send orders to the oil company against that quantity.

Mr. Tobin: I object to that. It calls for a conclusion of the witness.

The Master: Yes, but it will not do any harm.

Mr. Tobin: Exception.

A. Yes.

Q. Who bills you?

A. The Standard Oil Company.

Q. And you pay directly to the Standard?

A. We do.

Q. Are these requisitions for the different kinds of coal sent by you to the various persons whom you have described—do they pass through your hands?

A. Yes.

Mr. Tobin: If we may ask, if your Honor please, as to the dates of these various forms——

Mr. Neumann: He hasn't got to that yet.

Q. Has the Public Service Commission for the First District prescribed a form of report for the annual report of this company among other gas companies?

A. They have.

Q. And have annual reports to the Public Service Commission been made on the prescribed form by the New York & Queens Company since your connection with it?

Mr. Neumann: I object to that on the ground it is incompetent irrelevant and immaterial and not within the province of this
93 witness to say whether the reports are as prescribed by the Public Service Commission.

The Master: On the prescribed forms, he said.

Mr. Neumann: No, he went further than that.

(Questions read by stenographer.)

The Master: You see I was right in my statement. I will let the witness say he made reports on the forms prescribed.

A. Since 1907.

The Master: As far back as 1907?

The Witness: Yes.

Q. Have these annual reports been made up under your direction and supervision?

A. They have.

Q. And made up from the books of account here produced, and the other records to which you have referred?

A. Yes.

Mr. Ransom: I offer in evidence a certified copy of an order of the Public Service Commission, Order No. 728, filing order, prescribing a form of annual report to be filed by gas and electric corporations subject to the jurisdiction of the Commission.

The Master: Is there any objection?

Mr. Neumann: No.

Copy of order received in evidence and marked Complainant's Exhibit 57.

Q. Are the expenditures of the complainant company audited and approved in any manner, Mr. Spear?

A. Yes. They are approved once a month by an auditing committee of two.

94 The Master: Was there any subsequent order after this, Judge Ransom? This seems to provide for the 1907 report.

Mr. Ransom: I think under the authority of that order the chief statistician of the commission sends out each year a form of report.

The Master: This simply says, "Ordered that every corporation shall on or before October 31, 1908, make and file with the commission a report on said form for the six months ending December 31, 1907." That is all it says.

Mr. Ransom: The annual report, I believe, is required by statute, and that is the authority under which the form has been prescribed by the chief statistician of the commission.

The Master: The point is that that order seems to limit the prescribed form to that particular year.

Mr. Vilas: The first paragraph says that the form prescribed by the statute is adopted.

Mr. Ransom: The first paragraph is:

"The form for reports of all gas and electric light corporations subject to the jurisdiction of the commission as the terms are defined in Section 2 of the Public Service Commission law, as the said form has been prepared by the chief statistician of the commission, be and the same is hereby approved and prescribed by the Commission for the First District."

Now, the law required an annual report, and my impression is that under the authority of the adoption of that form the
95 chief statistician and the secretary each year send out a form of report.

The Master: The form of report that your company has made has been supplied by the Public Service Commission from year to year?

The Witness: That is right.
The Master: You don't print it yourself?
The Witness: No.
The Master: Or prepare it yourself?
The Witness: No.
The Master: The report is furnished by them.
The Witness: It is.

Q. They furnish you copies so as to create duplicate originals, do they not?
A. They do.
Q. One of them you retain and the other you file?
A. Yes.
Q. They are filed under oath, signed by the treasurer of the company?
A. Occasionally it has been. I have signed some of them.

The Master: By an officer of the company?
The Witness: Yes.

Q. Now, this auditing committee of two, what is turned over to them each month, among other things? First, who are they?
A. Edgar Palmer and H. M. Brundage.

The Master: How long had they been the auditing committee, for several years?
The Witness: About six years, I would say.

Q. Mr. Brundage was for some years one of the assistant secretaries of the Consolidated Gas Company?
96 A. Yes.
Q. And is now the secretary?
A. Yes, sir.

Mr. Neumann: Why not show where the auditing committee gets its authority from. There is nothing here to show.

Q. To whom does this auditing committee render its report?
A. To the board of directors, and receives its authority from the Board of Directors.
Q. Of the New York & Queens Gas Company?
A. Yes, sir.
Q. That is a committee created by the Board of Directors of the New York & Queens Gas Company?
A. Yes, sir.
Q. What is turned over to the members of this auditing committee at their monthly audit or examination?
A. Cancelled checks——

The Master: Do they make monthly audits and examinations?
The Witness: Yes, sir.

Q. What is turned over to them?
A. The cancelled checks, the cash book, the trial balance book and the general ledger. They check all the vouchers against the

cash book and the trial balance book against the balances in the ledger.

Q. Do they report each month's audit to the next meeting of the Board of Directors of the company?

A. Yes, they sign a certificate, make out a certificate, sign it and give it to me, and I present it to the Board of Directors.

The Master: They do that between meetings, do they?

97 The Witness: Yes, it is just before the Board of Directors meeting that they make the audit of the previous month's accounts.

Q. And does the Board of Directors take action with respect to the report of this auditing committee?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it may not be within the province of this witness to testify to that, so far as this record shows.

The Master: It would be binding on the public, but I will take it as not being especially important.

Mr. Neumann: Exception.

A. Yes.

Q. And are these monthly reports of the auditing committee and the action of the board of directors thereon subsequently submitted to the annual meeting of the stockholders of the company?

Mr. Neumann: Objected to on the same grounds.

Mr. Tobin: Objected to.

The Master: I will take it.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. They are.

The Master: I am taking this line of testimony simply as indicating the way the business of this company is conducted.

Q. For the opening of streets and the laying of mains is it necessary to obtain certain permits from municipal authorities?

A. Yes.

Mr. Neumann: Objected to.

98 Q. What permits are obtained?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Overruled.

Mr. Neumann: The witness has not shown any qualifications for this at all.

The Master: He knows whether or not he can open a street for his company without getting a permit, or whether the policeman will nab him by the back of the neck for opening it without showing a permit.

Mr. Neumann: I renew my objection.
The Master: Overruled.
Mr. Neumann: Exception.

Q. Just what is done with respect to a proposed main?
A. We have to make a sketch showing the position in the street that we want to lay it in. That is submitted to the Bureau of Sub-structures.
Q. That is the Sub-Surface Structures?
A. Sub-Surface Structures, who approve it if it is in the right location; then——

Mr. Neumann: I move to strike that out on the ground it is a pure characterization. The witness has no right to testify to that.
The Master: Overruled.
Mr. Neumann: Exception.
The Master: They approve it if they think it is in the right location?
The Witness: They have a certain position. For instance, we have to lay our mains all on the east and south sides of the streets, and they have locations for all other sub-surface structures, and they give us that position in the ground. Then it goes from there to the Department of Water Supply, Gas & Electricity, who grant a permit. From there that permit is taken to the Bureau of Permits, of the Borough President's office, who issue the final permit.
The Master: You are talking now about permits of the bureaus of the City of New York?
The Witness: Yes, sir.

Q. Mr. Spear, do you have charge of the matter of the rates of pay of employees of the company and the various departments?
A. I have.
Q. As to the works and shops, do you hire and discharge the men, or is that done by the head of the department?
A. It is done by the heads of the departments.
Q. Under your direction?
A. Yes, sir.
Q. But the matter of the rates of pay is in your hands?
A. Yes. Men are not discharged any more though.

Mr. Neumann: I move to strike that out.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. What is the procedure in the case of a contemplated extraordinary or unusual expenditure?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and does not mean anything on the record—extraordinary or unusual expenditure.
Mr. Ransom: I mean an expenditure out of the ordinary run in carrying on the business, or of an extraordinary amount.

100 Mr. Neumann: First prove what the ordinary run is, and then that this is extraordinary or that others are extraordinary.

By the Master:

Q. What is the procedure as to the usual run of expenditures, that is the pay of labor and things of that sort; how is that done?

A. I pass on that individually, and authorize it.

Q. Are there any expenditures that are in a class by themselves?

A. Yes.

Q. And separately handled?

A. If an expenditure runs up to a thousand dollars in the particular purchase or work that we want done, I take it up Mr. R. A. Carter, who is our Treasurer, and talk it over with him. If he approves it I go right ahead with it and then have it approved at the next board of directors' meeting.

Q. In other words, you feel when an expenditure gets to about a thousand dollars you do not use your own judgment?

A. That is right. And then if it is possible to wait until our board of directors' meeting, I would wait and take it up with them.

Mr. Tobin: If the Master please, might we ask that the witness indicate just the reason for taking those expenditures up with Mr. R. A. Carter?

The Master: Why, yes, I will give you plenty of opportunity to cross examine and ask about that.

Mr. Ransom: Mr. Carter is the Treasurer of the company and has been for some years.

The Witness: Yes, I so stated that.

101 Mr. Tobin: You ought to have in mind, if the Master please, whether that is provided for by the by-laws or some rules.

The Master: I will ask the witness that.

Q. Is that in pursuance of a by-law or is it just a general understanding and practice?

A. A general understanding and practice.

By Mr. Ransom:

Q. That is, there is no specific provision of the by-laws which fixes a definite amount at which you shall get the judgment and approval of other officers of the company or of the board of directors?

A. No.

Mr. Neumann: Would not the by-laws be the best proof of what the officers' duties are and how far they can go, rather than the witness' testimony. It is the same as an agent proving his own authority.

The Master: There may be some force in that, but it cannot do any harm in this case. The important thing is to find out what it costs to make and distribute gas.

Mr. Neumann: Still that old stuff.

The Master: It is the only thing in this case. You might as well understand it; all these side issues and side-plays pass over me like water from a duck's back; they mean nothing to me.

Q. Mr. Spear, aside from coal and oil how are materials and supplies purchased by the New York & Queens Gas Company?

Mr. Neumann: Objected to on the ground it is incompetent, irrelelevant and immaterial, and if there is anything in the by-laws of the company or the minutes of the meetings of the direc-
102 tors, that would be the best way of proving it, rather than by this witnes' testimony.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. If it is a large purchase I get competitive prices and place the order.

Mr. Neumann: Now I move to strike that out.

Q. You obtained bids?

A. Yes.

Mr. Neumann: One moment. I move to strike that answer out on the ground it is a conclusion. What he does with reference to getting bids is all right, but not to characterize it as competitive bidding. It may or may not be.

The Master: I will overrule the objection.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: I take it you mean, Mr. Spear, that you ask several different concerns in the same line of business to tell you what they will sell you material for?

The Witness: Yes. Take, for instance, cast iron pipe. We get three or four bids on that, if we have power to buy, and I take it up with the purchasing agent of the Consolidated Gas Company and ask him what prices he has got, so as to get a general line on the market. The purchasing agent of the Consolidated Gas Company is the man who figures all the time from current prices.

Q. Before awarding contracts you have the benefit of his knowledge and opinion regarding prices?

A. Yes.

103 The Master: Do you try to buy as cheaply as you can?

The Witness: Oh, yes.

Mr. Neumann: One moment. That was too fast for me.

The Master: Don't you like that, either?

Mr. Neumann: I want to object to that.

The Master: Why?

Mr. Neumann: Because I do not think this witness can testify to that in this way. He has testified now to a general course of business and he is testifying whether he buys as cheaply as anybody else.

The Master: I did not ask him that at all; I asked him if he tried to.

Mr. Neumann: It is practically the same thing.

The Master: The objection to the Master's question is overruled.

Mr. Neumann: Exception. That may appear before the answer is given?

The Master: It will be taken as having been made in time.

Q. Mr. Spear, have you at my request made up sheets showing the rates of pay, the wages paid in the various departments of the New York & Queens Gas Company, from 1911 to 1920, as known to you and as checked by you from the payrolls of the company?

A. I have.

Q. And is this such a sheet which I now show you (handing witness)?

The Master: You are showing him two sheets, are you not?

Mr. Ransom: Yes, two sheets, sheets 1 and 2.

A. Yes, that is the schedule.

104 Q. Prepared by you?

A. It was.

Q. And known by you to be correct?

A. It is.

Q. In the left hand column you have shown the classification of work, have you?

A. Yes, the classification of the men.

Q. Yes, the classification of the different kinds of men, under the various departments—the gas works or gas manufacturing department, the shop department and the mains and services department?

A. Yes.

Q. And then have you shown——

Mr. Tobin: If the Master please, we object to the question in that form. We believe that if he is going to refer to this paper he ought to say it is indicated on the paper, instead of being shown on the paper. We do not want him to attempt to prove the contents of that paper in just that way. It is indicated on this paper, certain things.

Mr. Neumann: I have a further objection, if the Master please. This witness has not as yet been qualified on this particular branch of the case. So far as his present qualifications are concerned, he has practically no qualification in the bookkeeping end of the business.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. And have you shown the number of men and the rates of pay in cents per hour for each of these classes?

105 Mr. Tobin: If the Master please, in that form of the question I object to the number of men.

Mr. Cummings: Just ask him what it shows.

Mr. Tobin: What it indicates, instead of what it shows.

The Master: That is not important.
Mr. Tobin: He cannot attempt to prove a paper in that way.
Mr. Neumann: As a matter of fact, all these questions are incompetent if he attempts to introduce the paper in evidence, because the paper will speak for itself, rather than introducing it now.
The Master: Objection overruled.
Mr. Neumann: Exception.

Q. Is that correct, Mr. Spear?
A. It is.
Q. And you have shown this information as of January 1, 1911, January 1, 1914, January 1, 1918, January 1, 1919, and April 17, 1920?
A. Right.
Q. On Sheet 2 have you recapitulated this information by years showing the number of men in the three departments and the maximum and minimum and average rates of pay for each of those years, and the increase in the average rates of pay per year, between January, 1914, and April 15, 1920, and between January, 1911, and April 15, 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not from a properly qualified witness.
The Master: Objection overruled.
Mr. Neumann: Exception.

106 A. Yes, it shows the recapitulation by departments and also by all the departments together.

Mr. Tobin: If the Master please, we still insist upon our objection to the form of the question. We do not think it is proper.
The Master: Yes. Overruled.

Q. And in a note on Sheet 2 have you correctly shown the rule of the company and its practice with respect to paying for overtime, holiday and Sunday work?

Mr. Neumann: Same objection.

A. We have.
Q. And the time when that went into effect?

Mr. Neumann: Same objection.

A. Yes.

The Master: I take it you mean the fact that those extra prices are paid for that kind of work?
Mr. Ransom: Yes.
The Master: Not so much a rule.

Q. You have a regulation on that subject.
A. Yes.

Mr. Neumann: Objected to.
The Master: Do you in fact make those payments?

The Witness: We do, actually.
The Master: It is not a question of a rule.
Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way of proving a rule.
The Master: Overruled.
Mr. Neumann: Exception.

Q. And this is correct to your knowledge?
A. It is.

107 Mr. Ransom: I offer in evidence Sheets 1 and 2.
Mr. Tobin: We object to that.
Mr. Neumann: Wait until we look them over first.
Mr. Ransom: I will give you copies (handing counsel two sets).
Mr. Neumann: May I proceed with my objections and have the Master wait until the rest of the defendants are through with their objection?
The Master: You may.
Mr. Neumann: Objected to on the ground that these exhibits are immaterial, irrelevant and incompetent.
The Master: It is one exhibit. You mean those two sheets.
Mr. Neumann: Sheets 1 and 2. They have not been offered for identification, have they?
The Master: No. They will be known as Sheets indicating wages paid by the New York & Queens Gas Company, 1911 to 1920.
Mr. Neumann: Yes. Upon the ground that they have not been properly proven, not proven by a witness who has any knowledge of the subject; upon the further ground that they are based upon entries in the books which have not yet been admitted into evidence.
Mr. Tobin: We add to those objections the further objection that the best proof of the facts are the books of the company, and that these items should not be allowed to go into evidence in this way.
Mr. Neumann: May I add one further objection, that the
108 best evidence of this would be the payrolls themselves as of those dates.
The Master: I will overrule the objection.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Marked Complainant's Exhibit 58 (consisting of two sheets).

Q. Mr. Spear, have you prepared the statement which I herewith show you, which shows in summary form the prices paid by the New York & Queens Gas Company for coal, both generator coal and boiler coal, for the years 1911, 1914, 1915, 1916, 1917, 1918, 1919, and three months of 1920 (handing witness)?
A. Yes.
Q. You were familiar with the prices in those years?
A. Yes, that statement is made up right from the invoices.
Q. And in this sheet you have shown the number of tons shown on the invoices?

Mr. Cummings: Your Honor, I think the witness ought to state what the sheet indicates.

Q. What does the first column show?

The Master: No, I am going to let him lead him.

Q. That is the total number of tons?

A. It is. The total number of tons received during that year.

Mr. Neumann: This is all over our objection, if the Court please.

The Master: Yes.

Q. And in the next column the amount of money paid?

109 A. Yes.

Q. And in the next column is the amount of money divided by the number of tons?

A. Yes, the cost per ton.

Q. The two columns headed "Stevedore," what is meant by that?

A. Our coal is carted from the docks to the yard by a stevedore and he renders a bill for that.

Q. So this stevedore charge per ton is the amount paid for stevedores' services, divided by the number of tons?

A. Yes.

Mr. Neumann: Our objections, of course, are still running all through this line of examination.

The Master: Yes.

Q. And the total cost per ton is the price paid for the coal, the invoice price plus the stevedore charges?

A. Yes.

Q. And then in the column to the right or the columns to the right you have shown by years the percentages of increase over corresponding years?

A. Yes.

Q. And the questions I have just asked you related to generator coal. The same method of making up the table has been followed with reference to boiler coal?

A. Yes.

Q. As to gas oil for the same years you have shown the total number of gallons?

A. Yes.

Q. And the total amounts paid?

A. Yes.

110 Q. And the price?

A. Yes.

Q. And the percentage of increase for each year over corresponding years?

A. Yes.

Q. And this is known to you to be correct?

A. It is.

Q. It was checked by you with the original bills and vouchers?

A. It was made up by me from the original bills and vouchers.

Q. And you have the original bills and vouchers here?

A. I have.
Q. With you, in court?
A. Yes.
Q. And this is known to you to be correct?
A. It is.

Mr. Ransom: I offer it in evidence.

Mr. Tobin: If the Master please, I do not think that is a fair way to introduce into this trial items which are going to be so important in ascertaining what you desire to ascertain—that is, what is a proper rate.

The Master: You say all these vouchers are in court?

Mr. Ransom: The vouchers are here.

The Master: Hold this until you offer the vouchers.

Mr. Tobin: The books are all here, the vouchers are here.

The Master: Do not spend any time on it; I am asking him to produce the vouchers.

Mr. Tobin: We object to the introduction of that at this time.

The Master: Well, I am holding it for the time being. I
111 am inclined to agree with you.

Q. Will you produce the vouchers?

The Master: And the stevedore vouchers, too, I suppose.

The Witness: Yes.

The Master: Have you them with you?

The Witness: Yes.

Mr. Ransom: Suppose I just lay this aside for a moment and cover the other things, because there are other things covered by these sheets.

Mr. Tobin: May I say a word here, please. I understood this witness was going to tell us the method of doing business.

The Master: Yes.

Mr. Tobin: And that they were not going to have offered by him or through him the actual accounts—that is, how things were paid, or just what did happen—that all he was going to tell us was just the method of doing business.

The Master: I did not so understand it. Up to a certain point I understood that was going to be his line of inquiry, but I did not know it was going to stop there.

Mr. Ransom: I am laying a foundation for all of this.

Mr. Neumann: When did he get beyond that? And another point, where has Mr. Spear's qualifications been shown on the accounting end of the business? If you will look over his qualifications—I read them very carefully—he is a chemist and he makes
a sort of cursory supervision of the bookkeeping end of it;
112 he has never had any practical experience in the bookkeeping end of the business and does not attempt to say that he ever kept any books.

Mr. Ransom: He has done various things in that regard.

The Master: Proceed.

Mr. Tobin: We object.

Q. Mr. Spear, in the same way have you made up a sheet headed "Comparison of prices paid for materials by the New York & Queens Gas Company from 1914 to 1919 inclusive," covering the principal materials purchased by the New York & Queens Gas Company for its gas business in those years?
A. Yes.

Mr. Tobin: Just a moment. What was the first part of the question?
Mr. Ransom: Have you made up a statement?
Mr. Tobin: I think it is decidedly unfair in the form of the question, if the Master please. The paper itself indicates something, and he should not be allowed to read in the record that it shows something. It indicates something.
The Master: Objection overruled.
Mr. Tobin: In other words, I do not see how he should be allowed to prove these facts in this way or attempt to prove them.

Q. In the left hand corner you show the names or kinds of materials purchased?
A. Yes.

Mr. Neumann: You purport to set forth.
Mr. Tobin: "You purport to set forth" is better, Mr. Ransom.

113 Q. In the next column is the unit according to which they are purchased?
A. Yes.

Mr. Neumann: I object to the form of the question.

Q. Per foot, per bushel, per pound and per gallon.
A. Yes.

The Master: Objections overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Q. And then in the remaining columns you have shown by years the prices paid in those years?
A. Yes.

Mr. Neumann: Same objection, in form and substance, both.
The Master: Same ruling on both grounds.

Q. The highest and the lowest?
A. Yes.

Mr. Tobin: If the Master please, I think it is decidedly unfair to allow him to go into this matter in this way. These are important factors.
The Master: They are not important at all.
Mr. Tobin: We deem them to be.
The Master: He has made up some summaries, that is all.
Mr. Tobin: But the books themselves are the best evidence.
The Master: One of the reasons why the courts are in such dis-

repute with the people is that so many judges pay too much attention to these fini-ky and useless objections.

114 Q. And in the last two columns you have shown the increase in 1919 over 1914 and the lowest and highest prices?
A. And the lowest and the highest.

Mr. Neumann: Same objection as to form and substance.
Mr. Tobin: Same objection as to form and substance.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Q. And you have in your hands the vouchers from which that was made up and checked?
A. No, I have not.
Q. You have not the vouchers on that?
A. Not on that.

By the Master:

Q. Have you got the vouchers back to 1911 on this other one?
A. Yes.
Q. All the way back to 1911?
A. That is 1911 and 1914, the same years indicated here. We skipped 1912 and 1913 on account of making so many.
Mr. Tobin: What years?
The Witness: 1912 and 1913.
The Master: On account of what, making some money?
The Witness: No, making so many.
The Master: That schedule apparently, Mr. Neumann, is based upon 1911—the one I was talking about is based on 1911, 1914 and other years, skipping 1912 and 1913. That is all he skips, 1912 and 1913.

Q. Referring to the same materials and supplies referred to in the schedules concerning which I have just interrogated you,
115 have you made up from the original bills and vouchers a comparison showing the prices per unit of these same materials in 1914, 1915, 1916, 1917, 1918 and 1919 (handing witness)?
A. Yes.
Q. That is correct to your knowledge?
A. It is.

The Master: You have not those vouchers here, have you?
The Witness: That would mean bringing every voucher we have got. That is compiled from all the vouchers.
The Master: Well, you have not got them here?
The Witness: No.
The Master: We better mark these for identification before we go any further.
Mr. Ransom (handing Master): This is the first one.
The Master: We will mark the paper "Comparison of Unit Costs

of Coal and Oil received by the New York Gas Company for the years 1911 and 1914 to 1919, inclusive, and three months of 1920."

Marked Complainant's Exhibit 59 for Identification.

By the Master:

Q. As to this Exhibit 59 for Identification you have all the vouchers for those years here?
A. I have.
Q. The next one is a paper which purports to show comparison of prices paid for materials by the New York & Queens Gas Company from 1914 to 1919, inclusive, and excluding coal and oil?
A. Right.

116 The Master: We will mark that for Identification.
The Witness: That is the highest and lowest prices for those years.
The Master: Highest and lowest, yes.

Marked Complainant's Exhibit 60 for Identification.

Q. Those vouchers are not here?
A. They are not.

The Master: The other paper you have got is a paper showing highest and lowest and comparison of prices for material paid by the New York & Queens Gas Company from 1914 to 1919. We will mark that for identification.
Mr. Ransom: Showing percentages of increase.

Marked Complainant's Exhibit 61 for Identification.

Q. What is the difference in the method of preparing Exhibits 60 and 61 for identification?
A. Exhibit 60 shows lowest and highest prices for those various years.

Mr. Ransom: All of those years.

A. (continued). Exhibit 61 shows the highest and lowest prices paid in 1914.
Q. Yes.
Q. And in 1919, and the increase over——
Q. In 1919?
A. In 1919 over 1914, of the lowest and the highest.
Q. Exhibits 60 and 61 for Identification depend upon the same vouchers?
A. Yes.
Q. They are not in court?
A. That is right.

117 By Mr. Ransom:

Q. These last two exhibits 60 and 61 for identification, with respect to standard wrought iron and steel pipe, the price given is the price less certain percentages?
A. Certain discounts.

Mr. Tobin: We object to the form of the question.
The Master: Overruled.
Mr. Tobin: Exception.

Q. Is this a correct statement of the list price on which those discounts are figured (handing witness)?
A. Yes.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way of proving a list price.
The Master: I will overrule the objection.
Mr. Neumann: Exception.

Q. And that is true not only of the wrought iron and steel pipe but of the malleable fittings?
A. Yes.

Mr. Neumann: Same objection.
The Master: Same ruling.
Mr Tobin Exception.
Mr. Neumann: Exception.
Mr. Ransom: I ask to have this marked for identification.
The Master: By "this" you mean the paper to which you have just referred?
Mr. Ransom: The paper to which I have just referred.

Marked Complainant's Exhibit 62 for Identification.

118 Q. Mr. Spear, referring to Exhibit 59 for Identification, you have here all of the various vouchers to which that relates?
A. I have.
Q. Those are vouchers which have hitherto been turned over to the accountants of the Public Service Commission?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.

Q. Or at least those with respect to recent years?
A. The years 1918 and 1919, yes.
Q. And these are produced by you from the files of the company?
A. They are.
Q. They are known to you to be the vouchers which passed through your hands in those different years?

A. Yes. The accountants of the Public Service Commission were working with them to-day, and I took them from them to-day temporarily.

Mr. Ransom: I offer these coal and oil vouchers in evidence.

Mr. Tobin: What do you mean by that?

The Master: The whole batch.

Mr. Neumann: He is just offering the vouchers, not the exhibits.

The Master: We will mark them as one exhibit and put a rubber band around them.

Mr. Tobin: We make the general objection to them at this time, if your Honor please.

The Master: Yes. I will make this note on the record, that that will be marked "Coal and Oil Vouchers referred to in Com-
119 plainant's Exhibit 59 for Identification," and they will be marked as one exhibit, Complainant's Exhibit 63. All vouchers will be Exhibit 63.

Marked Complainant's Exhibit 63.

Mr. Ransom: I now offer in evidence Complainant's Exhibit 59 for Identification.

The Master: No. 59 for Identification is offered in evidence. Is there any objection?

Mr. Neumann: Just a moment, if the Master please. May we be given an opportunity to look it over?

The Master: Surely.

Mr. Neumann: I will start the objections. I object to it on the ground it is incompetent, irrelevant and immaterial. The heading should be stricken out for the reason that it is not within the province of this witness to testify to those facts. The testimony thus far disclosed indicates that this witness makes no contracts for either oil or coal, that that is done by some one else; so that, if anything, this exhibit would be the same as if the witness were giving hearsay testimony of the same facts. For that reason I object to it. On the further ground that there is nothing to indicate that the information is accurate or correct. Upon the further ground that if this is intended to be a summary of the entries in the books, the books themselves would be the best evidence of it.

Mr. Tobin: We object on the further ground it is hearsay evidence, that the books, which have not yet been offered in evidence, are the best evidence of the facts, and it is not proper at this time for
120 the witness to testify to the contract prices in view of what Mr. Neumann said.

The Master: The objections are overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

The Master: The paper is marked in evidence.

Marked Complainant's Exhibit 59 in evidence.

Mr. Ransom: I think that is all with Mr. Spear.

The Master: Do you gentlemen want to proceed with the cross examination now or reserve it?

Mr. Tobin: Reserve it, if we may.

The Master: All right.

Mr. Ransom: I shall have Mr. Spear produce these other vouchers.

The Master: Yes, bring them all down.

Mr. Neumann: You are not through with Mr. Spear yet on direct, Judge?

The Master: Apparently not, but that is no reason why you gentlemen should not be prepared to cross examine on all matters that have already gone in.

Mr. Neumann: For the purpose of saving time it would be better to go over his cross examination at one time.

The Master: Yes, but when he gets through with his direct now you will go ahead with his cross.

Mr. Tobin: Yes, sir.

Mr. Neumann: I understand.

Mr. Tobin: Of course, there is a statement on the record there, if your Honor please, that after all this documentary proof was
121 put in you were going to grant us an adjournment so that we might get ready for cross examination.

The Master: I gave you four or five days this week already.

Mr. Neumann: But since then he has put in a great deal more, and things that are more vital to the case.

The Master: Yes, but I am not asking you to go on with the examination yet.

ARTHUR W. TEELE, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Teele, where do you reside?

A. 131 Riverside Drive, New York City.

Q. What is your business?

A. A public accountant.

Q. With what firm are you connected or of what firm are you a member?

A. I am senior partner of the firm of Patterson, Teele & Dennis.

Q. And where are the offices of that firm?

A. 120 Broadway, New York, and 131 State Street, Boston.

Q. Do you have any official standing in or are you a member of any associations dealing with this field of accountancy?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial, and at the present
122 time it does not appear what "this field of accountancy" means.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I am Vice President of the American Institute of Accou and a member of the Board of Examiners of the American Institu

of Accountants; a member of the New York State Society of Certified Public Accountants, and a member of the Ohio Society of Certified Public Accountants.

Q. And you are a certified public accountant of what states?

A. Of New York and of Ohio.

Q. And you are Chairman of the Board of Examiners of the American Institute of Accountants?

A. I am not now Chairman of the Board of Examiners.

Q. But you have been?

A. I am a member of that board, but I am not now chairman.

The Master: Mr. Neumann, you were in the Consolidated Gas case, were you not?

Mr. Neumann: I was.

The Master: Did you have occasion to inquire into the qualifications of Mr. Teele?

Mr. Neumann: I was not present when he qualified.

The Master: Have you any information about Mr. Teele?

Mr. Neumann: Well, is it the purpose of the question to ask whether I am satisfied with Mr. Teele as an accountant?

The Master: Why, yes, I see no reason for Judge Ransom being put to this hour or more of examination to qualify Mr. Teele, if as a matter of fact it will be conceded or should be that he is qualified to testify as an expert accountant. I never do it when I try a case. If a man is an accountant I admit he is an accountant.

Mr. Neumann: Speaking for myself only and not in any way binding any of the other defendants, I will say that in my judgment Mr. Teele is a qualified accountant, but that does not in any way bind the other defendants.

The Master: I understand that. I cannot save the time unless the other defendants are willing to make the same stipulation. I asked you because I knew you were in the Consolidated case. Mr. Tobin has not been and his associate here has not been.

Mr. Tobin: Why, I think, if the Master please, he might just qualify sufficiently so as to make the record. That is all we care about.

The Master: The trouble with that is Judge Ransom may feel that he has got to go the limit on the thing.

Mr. Tobin: No, we won't ask for that; we want sufficient on the record to prove his qualifications, then we will accept him. That is all there will be to it.

By the Master:

Q. Mr. Teele, you have been practicing as a certified accountant how long?

A. As a certified accountant since the law was passed in 1896, have been practicing as a public accountant in New York City 31.

Q. Just give us the names of some of the companies whose ac-

counts you audited. In the first place, you were the
124 accountant in charge of this gas investigation that Governor Hughes was in, were you not?

A. I was accountant for the Stevens Legislative Committee which made the investigation at that time.

Q. And of which Governor Hughes was counsel?

A. Of which Governor Hughes was counsel.

Q. Just state some of the concerns whose accounts you have audited in the last two or three years?

A. The American Telephone & Telegraph Company, Adams Express Company, the Southern Railway Company and all its affiliated lines.

Mr. Ransom: The Chicago, Rock Island & Pacific?

The Witness: I have audited the Chicago, Rock Island & Pacific lines, complete lines, on two separate occasions.

Q. Did you testify as an expert in the case of Consolidated Gas Company against Newton and others?

A. No.

Q. Before me as Master?

A. Oh, yes. Pardon me, your Honor, my mind was going back a little beyond that. I did.

Q. And the Master in that case accepted your testimony as an accountant as an expert?

A. I believe he did.

The Master: Do you think we ought to have any more on that, Mr. Tobin?

Mr. Tobin: That is all, sir.

The Master: As I understand it, no question is raised as to the competency and qualifications of Mr. Teele to testify as an
125 expert. That does not concede at all that his conclusions are correct or that his figures are correct, or anything of that sort. It simply means he is an accountant able to testify on the matters on which he is called.

By Mr. Ransom:

Q. Mr. Teele, in the latter part of 1918 or early in 1919 were you employed by the New York & Queens Gas Company and, if so, for what purpose?

A. I was employed in the latter part of 1918, the last week in December, to make an examination of the Consolidated Company and its affiliated companies, including the New York & Queens Gas Company, and I did subsequently make an examination of the accounts of the New York & Queens Gas Company for the year 1919 and for 1918.

Q. Did you work alone or did you have one or more men working with you and under you in this work on the books and accounts of the New York & Queens Gas Company?

A. I had a staff of assistants working with me and under my direction.

Q. Who were your assistants, were they men of your own staff and your own selection, or were they employees of any gas company?

A. No, they were men who were employees of my firm. They were men of my own selection, men who, most of them, had been associated with me for a number of years.

Q. Could you name any of them?

A. Mr. Morean, who has been with me for ten or more years; Mr. Littlejohn, who has been with me about ten years, and some of the junior assistants on the staff.

126 Q. Mr. Stumpfel, one of your partners, did some of this work?

A. The examination was originally started under the immediate direction of one of my partners, Mr. W. H. Stumpfel, carrying out the directions which I had given to him.

Q. That was before or about the time the bill of complaint was filed, and related to the year 1918?

A. Related to the year 1918, and that work was done about February, 1919.

Q. How much of your time since the beginning of this suit of the New York & Queens Gas Company have you personally given to this work?

A. I have given considerable time to it. I have been at the offices of the New York & Queens Gas Company. I have personally done a considerable amount of the work in making the examination of the books. I should say that I had spent in the neighborhood of ten days myself.

Q. That is at Flushing, at the office?

A. At Flushing and in my own office in New York.

Q. Some of the work has been done in the rooms in 15th Street in which this work has been going on?

Q. I believe nothing in connection with the New York & Queens has been done there. There may have been some work done there, but very little of it. Most of it was done at the offices of the company at Flushing, and some of the statements were gone over by me and instructions given in connection with them at my own office at 120 Broadway.

Q. And you have been in constant and direct personal contact with all phases of this work?

A. I have.

127 Q. And the men, your assistants, worked under your immediate direction and personal supervision?

A. They did.

Q. Now will you state just what books and record of the New York & Queens Gas Company you examined and used in this work, directing your attention now to the year 1919?

A. The general ledger, the general journal and the general cash book. The operating expense ledger and the various reports, including pay rolls and vouchers relating to the entries made in the general journal, from which all postings are made to the general ledger,

together with the reports made by the superintendent at the works and the records of manufacture at the works.

Q. The records referred to by Mr. Spear last Monday?

A. Yes.

Q. In the course of your examination of the books, accounts and records of the complainant, did you find various printed forms and devices used by the complainant for recording the various transactions of its business?

A. I did.

Q. Have you examined those forms?

A. I have.

Q. In your judgment are these forms adapted to recording correctly in the regular course the transactions of the complainant company's business?

A. They are.

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: The witness is simply asked for his judg-
128 ment as to whether they are adapted to accurately recording; not whether they actually do. I will overrule the objection.

Mr. Neumann: Exception.

The Master: I understand the witness' answer is that they are?

The Witness: They are.

Q. Would you say they were well designed for that purpose?

Mr. Neumann: Same objection.

Mr. Tobin: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. In your opinion are the books and records and accounting system of the complainant company so designed that if entries are correctly made therein and they are properly kept will correctly reflect the business of the complainant company?

Mr. Neumann: Same objection.

Mr. Tobin: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes.

The Master: The form of the books is not so important, is it, Mr. Teele, if the entries are correctly made?

The Witness: That is all, if the entries are correctly made, and the classification of accounts is designed to bring out the facts sought.

Q. Mr. Teele, you prepared two statements, one showing the revenues and expenses of the gas business of the New York & Queens

Gas Company for the year 1919? and the other showing
129 the cost of manufacture and distribution of gas by the New York & Queens Gas Company for the year 1919?

A. I did.

Q. This is the statement showing the cost of production and distribution for the year ended December 31st, 1919 (handing witness)?

A. Yes.

The Master: We will mark that for identification.

Marked Complainant's Exhibit No. 64 for Identification.

Q. And this is the revenues and expenses of the gas business for that year (handing witness)?

A. Yes.

The Master: Mark that for identification.

Marked Complainant's Exhibit No. 65 for Identification.

Mr. Ransom: Copies of these two statements were furnished to the defendants some weeks ago.

The Master: Is it conceded that copies of these were given to the counsel for defendants several weks ago?

Mr. Tobin: Just the 1919?

Mr. Neumann: I do not know, I would like to look them over.

The Master: I understand Mr Tobin concedes he got 1919 several weeks ago.

Mr. Tobin: I believe they are the same. They are marked 8567 and 8566.

Mr. Ransom: That is right.

Mr. Tobin: On the bottom of the first page of the outside cover.

Mr. Ransom: Is there any question on behalf of the defendant commission that copies of these two statements were received
130 by Mr. Farley, counsel for the Commission?

Mr. Neumann: If they are the same that you sent me about a week ago, I will concede that you sent me papers purporting to be those.

Mr. Ransom: Well, several weeks ago.

Mr. Neumann: They are the same.

Mr. Ransom: They are the same as those sent to you several weeks ago?

Mr. Neumann: I will concede they were sent me and you have my letter of acknowledgment.

Mr. Ransom: I have your letter of acknowledgment some time after their receipt.

Q. Referring to Complainant's Exhibits 64 and 65 for Identification, Mr. Teele, and the preparation and verification of them by you, will you describe just what was done by you and by your assistants under your direction, and just what checks you made of the vouchers, underlying records and the books?

Mr. Neumann: One moment. Objected to upon the ground it is incompetent, irrelevant and immaterial, and the witness is now attempting to describe something taken from papers and books that are not yet in evidence.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: If the Master please, we make the general objection. We do not believe that this sort of evidence should be introduced in this way, that the books are not yet before you.

The Master: I understand that, Mr. Tobin. I understand this inquiry to be as to just how Mr. Teele and his assistants made
131 up this statement.

Mr. Tobin: That is what we were informed before, if your Honor please, that it was simply the form, but then we got further on and were advised that they had passed beyond the form and——

Mr. Neumann: Gone into the substance.

Mr. Tobin (continuing): Gone into the substance. We do not want to be caught in the same way. We raise this objection here. We believe the best evidence of what was done and the transactions of this company are the books themselves.

The Master: Yes, but Mr. Tobin, wait a minute, I want to help you keep the record straight and I want to keep it straight myself. Mr. Spear testified to a general course of operation, that is, the way they ran the business; then he identified some statements showing comparative prices and percentages. I did not allow in the comparative prices until he put in the vouchers, so that protected you there. The other papers are not yet marked in evidence, because he did not have his vouchers, so I am protecting you there. He has identified a lot of books that are not yet in evidence, because apparently the people who made the entries are available and the vouchers are available, so that is being held up.

Mr. Teele has now identified some tables he prepared, they have been marked for identification, the books are not in evidence, the vouchers are not in evidence, except the coal and oil vouchers, and these schedules are not yet in evidence, and I am not going
132 to let Mr. Teele testify to the figures, nor am I going to receive these schedules in evidence yet, but I am going to let him state how he did the work.

Mr. Tobin: Well, if it is confined to the form.

The Master: That is all.

Mr. Ransom: Not only the form, but what he did.

The Master: What he did.

Mr. Ransom: He made the tabulation.

Mr Tobin: Of course, the part we particularly object to is the form of his questions. That is, he does not satisfy himself with asking the witness as to the manner in which they are made up, but he goes further than that, and we object to that and we wish a general objection.

Mr. Neumann: If the Master will just go back and have that question read over.

The Master: No, I heard it. Objection overruled. Mr. Teele, just tell us how you did your work.

Mr. Morissey: May it please the Court——

The Master: Who is addressing the Court?

Mr. Morissey: Mr. O'Brien——

Mr. Ransom: I object to anybody claiming to represent a man named O'Brien, addressing the Court?

The Master: Who are you?

Mr. Morissey: Joseph P. Morissey, an Assistant Corporation Counsel.

The Master: Your statement is what?

Mr. Morissey: Mr. O'Brien asked me to come over here and appear for the District Attorney of Queens County. As I
133 understand it there has been no order entered yet, but the District Attorney of Queens County has requested the Corporation Counsel to appear for him in this action. I don't know whether your Honor wants to rule whether we are yet in, or that we can sit in and act for the District Attorney.

The Master: My ruling will be that the District Attorney of Queens County has a right to have any counsel he wants to have here represent him.

Mr. Ransom: If he designated him——

The Master: I shall take Mr. Morissey's statement that he has been retained by the District Attorney of Queens County.

Mr. Ransom: He doesn't know anything about it, except that a man named O'Brien has sent him over here.

The Master: I shall take Mr. Morissey's statement that he is an attorney and an officer of the court, and has been retained by the District Attorney of Queens County to represent him here. Is that correct?

Mr. Morissey: That is correct.

The Master: Then you can sit in.

Mr. Ransom: I object to it. I don't think there is anything before the court under which your Honor is warranted in concluding that this proceeding on the part of Mr. O'Brien or Mr. Morissey is in any way warranted.

The Master: I am going to take this statement that he has been retained to appear as representing the District Attorney of Queens County.

134 Mr. Ransom: I take an exception. It is not a regular way for the appearance of the District Attorney of Queens County in the case. Mr. O'Leary has already made a designation which, so far as we have been notified by Mr. O'Leary is still in effect.

The Master: Well, suppose Mr. O'Leary wanted to retain John Stanchfield to appear for him, and John Stanchfield walked in here and said, "I am counsel for Mr. O'Leary," would you object to it?

Mr. Ransom: I should if there had been some previous designation of a counsel who had become solicitor of record in the case.

The Master: There is no change of solicitor of record in this case.

Mr. Ransom: Mr. Van Steenburgh has been designated.

The Master: Mr. Van Steenburgh is still the attorney of record,

but Mr. Van Steenburgh can retain Mr. Morissey, or John Stanchfield, or anybody else, to appear for him. I shall stand by my ruling.

Mr. Ransom: Your Honor will allow me an exception?

The Master: Yes. Now, Mr. Teele, tell us how you did your work in making up the schedules to which your attention has been directed?

The Witness: This statement of revenues and expenses——

The Master: What is the exhibit number on that?

Mr. Ransom: Exhibit No. 65 for Identification.

135 The Master: And cost of production, Exhibit 64 for Identification?

Mr. Ransom: Yes.

The Witness: Exhibit 65 for Identification is a statement prepared from the accounts appearing on the Journal and Operating Expense Ledger of the company.

The Master: Did you use any other papers in connection with that?

The Witness: I verified the figures appearing in the various accounts entering into the figures shown on this statement by reference to the original entries appearing on the Journal; and as to materials purchased, or expenditures incurred other than labor, I referred to the original vouchers themselves.

By Mr. Ransom:

Q. Were all of the 1919 bills and vouchers examined by you and your staff under your direction?

A. They were.

Q. And all of the matters appearing on these two exhibits, so far as they relate to bills and vouchers for materials and supplies, were checked with the original vouchers?

A. They were.

Q. And then into the books of account likewise?

A. Then into the journal and from there into the ledger account from which these statements were compiled.

As to expenditures for labor, the company has three different pay rolls, office pay roll, works pay roll and shop pay roll.

The first pay roll—the distribution of the office pay roll—it has entries upon it, and the entries distributing that pay roll were

136 traced from the pay roll itself to the journal and from there to the ledger.

The shop pay rolls are distributed in accordance with the endorsements appearing upon the pay rolls, and the pay rolls themselves, the endorsements are made up by taking the monthly distribution sheets of the individual workmen whose names appear upon the shop pay rolls, and compiling those for the month. The total amount to be charged to each account is then endorsed upon the back of the shop pay roll.

A similar method is followed in the case of the works pay roll. The monthly distribution of each man's time is shown upon the sheet for each man. Those sheets are compiled, the total amounts

being charged for each account being the aggregate total pay roll for the month, is then endorsed upon the pay roll. The accounts to be charged, and the amounts to be charged against each account, are shown by this endorsement and entered in the journal, and from there posted into the ledger accounts.

Q. Then so far as the cost of labor, so far as the men in the manufacturing department and the other departments of the company are concerned, these exhibits 64 and 65 for identification have been checked both to the books and to the various pay rolls?

A. And to the various pay rolls.

Q. And the books were likewise, as postings, checked back to the pay rolls?

A. The postings appearing in the ledgers were checked back to their original sources.

Q. The postings in the ledger were traced back to their sources?

A. They were.

137 Q. What if anything was done by you to verify and check the correctness of these departmental pay rolls?

A. I have just stated how these pay rolls are compiled. We checked the monthly distribution sheets against the several monthly pay rolls, both the shop pay roll and the works pay roll. In the case of the shop pay roll I took four months in 1919, and went back to the individual daily workmen's time sheets. That is a sheet made out each day by the workman, indicating the work upon which he is engaged and the number of hours he was engaged upon that work.

Mr. Neumann: I object to that on the ground that there is nothing here shown as to this witness' knowledge and ability to testify as to what any particular workman did.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. (continued). I checked the four months of these individual sheets against the monthly sheets, and then checked all the monthly sheets to the monthly journal entries where the distribution of that time is indicated, and charged to the various ledger accounts.

Q. What about the works pay roll and the manufacturing department pay roll? What checks back did you make on those?

A. There is nothing, so far as I could find, back of the monthly sheets kept for each man.

Q. There is a monthly sheet kept for each man?

A. There is a monthly sheet kept for each man in which the days of the month are set down on the left hand side, and the ac-

138 counts to be charged are at the tops of the sheets, and the time each day for each man is put on those sheets.

Q. And charged to different account numbers?

A. Charged to different account numbers.

Q. Those being the various uniform system of accounts lettered accounts, or by numbers?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and no foundation laid.

The Master: I will allow the witness to state if he will state, first, that he is familiar with the uniform system of accounts requirements.

The Witness: They are not indicated in that way, they are symbols.

Q. Symbols by numbers?

A. Symbols by numbers and letters, indicating accounts to be charged, and those are put upon the ledger account to identify the name of the account appearing on the ledger pages.

Mr. Neumann: That makes the objection all the stronger. It indicates that the witness is not as qualified to state whether the accounts are kept in accordance with the uniform system of accounts or not.

Mr. Ransom: I am not now asking him that.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. It is from the monthly statement for the individual employees of the works department that the weekly pay rolls are made up?

A. Yes.

Q. What checks on employees, or the rates of pay, or the amount of pay for labor did you make as to any of the other departments?

139 A. There are no other departments other than the ones I have enumerated, the shop department, the works department and the office.

The Master: That is all there is?

The Witness: That is all.

Q. What did you do on the office pay roll, so far as checking there was concerned?

A. There are no records back of the monthly pay roll. The monthly pay roll has a sheet on which the weekly pay rolls appear, and the total pay rolls for the month. All the days of the month appear on one sheet, and they are divided by weeks, and at the end of a month, if there is a part of a week it is put upon two pay rolls, so that a single sheet covers one entire month.

Q. How did you ascertain the sales of gas and the revenues from the sales of gas?

Mr. Neumann: I object to that on the ground it is incompetent, irrelevant and immaterial, and not within the province of this witness so to say.

Q. Referring to Schedule 1 of Exhibit 65 for Identification?

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The consumers' accounts for sales of gas are contained in nine ledgers. I took one hundred accounts for the months of January, February, November and December, 1919——

Q. That is one hundred in each month?

A. One hundred in each one of the ledgers on the district.

Q. That is, each of the nine consumers' ledgers represents a district?

A. Represents a district.

Q. A territorial district of consumers?

140 A. Yes. We took one hundred accounts in each one of those four months, January, February, November and December, and checked them from the original index books to the consumers' ledgers and to the bill registers, or consumption record, as it is called, in which the total amount of gas entered upon the consumers' ledgers is made up. We did that for four months, and checked the summaries for all the months in the year to the journals, and from the journals to the ledger accounts representing the sales.

Q. The index books being the books in which the readings are originally taken?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and upon the further ground that the question is most leading.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: There isn't any use in making objections to questions as leading, as far as I am concerned.

A. The index books are the books which are used by the inspectors when they visit the meters, and in which they set down the reading of the meter.

Mr. Neumann: I move to strike out the answer on the ground that it is not within the province of this witness so to speak. He is an accountant and not a gas man.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. How did you ascertain the revenue, if any, from the furnishing of gas for municipal buildings?

141 A. Municipal meters are read the same as other meters.

Mr. Neumann: I make the same objection to that.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. How about the revenue from prepayment meters?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The prepayment meters are read the same as other meters. The amounts collected by the collectors are listed on slips, and the amount of the reading of the meters is turned over to the bookkeepers. They summarize the total number of feet read, and compare that with the slips on which the money turned in by the collectors

has been listed, and the total amount of gas sold through the prepayment meters is summarized and taken up in the journal entries, the same as gas sold through commercial meters.

Q. And those were checked in connection with your check of other postings?

A. They were.

Q. Now, the matter of interest on bank balances, how did you check or verify that item?

A. The amount of cash that was credited in the bank accounts current rendered to the company.

Q. And interest on consumers' final bills, how did you check that item, although small?

A. It is the amount of cash that is reported as collected and deposited in the bank by the company upon the final bills rendered to consumers.

The Master: What do they do, charge interest on that?

142 The Witness: A final bill, if it has been held up and has not been paid promptly, they charge a small amount of interest.

Mr. Ransom: It amounts to $5.44.

Q. Now, rentals from gas appliances—what did you do to check and verify the figures which you have shown on this tabulation, Exhibit 65 for Identification, as to that item?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The total amount of cash collected by the company during the year is reported as the rent of appliances. We accepted the amount of cash which they have recorded and turned into their bank accounts as rental on appliances. We did not go back of that.

Q. And, gross profits from sales of gas appliances?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The gross profit on sales of appliances is the balance carried in the account in the ledger to which are credited the proceeds of sales of appliances, and to which is charged the cost of the appliances as sold. We have examined the original invoices for the appliances purchased during the year, or the original inventories for appliances on hand at the beginning of the year, for those appliances which are credited to this account, to see if the amounts calculated as the cost of those appliances were correct. Having satisfied ourselves as to the correctness of the cost of the appliances sold, we have

143 taken the balance of that account as correct, and have recorded it here as the profit on sale of appliances.

Q. There is a small item of interest on main contracts deposits, shown on Exhibit 65 for Identification?

A. My recollection is that is interest that is credited by the bank on moneys specially deposited under the main contracts. It is a very small amount.

Q. I notice on Exhibit 65 for Identification in parenthesis, following the different items, certain numbers, in some instances capital letters and numbers, such as 440, G 902, and the like. What do those indicate, to what do they refer?

Mr. Tobin: Counsel is attempting to introduce into the record something from an exhibit which is not yet introduced in evidence.

The Master: It is not terribly important.

Mr. Neumann: We object to it.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. They indicate the corresponding account numbers in the public service classification.

Q. That is, the uniform system of accounts for gas corporations?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

By the Master:

Q. Are you familiar with that uniform system of accounts system, Mr. Teele?

A. I am more or less familiar with it.

Q. Are you familiar enough to be able to say that these symbols do refer to the accounts as prescribed by the Public Service Commission?

144 Mr. Neumann: I object to the Master's question.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Knowing the nature of the expenditures indicated by the different accounts kept by this company, I compared them with the definition of accounts set down in the Public Service Commission classifications, uniform system of accounts, and considered that the numbers I set down against these items were the corresponding accounts.

Q. Who set the numbers down?

A. I did personally.

Q. In other words, it is your inference that the classifications are correctly designated by you by these numbers?

A. Yes.

Mr. Neumann: I renew my objection.

The Master: Don't you see, Mr. Neumann, that your objection is rather futile, because all that Mr. Teele undertakes to say is that he assumed that these accounts are properly identified.

Mr. Tobin: I think it goes further than that. They are assuming and attempting through this process of examination to show that

these are uniform system- of *account* accounts as marked on this particular exhibit that is here for identification.

Mr. Neumann: And later on counsel will claim that he has proven that these books are kept in accordance with the uniform system of accounts, because of what Mr. Teele is now saying.

145 The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Mr. Tobin: We were given to understand that Mr. Teele was simply to testify to what he did in the examination of these books.

The Master: That is what he is doing.

Mr. Tobin: No, he goes further than that. He attempts to say that they are the same accounts as shown in the uniform system of accounts.

The Master: He is just telling me what he did.

Mr. Ransom: There are certain titles in the books, and there are certain titles on these tabulations. He is simply adding the classification account number which appears in the uniform system of accounts for gas corporations, which is in evidence.

The Master: He is telling us what he did.

Mr. Tobin: Exception.

Q. On Schedule 1 of Exhibit 65 for Indentification, in the left hand column, you have put down the references to the folios of general ledger No. 4 in which these respective items appear, have you not?

A. Yes.

Q. And in Schedule 2 of Exhibit 65 for Identification you have put down the folio of the operating expense ledger No. 2 in which these various items appear?

A. Yes.

Q. Likewise as to Schedule No. 3, in connection with cost to distribute?

A. Yes.

Q. On Schedule 2, which is headed "Cost of production, year ended December 31, 1919", have you stated the sums of

146 money making up the various items entering into the cost of production?

A. Yes.

Q. And then you make a deduction which you call "Residuals produced, credit," and "Residuals produced, sold". Will you explain just how you ascertained the amount of that deduction, and what check and verification you made in that connection?

Mr. Neumann: I object to that on the ground that is is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. What was the nature of the residuals?

Mr. Tobin: We object to the form of the question. I think he ought to be confined to asking the witness just what he did.
The Master: Objection overruled.
Mr. Tobin: Exception.

A. Those two items appear in two separate ledger accounts on the books of the company as indicated, folios 86 and 88 of operating expense ledger No. 2. "Residuals produced, credit" is the amount credited in that account and represents the number of gallons of tar reported on the works report——

Mr. Neumann: I move to strike out the answer of the witness upon the ground that the witness is not competent to testify to that at this present time, not from this witness at least.
The Master: Objection overruled.
Mr. Neumann: Exception.
147 Mr. Tobin: If the Master please, I think this witness is going further than you indicated would be allowed, that is, in testifying as to the system of accounts and what he did in his examination. Here he is testifying to what an engineer may be called upon to testify to.
Mr. Ransom: What he found, what he checked.
Mr. Neumann: You are going further than that.
The Master: I don't think so.
Mr. Tobin: I think it is quite serious at this time.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Q. Proceed.
A. Representing the number of gallons of tar reported by the works as having been produced and used during the month, calculated at six cents per gallon, and corresponds to the same figure which is found in the cost of production schedule, immediately above it, and as it appears on folio 84 of the operating expense ledger. In other words, the same amount appears on both sides.

Mr. Neumann: I move to strike out the witness' answer.
The Master: Motion denied.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Q. This tar is water gas tar?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. This witness has no qualifications to say whether it is water gas tar, or any other kind of tar.
148 The Master: Objection overruled.
Mr. Neumann: Exception.

A. It is so designated on the books and on the reports.
Q. Did you check these quantities of water gas tar produced and used and sold, first, produced and used, to the works report?

Mr. Neumann: I object to that as incompetent, irrelevant and i material both as to form and substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: If the Master please, there is nothing on this sched which refers to water gas tar; there is nothing here at all whi refers to it. If you examine it you will find there is nothing.

The Master: Go ahead.

Mr. Tobin: We object to the form of the question and the su stance of it.

The Master: Objection overruled.

Mr. Tobin: Exception.

Q. In other words, water gas tar is used, and the cost of producti is charged at six cents per gallon?

Mr. Neumann: I object to that as incompetent, irrelevant and i material, both as to form and as to substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. Then there is deducted from the cost of production as a resid credit the quantity of boiler fuel tar or water gas tar produced.

149 Mr. Neumann: I make the same objection, that it is i competent, irrelevant and immaterial, both as to form a substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. At the same rate, six cents per gallon?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. And the very slight quantity sold was at the same rate?

Mr. Neumann: I make the same objection both as to form a substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. It produced $13.95. I think there was reported less than gallons.

The Master: Was any sold?

The Witness: Amounting to $13.95.

The Master: You did not give the price at which it was sold?

The Witness: I have that in my working papers, the amou they received for it; I haven't those here.

Q. Schedule 4 of Exhibit 65 for Identification relates to taxes and interest thereon. Will you describe from what sources you made up this tabulation, and from what sources you checked and verified it?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.
The Master: Objection overruled.
Mr. Neumann: Exception.

150 Mr. Tobin: Exception. If the Master please, I think the witness ought to be asked to testify as to how the schedule was made up, and not in just the form in which Judge Ransom asks the questions. I think it is a leading question, and we were given to understand that Mr. Teele would testify as to just what he did in connection with this examination.

Mr. Ransom: I don't know who gave you to understand any such thing.
Mr. Tobin: We did so understand.
Mr. Neumann: Yes, we did.
Mr. Ransom: From whom?
Mr. Neumann: From the Master.
Mr. Tobin: Yes.
The Master: I rule that this is all within the lines I indicated.
Mr. Neumann: Exception.
Mr. Tobin: Exception.
The Master: Where did you get your information?
The Witness: From the checks, bills, and the ledger accounts.

Q. Is this a tabulation from the bills?
A. It is.
Q. And also checked with the ledger accounts?

Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Yes.
Q. And the ledger accounts were also checked with the bills?

Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Yes.
Q. Just take the different items there and show how you made up the statement?

151 The Master: Don't answer it that way. Were there any adjustments there at all?
The Witness: There were no adjustments. All the checks paid by the company are stated here applicable to the year 1919. Interest on unpaid taxes does not appear upon the tax bills, but it is calculated at the rate of 7 per cent per annum on the unpaid taxes, and appears upon the company's books.

Mr. Neumann: I move to strike out the answer of the witness.
The Master: Motion denied.
Mr. Neuman: Exception.

Q. Now, turning to Exhibit 64 for Identification, cost of produc tion and distribution, year ended December 31, 1919——

Mr. Tobin: If the Master please, this is a still more importan document, and I think the witness ought to be confined to just th method by which he got these figures together, instead of going o and testifying as to what an engineer or some other officer of th company properly qualified should testify to.
The Master: Let us see what the question is first.

Q. On the first sheet of this exhibit headed "Cost of production" you set forth various items of generator coal, boiler fuel coal, ga oil, gas making labor, and the like. Take the first item, generato coal, quantity.

Mr. Tobin: If the Master please, I think the witness ought to b allowed to testify as to how he made up this particular first pag instead of having Mr. Ransom lead him along as to the sub
152 stance of these particulars that are in here.
Mr. Neumann: And afterwards it will be claimed by M Ransom that he proved the quantity of generator coal by allowin the witness to testify to the figures on the exhibit.
The Master: Let us get a concrete question.

Q. From what sources did you obtain, and from what sourc verify the quantity of generator coal which you have shown on th exhibit?

The Master: Just tell us the sources from which you got your i formation.

A. The quantities are taken from the daily record of man facture.
Q. And that is true of the other accounts of coal and fuel?
A. That is true of all the items set down, in the quantity colum
Q. Now, the column headed "Amount" shows various sums money in connection with each of those items. From what sour or sources did you obtain, and from what sources verify and chec the amounts of money shown in this column?

Mr. Tobin: If the Master please, I object to the form of the qu tion. I think he should ask the witness how he obtained th figures.
The Master: That is what he is doing.
Mr. Tobin: Well, he is going at it in a little more direct way.
Mr. Ransom: "Direct way" is very good.

A. They were taken from the ledger account. This particu amount of coal, $48,000.——

153 Mr. Neumann: One moment.
The Master: No, no.

Q. It is the amount of money shown in the ledger accounts?
A. Yes.

The Master: In money.
The Witness: In money.

Q. As having been expended for coal?
A. Yes.
Q. How did you get the prices per ton, per gallon, per cubic foot, etc., which appear under the unit price column?
A. By dividing the quantities shown into the dollars shown in the amount column.
Q. Thereby giving you a unit price per ton, or per gallon, according as the unit is for the particular quantity?

Mr. Neumann: I object to that and ask that the question be stricken out as a conclusion of the examining attorney.
The Master: Motion denied.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. Yes.
Q. In the column headed "Cost per cubic foot," there are set forth various sums of money in connection with each of the items on this cost of production sheet. How did you obtain the figure in money which is there shown per thousand cubic feet?
A. By dividing the figures appearing in the amount column by the total number of cubic feet of gas made, as shown by the record of manufacture.
Q. How did you obtain the figures in pounds, gallons, cubic feet, and so on, which are shown in the next column, the material
154 per thousand cubic feet made?
A. By dividing the total quantities by the total number of cubic feet of gas made.
Q. From what source did you obtain the number of thousand cubic feet of gas used by the New York & Queens Gas Company itself, that the company used?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. From the reports in the office of the company.
Q. Which reports?
A. The monthly office reports.
Q. And you have described the course and the method of verifying the quantity sold to consumers?
A. Yes.
Q. From what source did you obtain and verify the items shown in red ink, "Decrease in stock on hand?"

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. By deducting the stock on hand December 31st, as shown by the daily record of manufacture, from the stock on hand as shown by that same record, January 1, 1919.

Mr. Ransom: Defendants may cross examine.

155 The Master: Do you want to cross examine now, or do you want to hold it?

Mr. Tobin: We want to hold it over.

The Master: I will reserve cross-examination. Don't you want to ask him about the Cost of Distribution sheet?

Q. On this Cost of Distribution sheet of Exhibit 64 for Identification, you have shown certain amounts in money. Those are taken from the sources and verified in the way in which you have already described, in connection with the revenues and expense statements?

A. Yes, they are.

Q. In the second column, or in the last column to the right, you show cost per thousand cubic feet sold. How did you obtain the amounts of money shown in that column?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. By dividing the figures in the column headed, "Amount" by the number of cubic feet of gas sold.

Mr. Tobin: If the Master please, I think they are simply introducing evidence as to what transpired, instead of the method of doing business, or as to what this man found on his examination of the accounts.

Mr. Neumann: I object to it on the further ground that apparently this computation of the witness is based on something which is not yet in evidence.

156 The Master: He is stating that all of the figures are taken from the books? Am I correct about that?

The Witness: That is right.

Mr. Neumann: He is talking about gas sold.

The Master: As taken from the books. Where did you get "Renewals and Replacements" from?

The Witness: The actual replacements that are shown on——

The Master: That appears in the books, too?

The Witness: Yes, sir, ledger folio 188.

The Master: The amount as shown in the amount column appears in the books?

The Witness: It does.

The Master: The cross-examination is reserved.

Mr. Tobin: We would like to have entered here, if the Master please, a general objection to the testimony, to the effect that the State is not bound in any way by what actually transpired, as concerns the testimony of this witness, except as to the methods in which the business of the company was carried on that this man found upon his examination. In other words we should not have introduced here as against the State evidence which should properly be given by an engineer or some other officer of the company, and be bound by it.

157 ALTEN S. MILLER, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Miller, what is your occupation?
A. I am an engineer, and the Vice-President of the Bartlett-Hayward Company of Baltimore, which company is a manufacturing and contracting company making certain automobile parts, pneumatic tools, and all of the gas manufacturing apparatus ordinarily used by gas companies, outside of running machinery.
Q. That is gas holders——
A. Gas holders, water gas generators, retorts——
Q. Generating and purifying apparatus?
A. Yes.
Q. Condensing and scrubbing apparatus?
A. Condensing and scrubbing apparatus, pipe fittings.
Q. And by-product apparatus?
A. A full line of by-product apparatus.
Q. And some general job work?
A. The company does do general jobbing work in its machine shop. It has large blacksmith shops, foundries, plate shops and machine shops.
Q. It also manufactures sugar machinery?
A. Yes, sir.
Q. Does it take contracts for gas plants complete, or for the construction of parts of plants as needed?
A. It will take contracts for almost any part of a gas plant or for complete gas plants.
Q. It erects the plants or parts of plants?
A. It manufactures a large part of all the equipment in its own establishment, and what equipment it does not manufacture
158 it buys and erects, and starts the plant.
Q. The iron and steel parts therefor it manufactures and erects?
A. Yes. That does not apply to proving machinery like engines, exhausters, etc., but cast iron work and such things it makes in its own shops.

Q. Running machinery it buys and sets up and installs?

A. Yes, sir.

Q. As a part of its installation of a given plant or unit of a plant?

A. Yes.

Q. How long have you known the Bartlett-Hayward Company to be engaged in the erection of gas plants and structures?

A. Personally since I have been in the gas business, which is thirty-two years.

Q. Since 1888?

A. Since 1888.

Q. And at that time it was engaged in the manufacture of gas plants and gas manufacturing apparatus?

A. It had been engaged for many years, yes.

Q. Before that time?

A. Yes.

Q. What academic and engineering education did you receive?

A. I was educated in the private schools of Richmond, Virginia; then I went one year to the Richmond College; afterwards, three years at Stevens Institute of Technology in Hoboken, from which I graduated in 1888 as mechanical engineer.

Q. What have been your occupations since you were graduated as an engineer?

159 A. Immediately after leaving Stevens Institute I went with the United Gas Improvement Company of Philadelphia.

Q. In its engineering department?

A. As a draughtsman or cadet engineer in the construction department. The United Gas Improvement Company being an operating company, and also a constructing company in the gas business.

Q. That is, it both owned and operated gas plants of its own, and took contracts for the erection of gas plants and apparatus?

A. Yes.

Q. What did you do there?

A. There I made drawings of gas holders, gas works apparatus that is retorts, and of buildings. As far as I recall that was the principal work in that office, which lasted only four months.

Q. In August of that year what did you do?

A. I went to Omaha, Nebraska, as assistant superintendent of the gas company in that city, which company was owned by the United Gas Improvement Company.

Q. What were your duties there subject to the advice of the superintendent?

A. I had charge of the manufacture of gas, the maintenance of the plant, the new construction work, which involved a new holder and governor house, and also the laying of mains and services; and I personally kept the records of construction, and the records of the main laid.

Q. Did you build a gas holder, governor house, and so on there?

A. Yes.

Q. And had charge of the installation of many miles of

160 mains?

A. Yes.

Q. Did you personally keep all the records of the main installation, including the cost data of material and labor?

A. Yes.

Q. All the labor and materials entering into the cost of making gas at that plant?

Mr. Neumann: I object to that unless counsel confines it to some particular time. It is indefinite as to time.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Did you actually personally check up the time cards and approve all bills?

Mr. Neumann: I make the same objection, that there is no limitation as to time, and no time specified.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I actually kept the time myself. It was a plant smaller than the Flushing plant. I had my office in the plant and kept the time of the men and checked up all costs, and personally approved all bills relating to the operation of the plant, and to the operation of the construction portion of the distribution system.

Mr. Neumann: I move to strike out the answer upon the ground that no time is specified.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. How long did you stay in Omaha in this capacity?

A. From August, 1888 to May, 1892.

Q. Then what did you do?

161 A. I went to Chicago as general manager of the National Gas Light & Fuel Company, which was also owned by the United Gas Improvement Company, and which had charge of the work in the West of the United Gas Improvement Company.

Q. That is, on gas plants and gas works and apparatus?

A. Yes.

Q. It built and took contracts?

A. It took contracts and erected.

Q. What did you do there?

A. There I canvassed the territory and made contracts for apparatus, and in at least one case I built a gas apparatus for one of the companies.

Q. What next? Did you then become western agent?

A. Well, during that period I closed out the National Gas Light & Fuel Company as an agency, and ran the office as western sales agent of the United Gas Improvement Company

Q. How long were you there?

A. I was there two years.

Q. Then what did you do?

A. Then I came to New York as engineer of the East River Gas Company of Long Island City.

Q. Was that at that time affiliated with the Consolidated Gas System?

A. No; at that time it was a small plant making and distributing gas in Long Island City.

Q. Was it building a plant and tunnels?

A. At the same time it was working on a tunnel under the East River, and a plant was in course of construction.

Q. How large a plant?

A. It had a nominal capacity of six million cubic feet per day.

162 Q. That is, the company was then seeking and preparing to sell gas in the Borough of Manhattan as well?

A. Yes, then New York City.

Q. How long were you with the East River Gas Company of Long Island City?

A. There I had charge of the completion of the plant and completed it and started it up, and had entire charge of its operation. In October of that year gas was turned on in New York City. I had charge of the distribution system in New York.

The Master: The tunnel had been built?

The Witness: The tunnel was completed in October.

The Master: What tunnel is that?

The Witness: That is the Ravenswood tunnel. That was completed and gas was turned on in October, 1894.

Q. What was the capacity of the plant of the East River Company at the time you went there?

A. I do not recollect exactly, but probably about four or five hundred thousand feet a day.

Q. What was the capacity per day at the time you left there at the end of about eight years?

A. Thirty millions, nominally.

Q. And the tunnel meanwhile had been finished?

A. Yes.

Q. Did you have charge of the construction and design of the new plant?

A. The first unit had been designed, and construction was under way when I went there. I completed that. I had entire charge of that construction and completed it. The balance of the plant I designed and constructed.

163 Q. Did you have charge of the gas business in Long Island City?

A. Yes, the commercial business, entire charge, and entire charge of all the operations of the company in Long Island City, including all the manufacture of gas, and all the commercial business of selling gas in that territory.

Q. Did you have charge of the engineering end of the gas works in Manhattan?

A. I did all of the engineering in Manhattan.

Q. And that included charge of the distributing system?

A. The holder station, the mains, services, and setting of meters. That was under the engineer, the setting, removing and maintenance of meters.

Q. And the tunnel had been finished and gas turned on in the mains in New York City in 1894?

A. Yes.

Q. In 1898 was there any change in the status of the East River Gas Company with which you were identified?

A. The East River Gas Company of Long Island City was consolidated with the Equitable Gas Light Company, forming the New Amsterdam Gas Company, and I was made the engineer of the New Amsterdam Gas Company, and had charge of the operation of the Equitable works as well as the East River works at Ravenswood, as well as the whole distributing system.

Q. And commercial operations likewise?

A. Not in New York.

Q. In Long Island City?

A. In Long Island City I continued in charge of all commercial operations.

164 Q. As far as canvassing in Manhattan was concerned, or the delivery of bills, you didn't have charge of that?

A. No.

Q. But you did have charge of the manufacture of gas and of the construction work?

A. All the manufacture and all the construction, and all the engineering operations of the company in all territories.

Q. Up to and after this consolidation in 1898 into the New Amsterdam Gas Company, was the New Amsterdam Company controlled by or in any way identified with the Consolidated system at that time?

A. No, not at that time.

Q. It was a vigorously competing company in those days?

A. It was.

Q. It was the New York & East River Gas Company which owned the East River Gas Company, and consolidated with the Equitable Gas Light Company which formed the New Amsterdam Company in 1898 as a competitor of the Consolidated?

A. Yes.

Q. Now, in 1900, or thereabouts, what happened so far as the Consolidated Company acquiring any interest in the New Amsterdam Company was concerned, and what did you do then?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

165 A. The Consolidated Gas Company of New York bought control of the New Amsterdam Company, and in addition to my duties as engineer of the New Amsterdam Gas Com-

pany I was made constructing engineer of the Consolidated Gas Company.

Mr. Tobin: If the Master please, I move that that answer be stricken out. I think this witness ought to be asked how he was employed at that particular time, and not put in transactions between gas companies, consolidations and mergers, and a lot of other things here. It is all right to ask him what it was he did, and what position he had, but to enter on the record all these consolidations and changes, I think is not proper.

The Master: I will let the answer stand. I think perhaps technically it is objectionable.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Q. In 1900, then, you were constructing engineer of the Consolidated Gas Company, and also engineer of the New Amsterdam Gas Company?

A. Yes, sir.

Q. After that did you build any extensions to the New Amsterdam plant?

A. Yes. The New Amsterdam plant was increased by two extensions after the first unit. One of the extensions I built shortly after 1898, and the second extension, bringing it up to a capacity of thirty million, around 1901.

Q. About doubling its capacity?

A. The second extension doubled the capacity, yes.

Q. And did you build the two five million cubic feet capacity holders of the Consolidated Company at 111th Street?

166 A. Yes, I built those holders, and put up some apparatus, boilers and other things, at 99th Street.

Q. Valve and governor house?

A. Yes, governor house at 11th Street.

Q. Additional gas mains in the East River Tunnel?

A. Yes, and put in a lot of coal gas apparatus in the Central Union plant.

Q. New condensers at 21st Street?

A. Yes.

Q. Generating apparatus at 44th Street?

A. Generating apparatus and condenser apparatus and scrubbing apparatus.

The Master: For what purpose are you qualifying Mr. Miller? What do you want to prove by him after you have qualified him?

Mr. Ransom: Present value of property.

The Master: Present value? On what basis, cost to replace, or what?

Mr. Ransom: Cost to replace.

The Master: I will stop the examination as to qualification at this point. I will let you take it up again if I hear counsel questioning it later on.

Mr. Tobin: We except to that, if your Honor please. We want to ask some questions of this witness.

The Master: You are not satisfied yet?
Mr. Tobin: No, sir.
The Master: Go ahead, then.

Q. In 1902, you did what?
A. I went to Baltimore as Vice-President and General Manager of the Consolidated Gas Company of Baltimore.
167 Q. Has the Consolidated Gas Company of Baltimore any connection with the Consolidated Gas Company of New York?
A. None whatever. There I built an entirely new plant, and re-arranged the distributing system, added many miles of mains, and secured many new customers. At a later date——

Mr. Neumann: I object to that unless the witness fixes the time. Throughout his entire testimony the time is very vaguely fixed.
Mr. Ransom: It is very definitely fixed.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Well, three or four years later, I would not say the exact date, the Consolidated Gas Company was consolidated with——

Mr. Neumann: I object to that upon the ground that it has nothing to do with the qualifications of the witness.
The Master: Yes, I will sustain the objection.

Q. Was there some new company in Baltimore of which you became an officer, and for which you undertook certain duties?

Mr. Neumann: I object to that unless the time is fixed.
The Master: He says three or four years.

A. About 1907 I became Vice-President and General Manager of the Consolidated Gas, Electric Light & Power Company of Baltimore, which supplied all the gas in Baltimore and suburbs, and practically all of the electricity except that used in connection with the operation of the street railways.
Q. Did you build a new electric plant?
168 A. I built a new electric generating station to supply all the company's requirements, and completely rebuilt the electric distributing system which had been supplied from several small plants, and I re-arranged it so as to supply everything from one central station.
Q. In 1906 while you were still connected with the Baltimore Company did you become connected with any other gas corporation?
A. Yes, I was made President of the Hyattsville Gas & Electric Company, and I built a complete plant and distributing system for the town of Hyattsville.
Q. Hyattsville is near the edge of the District of Columbia?
A. It is in Maryland alongside of the District of Columbia.
Q. You are still President of that company?
A. Yes, and own half an interest in it.
Q. In 1909 what did you do?
A. In 1909 I went to St. Louis as Vice-President and General

Manager of the Union Electric Light & Power Company, and a short while afterwards, within the next six months, was made president of the company.

Q. In 1911, and for four years thereafter, were you a consulting engineer in the firm of Humphries & Miller?

A. I was Vice-President, and a member of the firm of Humphries & Miller, consulting engineers. I am still Vice-President.

Q. When did you become Vice-President of the Bartlett-Hayward Company, in 1915?

A. In August, 1915, I went to Baltimore as Vice-President of the Bartlett-Hayward Company, and also took an interest in the company.

169 Mr. Neumann: I move to strike out the words "took an interest in the company."

The Master: Motion denied.

Mr Neumann: Exception.

Q. You have been with the Bartlett-Hayward Company since in the capacity you have described, with the exception of what time?

A. With the exception of a period from April, 1918, to December, 1918, I have been with the Bartlett-Hayward Company as Vice-President and Director. From April to December, 1918, I was connected with the Engineering Division of the Ordnance Department in charge of the design of cannon ammunition.

Q. Of what engineering or scientific societies are you an officer or member?

A. I am Fellow of the American Institute of Electrical Engineers; member of the American Institute of Consulting Engineers; American Society of Mechanical Engineers; American Gas Association, The Illuminating Engineering Society; the Society of Gas Lighting.

Q. During your vice-presidency of the Bartlett-Hayward Company has the Bartlett-Hayward Company from time to time done work at the plant of the New York & Queens Gas Company, and the Consolidated Gas Company, and other companies of the Consolidated System?

A. Yes.

Q. And you have been in touch with this work and in charge of portions of it from time to time?

A. Yes.

Q. In connection with that work, from 1900 down to date, and for a number of years prior to 1900, have you purchased and sold materials, and employed labor used in the construction and
170 operation of manufacturing and distributing plants for gas?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. Counsel stated that he is only qualifying this witness for the purpose of stating present day prices.

Mr. Ransom: I may ask him some other questions. I am qualifying him broadly.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. Have you been and are you now familiar with the market price of such materials, and the rates of pay of such labor, from 1900 down to the present time?

Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. Yes.

Q. Mr. Miller, during the year- 1918 and 1919 were you employed by the New York & Queens Gas Company to undertake an inventory and appraisal of its buildings, manufacturing and holding stations, apparatus, distributing system and other properties?

A. Yes, sir.

Q. On or about what date, if you can give the approximate date—about what time?

A. I think it was in June, 1918; I am not sure.

Q. When did you begin that work, about what time?

A. I did a very small amount of work at that time, made a general examination of the plant, but did not begin it very actively
171 until after I left the service in December, 1918. Then I took it up quite actively.

Q. When did you finish your inventory and appraisal of the property of this company?

A. Within six or eight weeks.

Q. Did you devote much of your own time to it?

A. Yes, a considerable amount of time.

Q. Did you personally examine all the buildings, holders, and apparatus of the New York & Queens Gas Company?

A. Yes.

Q. What assistants did you have in this week?

A. I had some of my own men from Baltimore, and had some special men that I brought in to help me in this connection.

Q. That is, they were all your employees?

A. Oh yes.

Q. During what period of time did these assistants work with you and for you on this inventory and appraisal?

A. The work altogether went over a period of about 15 months.

Q. Did all of these men work with you and under your immediate supervision and personal direction?

A. Yes.

Q. Did you give them instructions from time to time as to what you wanted them to do and how?

A. Yes.

Q. Did you personally observe the work that they were doing from time to time, and the results of it?

A. Yes.

Q. Did you personally go over all their work?

A. I did, and checked all the figures.

172 Q. You went over the details of their inventory and of the appraisal?

A. Yes.

The Master: This inventory is as of what date?

The Witness: As of January 1, 1920.

Q. And you made such changes in the work of your assistants, if any, as seemed necessary in order to make anything found by them conform to your own judgment?

A. Yes.

Q. Now, as a result of the work which you have described did you prepare a document which I now show you, entitled "Inventory of the New York & Queens Gas Company as of January 1, 1920, Summary of Costs?"

The Master: Summary of cost?

Mr. Ransom: Well, summary of value.

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and upon the further ground that the statement of counsel is very vague and indefinite as to what the inventory is.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: Did you prepare this statement?

The Witness: Yes.

Q. The first two pages show an index of the various pages of that inventory and appraisal on which particular properties are dealt with, for example, old generator house, pages 1 to 4, and so on?

A. Yes.

173 Mr. Tobin: If the Master please, we are not ready to accept that this witness has been qualified to fix the costs.

The Master: We haven't got to that yet.

Mr. Tobin: He is coming to a schedule here.

Q. Next, you have made up and incorporated in this document a summary statement, which you call, "Summary of cost to reproduce the plant of the New York & Queens Gas Company, January 1, 1920."

A. Yes.

Q. Following the different subdivisions of this summary I find various numbers, in some instances numbers and letters in parenthesis, for example, ("Land"), ("G. 110"), "Street Mains (231)," etc. What do these numbers and letters in parenthesis mean?

A. They are the letters of the account in the Public Service Commission's uniform system of accounts.

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and I move to strike out the witness' answer. The witness is not yet qualified.

The Master: Objection overruled and motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception. If the Master please, there has been no foundation laid to indicate that these are the same accounts as might be called for in the uniform system of accounts. There is nothing here to indicate that.

The Master: My ruling will stand.

174 Mr. Tobin: Exception.

Mr. Neumann: That objection, of course, may be put in before the witness' answer? It came too quick?

The Master: Yes.

Q. Turning to the inventory and appraisal of the physical property, have you set forth with respect to each building, structure, etc., the details of the computation by which you have ascertained and calculated the cost to reproduce it?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, nothing shown as to the time or date of production cost.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. For example, take page 1 of the pages as they have been numbered by the numbering machine, in relation to generator house No. 1, in the left hand column you have for convenience assigned an item number—to the various details entering into the cost to reproduce this generator house?

Mr. Neumann: I object to that on the same grounds as before.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. That is 1, 1A, and so on, excavation being 1, and shallow earth being 1A, and back fill being 1E?

A. Yes.

Q. That is for the purpose of convenient reference?

A. That is for my own convenience.

175 Q. In the third column you have shown the quantity of each kind of material and labor entering into the particular item of property?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The amount shows the material with the labor added to it. In other words, they are not shown separately.

Q. The third column is quantity?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.
Q. That is correct, is it?
A. Yes.
Q. And in the next column you have shown the unit in which such item is measured, whether in cubic yards or cubic feet, or whatever may be the unit standard of measurement?

Mr Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

Q. Is that correct?
A. Yes.
Q. And in the fifth column you have shown the unit prices which you have applied to such unit quantities?

Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Yes.

176 Q. Do the unit prices shown in the fifth column represent, in your judgment, the fair and reasonable and necessary cost as of January 1, 1920, of the units of materials, labor, etc., shown in this inventory and appraisal?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The witness is not properly qualified.
Mr. Tobin: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. Yes, on a sub-contract basis.

Mr. Neumann: I move to strike out the witness' answer, and the question, in view of the witness' answer.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. With respect to the distribution system, street mains, etc., will you describe how you ascertained the quantities and their reproduction cost as of January 1, 1920?

Mr Neumann: I make the same objection.

A. I took the company's records as far back as they went, and took from them the quantities of mains that were laid from year to year, and that left a balance which presumbably might have been there before the records began. I then took a map and entered on it all the mains as shown by the record. I then entered on that map, in different colored ink, the mains that should have been there according to another old map. Then I went to the company's files and took out records of repairs and services, and such work, and checked this map that I had made on the old map, checked

that part to find out whether the reports of the men who did work on services, or work on repairs, or work on extensions, agreed with this map. Then there were still a few gaps, and I had the ground dug at those places to identify the pipes that could not be identified either from the records as having been laid, or from the records as having been worked on since they were laid, by actual inspection of the pipe in the ground.

Mr. Neumann: I move to strike out the answer on the ground that it is based on assumptions and presumptions.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Except to the extent to which you have described, you of course had no way of physically looking at these mains under the surface of the ground?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I did not look at any except in just a few places that did not have a record establishing their existence.

Mr. Neumann: I move to strike out the witness' answer, and the question in view of the witness' answer.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. When a new service is installed and the ground is dug up for that purpose, the main is exposed for the purpose of connecting new service, and is a record in regular course made with respect to the main and the size of the main, to which the service is attached?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, improper as to form and substance, and also not within the province of this witness to testify.

The Master: I take the question to mean that he found records which pretended to show that.

Mr. Ransom: Yes.

Mr. Neumann: I make the same objection to that question.

Mr. Tobin: We would like to raise a general objection and exception right here, that the State should not be bound by quantities or kinds of property owned by the company, that these figures that are being submitted here are simply based upon data furnished by the company. In other words, we are not going to accept this man as stating that the company owned these particular properties. He simply made a valuation, and he should be asked to explain this valuation and nothing further. In other words, there should not be brought into the record something that is going to be testified to by an officer or engineer of the company.

The Master: I think there ought to be some evidence as to the extent of these mains, and as to the accuracy——

Mr. Tobin: There should be something before this man is called upon to testify as to what they are worth.

Mr. Ransom: You mean as to the accuracy of the main records?

The Master: Yes. Let him say for the time being that he relied upon them.

Mr. Tobin: We object to that line of examination if your
179 Honor please. We do not think it is fair to the State. To begin with, we have no copy of this book.

Mr. Ransom: It was sent to you weeks ago.

Mr. Neumann: By weeks ago you mean about a week ago, don't you? You have my letter acknowledging receipt of it. Bring out the letter.

Mr. Ransom: I can prove that this was sent to you weeks ago, not one or two weeks ago, but weeks ago.

The Master: Next question.

Mr. Tobin: There is another part to it, too. This is based upon an inventory which Mr. Ransom says he furnished to the State and the other defendants, but it is not complete, that is, there are certain items which go to make up that inventory which are not complete, and which are before you for further direction.

The Master: We will take that up as soon as we get through with Mr. Miller.

Mr. Tobin: Here is this witness testifying to this inventory, and we have no way of dealing with it fairly. They are simply introducing evidence which should be introduced by proper officials or engineers of the company.

Q. From these different sources which you mention, Mr. Miller, you ascertained the quantities and sizes and lengths of mains, which quantities you made the basis of your appraisal?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, both as to substance and form.

180 The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Now, with respect to services, meters, gas appliances, and the like, will you describe how you ascertained their quantity and the cost to reproduce them as of January 1, 1920?

Mr. Neumann: I make the same objection to that, both as to form and substance.

The Master: Objection overruled.

Mr Neumann: Exception.

A. The services I took from the record of services laid, going back to the earliest record I could find in the company's possession, which shows each month the service laid, giving the location and length of service and the size of service. That record started with an original balance, which was small, I do not recollect the exact number, but there weren't very many services at the time this record was opened. This record shows each one that has been laid since. In

order to check up the probability of this being correct at the start I looked over the reports showing the amount of business that the company did at this period, in 1904, the number of meters it had, and checked that against the number of services that were shown by the record, and satisfied myself that the number was reasonable in the opening of the book. For the meters, I counted from the consumer's ledger and counted the number in stock.

Mr. Neumann: I move to strike out the witness' answer upon the ground, among others, that it is based upon assumptions.

The Master: Motion denied.

Mr. Neumann: Exception.

181 Mr. Tobin: I move you at this time that we suspend until there is some testimony here as to the extent of property owned by the company. This man is simply a valuation engineer, he has come in here to make a valuation of the property, and they are asking him these things. I think we should have an estimate of what the company owns by an officer of the company before we go any further. I think the State should be protected to that extent.

The Master: The State will be protected. Motion denied.

Mr. Tobin: Exception.

The Master: I am not going to take Mr. Miller's value until I get more proof of what actual property they have on hand.

Mr. Tobin: It occurs to me that if we got that in first we might proceed in a more orderly way.

A. The appliances were taken from the company's inventory, furnished by the company.

Mr. Neumann: I move to strike out the balance of the witness' answer upon the same grounds as before stated.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: I object further that his answer is not based upon any facts which are before the Master. It is based purely upon assumptions of his own.

The Master: Objection overruled.

Mr. Tobin: Exception.

Q. Did you make any check with respect to the accuracy of these meter records, so far as the meters on the District were concerned?

182 The Master: I thought he answered that?

Mr. Ransom: He said he counted some of the consumers' ledgers.

The Master: He figured a meter for each consumer.

A. I counted them right from the ledgers, and checked them on the meter readers' books.

Q. That is, you took the meter readers' books, and also the consumers' ledgers from which bills were being rendered and paid?

A. Yes, the meter readers' books show the reading of the meter each month.

Q. Now, with respect to the item, "Works office and dwelling," you did not undertake to make a valuation or appraisal of this works office and dwelling, those two buildings?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. If he did not undertake to make an appraisal what is the purpose of it?

The Master: Objection overruled.

Mr. Neumann: Exception.

A. No.

Q. You obtained that figure for that building from what source?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. From the local builder who has testified here.

Q. You mean Mr. O'Connor?

A. Mr. O'Connor.

Mr. Neumann: I move to strike out the answer on the ground that it is based on hearsay.

183 The Master: Motion denied.

Mr. Neumann: Exception.

Q. In other words you have included and incorporated in your inventory and appraisal, in so far as it relates to this works office and dwelling the figure testified to by Mr. O'Connor, and incorporated in the estimate or letter which was marked for identification at the last hearing?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, based on something that is not in evidence in this case.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. You did not undertake to make a valuation or appraisal of the land owned and used by the company as of January 1, 1920, did you?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. No.

Q. From what source did you obtain the figures given by you in your summary table for land?

Mr. Neumann: I make the same objection.

Mr. Tobin: If your Honor please, there is no testimony whatever with reference to the value of land.

The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. From the appraisal of Mr. Halleran.
184 Q. John J. Halleran?
A. Yes.

Mr. Neumann: I move to strike out the answer.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. In so far as this inventory and appraisal relates to land, it relates only to the land occupied by the manufacturing plant, holders and appurtenant structures?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not within the province of this witness so to state.
The Master: I will take the witness' statement. Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. Yes.
Q. That is, you have not undertaken to show in this inventory and appraisal either the land rented by the company for office use, or the building thereon occupied for office purposes but not owned by the company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and assuming a state of fact which have not yet been proven in this case.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. No.

Q. In the summary table which follows the index, in addition to the inventory, the summary of the inventory and appraisal of the tangible property, there appear also and you have set forth
185 figures embodying certain items commonly referred to as undistributed structural costs. Is that correct?

Mr. Neumann: I move to strike out from the question, and object to it, the word "commonly."
The Master: Motion denied.
Mr. Neumann: Exception.
Mr. Neumann: Now I object to the question as incompetent, irrelevant and immaterial.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Yes.

Q. On the pages following the summary statement have you shown a series of notes or comments by you concerning the elements entering into each of these items of undistributed structural costs, and the methods followed by you in computing them?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Your objection is well founded, except that I think it will save time to take the witness' statement in this form.

Mr. Ransom: I am offering this only as a compact form of his testimony.

The Master: I think we all found in the Consolidatted case that when we had a witness like Mr. Miller on the stand, who had a speech to make, that it was quicker to take his speech as he had prepared it than to ask him questions and bring out the speech by question and answer. The net result of an examination of an
186 hour or two will be that this witness will testify to the matters stated in these pages from two down to the question of working capital, which this question does not comprehend. If your objection is pressed——

Mr. Tobin: There is another point about it. He is called upon or will be called upon to give evidence here as to values, and also an indication of the condition of this property, which has not been proven.

The Master: I know that. Don't let us get away from the issue. He has given some figures, says Judge Ransom, on the basis of cost of construction not included in the particular items already covered. Now, he has stated his reasons in these pages, and has given the theory on which he has figured this, and how he figured it. Now, Judge Ransom could cover that in one of two ways, he could do it in the way of getting the testimony en bloc, or he could ask the questions, "Are there certain expenditures incident to the construction of a gas plant that have to be made," and so on, and the witness will say, "Yes," and then he will say, "Tell us some of them," and then he will enumerate the seven elements. Then he will say, "Tell us about the first one," and he will go on and make a whole speech. The only question now is whether you are pressing your objection to the method of getting the witness' statement in the record.

Mr. Tobin: The point I make is this: With the previous witness they were not satisfied to have Mr. Teele testify as to his
187 figures, but he also endeavored to have him testify as to just what the expenses consisted of. Now he is endeavoring to do the same thing here, to indicate the extent of this property, and also the condition of the property. We object to that and say it is not fair at this time, because there is no evidence here before you as to the extent of property owned by the company or the condition of the property. Of course you protected us to a certain extent as to the expenditures, because you only allowed those in indicated by vouchers offered in evidence, but Judge Ransom is going further with this witness and is trying to show the condition of the property and the extent of the property.

The Master: I will overrule the objection.
Mr. Neumann: Exception.
Mr. Tobin: Exception.
The Master: I don't think the witness has answered that question. You have set forth in these pages following the summary the basis on which you made these computations?
The Witness: Yes.
The Master: And if you were asked particular questions relating to the particular items would your answers be as set forth in these pages?
The Witness: Yes.
The Master: In other words, are the statements made in these pages now made by you under oath, without repeating them all?
The Witness: Yes.
The Master: So that you are swearing to it?
188 The Witness: Yes.
Mr. Neumann: My objection goes, of course, to all the Master's questions.
The Master: I am asking him in the same manner and to the same extent as I would ask if particular questions were asked to bring out these particular answers.

Q. If interrogated by me regarding each of these items of undistributed structural costs would you testify regarding each such item to the substantial effect shown in the corresponding note annexed to your summary statement?

Mr. Neumann: That is already covered by the Master's questions, and our objection and exception.
The Master: Then it will not do any harm to answer it again.
Mr. Neumann: I object to it as incompetent, irrelevant and immaterial.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: I object to the form of the question.
The Master: Objection overruled.
Mr. Tobin: Exception.

A. Yes.

Mr. Tobin: We ask that he testify to each of the items.
The Master: I will not require it now.
Mr. Tobin: Exception.

Q. The same is true with respect to your note in connection with working capital?

Mr. Neumann: I make the same objection, and also that it deprives the defendants of the opportunity to object specifically to any particular question that might be asked.
189 The Master: I will reserve to you the right to move to strike out any statement contained in any of these pages as if you had made objection to the question.

Mr. Neumann: That does not protect us. Here is a witness who is attempting to make some statements on a supposed inventory with reference to working capital. There is not a scintilla of evidence in this record to indicate that he is properly qualified to testify as to the question of working capital.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Mr. Tobin: We take a general exception.

Q. Since these notes on certain of these items were originally made up some weeks ago, and at that time furnished to the defendants, have you at my request further amplified your comments on three items, namely, engineering superintendence and general production expense and profit, administrative, and legal and miscellaneous general expense, and interest during construction?

Mr. Neumann: I move to strike out from the question the words "furnished to these defendants several weeks ago." "Several weeks ago" is what I move to strike out.

The Master: Motion denied.

Mr. Neumann: Exception. Now, I object to the question as incompetent, irrelevant and immaterial, and further upon the ground that what counsel is endeavoring to do is either to impeach or vary or alter the testimony of the witness as given heretofore.

The Master: Objection overruled.

190 Mr. Neumann: Exception.

The Master: I am frank to say in this connection, and in connection with this inventory, that I do not believe the Court ever intended by any statement made in any case to require the consumers of gas to pay a price based upon a theoretical or opinion statement as to the cost of replacing the plant today. Now, it may be that I have got to value the plant as of this time under some of the language of the cases, but having in mind an expression in the decision or opinion of the Supreme Court in the prior Consolidated case, I do not believe the Court ever intended that the consumers should pay for gas based upon the present, and to some extent, in one point of view, an abnormally high price of reproducing this kind of property. I am going to take all this evidence.

Mr. Neumann: Your Honor means a return based on that valuation?

The Master: I say a return based on that. It may well be that I have got to make some finding as to present cost of replacing or reproducing, and therefore I am going to take this proof, but I am frank to say I do not believe the Court ever intended to impose any such condition on the consumer.

Mr. Tobin: We object further to this question in that we do not believe it proper that the brief of the other side should be handed in on certain questions which will come before you for exact evidence,

a brief on this particular matter that seems to be raised by Judge Ransom, and which he now attempts to append to the in-
191 ventory previously given to the defendants.

Mr. Ransom: It is only a slight elaboration.

Mr. Tobin: You are attempting to make it the testimony of the witness. We object to the introduction of it.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Ransom: Subject to the offering of more detailed supporting proof with respect to the matter of street mains, meters and appliances, I offer this inventory in evidence.

The Master: Mark it for identification first.

Paper marked Complainant's Exhibit 66 for Indentification.

The Master: You had better hold the offer of that exhibit 66 for Indentification in evidence back for a while.

Mr. Neumann: How about the corrections?

The Master: I will take the amplifications.

Mr. Ransom: The amplifications are in the amplified form.

Mr. Neumann: We object to it.

Mr. Ransom: Page 7, engineering superintendence and general production expense and profit; page 8, administrative, legal and miscellaneous general expense; page 10, interest during construction.

The Master: Those pages are new since you gave this the other side?

Mr. Ransom: Yes.

The Master: Now, give these three pages to the other side. I have asked the counsel to hold back the offer of this document in
192 evidence, because I would like to have more supporting evidence before I take it.

Mr. Ransom: That is all with Colonel Miller at this time. The defendants may cross examine.

The Master: You may reserve your cross examination.

Mr. Ransom: Perhaps I might say this: What is missing in this inventory, Exhibit 66 for Indentification, that you gentlemen want, following the last hearing I have had under preparation—although I do not believe it is called for by the order of Judge Mayer, I am very clear that it is not, I am going to have made up, and am having made up, and it is practically complete, a statement showing the details of the investment of this company in property and assets used in its gas business. That will be completed within two or three days, certainly early next week, and I then will furnish it, although I do not regard it as called for by Judge Mayer's order, and it is not a part of the proof which I contemplate offering in the complainant's case.

Mr. Neumann: What about the provision of the order which required you to furnish us by April 29th with the age of your various properties?

Mr. Ransom: That is what I am referring to. That is being prepared and will be furnished.

Mr. Neumann: What about the original costs?

193 Mr. Ransom: If you had listened to the statement which I have just made you would have heard it. There are circumstances under which it may be impossible to obtain original costs.

The Master: Then you are going to give me values based upon what a manufacturing and distributing system of this kind ordinarily cost in the years prior to the war, and that it is all it is worth to the consumer.

WILLIAM RAYNOR, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Where do you reside?

A. 358 Sumner Avenue, Brooklyn.

Q. What is your connection with the New York & Queens Gas Company?

A. Secretary.

Q. Do you devote all of your time to the business of that company?

A. Yes, sir.

Q. Where is your office?

A. 88 Main Street, Flushing.

Q. That is the business office of the company?

A. Yes.

Q. In the business district of Flushing?

A. Yes, sir.

Q. What are your general duties as secretary?

A. The general supervision of the office.

194 Q. The books of account?

A. The books of account.

Q. You have charge of the work of the indexers and their records?

A. The indexers, collectors, bookkeepers and other clerks.

Q. What business were you engaged in just prior to your going with the New York & Queens Gas Company?

A. I was with the New York & Queens Electric Light & Power Company for a year.

Q. In what department?

A. In the accounting department.

Q. That is, from August, 1912, to the same month in 1913?

A. 1912 to 1913.

Q. Since August, 1913, you have been with this complainant company?

A. Yes.

Q. What business were you in prior to your entering into the service of the accounting department of the New York & Queens Electric Light & Power Company?

A. I was in the accounting department of a real estate company.

Q. You are an accountant?

A. Yes.

Q. For how many years have you had experience with books of account?
A. About fourteen.
Q. Steadily?
A. Steadily.
Q. You had a business college course in accountancy?
A. Yes.
195 Q. Or bookkeeping?
A. Several years ago.
Q. You are not a certified public accountant?
A. No, I am not.
Q. Did you work and study under a certified public accountant in the real estate business?
A. I did that, yes.
Q. Who is that?
A. H. C. Bentley.

The Master: He is a man who has written some books on accountancy, is he not?
The Witness: Yes.

Q. Have you immediate charge of keeping of the books of account and other records of the company?
A. Yes.
Q. You have a bookkeeper who makes the entries under your direction?
A. Yes, sir.
Q. When did you become secretary?
A. In January, 1920.
Q. And before that you were assistant secretary?
A. Assistant secretary from October, 1918.
Q. And before that you were head bookkeeper?
A. Chief clerk and general bookkeeper.

The Master: These books during 1919 have been under your direct supervision, have they?
The Witness: Yes, sir.

Q. You are in daily and continuous touch with the accounting system and records of the company?
A. Yes, sir.
196 Q. Are you familiar with the uniform system of accounts prescribed by the Public Service Commission for gas corporations?
A. Yes, sir.

Mr. Neumann: One moment. Objected to as incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.

Q. Is the classification of revenues and expenses employed by you in your books of account that set forth in the uniform system of accounts for gas corporations?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial, this witness not being properly qualified to prove that fact.
The Master: Overruled.
Mr. Neumann: Exception.

A. Yes, with the exceptions of the amortization account——

The Master: And the automobile account?
The Witness: And the automobile account, where we have renewals and replacements.
Mr. Neumann: Now I move to strike out the witness' answer upon the ground that his answer clearly indicates——
The Master: I will deny your motion.
Mr. Neumann: Exception.

Q. You keep an account called renewals and replacements?
A. Yes, sir.
Q. And report that to the Commission in your annual report, do you?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial. According to the wit-
197 ness' own testimony he does not keep his books in accordance with the uniform system of accounts.

A. We do.

The Master: Overruled.
Mr. Neumann: Exception.
Mr. Ransom: He has not said that.

Q. What do you charge to this account of renewals and replacements?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial; the uniform system of account shows what should be placed in that account.
The Master: Overruled.
Mr. Neumann: Exception.

A. Three cents per thousand cubic feet sold.

By the Master:

Q. What is that based on? How do you get that figure?
A. Well, that is the figure which was handed down to me by the officers; that is through the action of the Board of Directors.
Q. Have you ever figured what the actual cost of renewals and replacements is?
A. I have not figured out the actual cost, no.
Q. You have never done that?
A. No.

Mr. Tobin: If your Honor please, I think his answers there should be stricken out as to the amount arrived at, because it is simply a direction——

The Master: No, I am going to let it stand that he charges to that account three cents.

198 Mr. Tobin: Under direction of somebody else.

The Master: But my question would indicate I would like to have a little more light on it by actual figures.

Q. You charge against that account losses on property withdrawn from service?

Mr. Tobin: We object to that.

Mr. Neumann: We object to that on the ground it is incompetent, irrelevant and immaterial, not according to the uniform system of accounts.

The Master: Overruled.

Mr. Tobin: I do not think it is fair to accept an arbitrary figure in the record without some basis for it.

The Master: I am not going to accept it; I am going to let the witness state how he runs his books. He says he charges three cents, against which I assume he charges losses.

Mr. Tobin: Well, Judge Ransom's questions are bad in form.

The Master: That is not important so long as we get the facts.

Q. Do you charge losses due to retirements against that?

Mr. Neumann: My objection runs to the Master's questions, of course, also.

The Master: Yes. Overruled.

Mr. Neumann: Exception.

A. Yes, we charge losses in withdrawals against the renewals and replacements reserve account.

By the Master:

Q. How does that work; does it leave a surplus or does it leave a deficit, or did it in 1919?

199 Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

Mr. Tobin: We object to that.

A. It left a credit balance.

Q. A credit?

A. Yes.

Q. So your actual renewals and replacements were less than three cents?

A. A little less than three cents.

Mr. Neumann: We object to that.

The Master: Check up your records before you come back and tell me just what it was.

By Mr. Ransom:

Q. Do you have occasion in the course of your duties to test and observe the accuracy of your books of account and records?
A. Yes, sir.
Q. Do you test by trial balance at the end of each month?
A. Yes, sir.
Q. And many of the details entering into the books of account come immediately under your supervision and observation?
A. Yes, sir.

By the Master:

Q. You make entries in these books yourself?
A. Not now.
Q. You have made them, though?
A. I have made them previous to May, 1919.
Q. There are entries in these books marked for identification in your handwriting?
A. Some of them, yes.
Q. Were those entries right when you made them?
A. Yes.
Q. And correctly made?
200 A. Yes.

Mr. Neumann: If the Master please, I object to that on the ground it is a conclusion. The witness should state what he does.
The Master: Lots of facts testified to are conclusions. Objection overruled.
Mr. Neumann: I move to strike out the witness' answer.
The Master: I will let you cross-examine when the time comes to show that he is wrong about it. You ask a man if he is the owner of a house, that is a conclusion. You may show he does not know what he is talking about, but he thinks he does.
Mr. Neumann: But you would not prove he owns the house that way.
The Master: Yes, I would. You ask me if I own the land on the corner of Lyman Avenue and Seaman Avenue, and I say I do. I think I do, anyhow.
Mr. Neumann: What court would that be competent in?
The Master: Any court. I have been through it a hundred times: Query, Are you the owner of this desk or piece of property? Answer, Yes. It is a fact.

By Mr. Ransom:

Q. Up to what time did you personally make entries in these books of account?
A. Up to May 1, 1919.
Q. That is, you made none during the remainder of 1919?
A. No.

By the Master:

Q. Are you sure you made none at all?
A. I am quite sure I made none.
201 Q. Well, if you made any did you make them correctly from the information at hand?

Mr. Neumann: Now, then, I object to that.
The Master: That is overruled.

Q. In other words, did you write down the correct figures?
A. Yes, sir.

Mr. Neumann: The correct figures from what?
The Master: From whatever source it was, that we are getting to.

Q. If you were entering an item from a voucher you correctly entered it?
A. Yes, sir.
Q. You took the figures just as you found it?
A. Yes, sir.
Q. Your computations were correct?
A. Yes, sir.
Q. Whatever you made?
A. Yes, sir.

By Mr. Ransom:

Q. Are you prepared to say the books of account and records correctly reflect the transactions of the company?
A. They do.
Q. Are they correctly kept?
A. Yes, sir.
Q. Does the company keep more than one set of books, for example, for 1919; are there any other general books of account than those which have been produced and marked for identification?

Mr. Neumann: One moment. Objected to as incompetent, irrelevant and immaterial, both as to form and substance.

202 Q. For instance, operating expense ledger, is that the only operating expense ledger that you have for that period?
A. That is the only one.
Q. The same as the other one?

The Master: That is Exhibit 54 for Identification, Exhibit 52 for Identification, Exhibit 56 for Identification, Exhibit 55 for Identification and Exhibit 53 for Identification?
The Witness: They are the only books.

Q. How long have you had a bookkeeper keeping these books of account?
A. Since the first part of May, 1919.
Q. That is the time you stopped doing it?
A. Yes.

Q. Who was that bookkeeper?
A. William J. Foy.

By the Master:

Q. Miss Mold made some entries in these books, too?
A. That is before he got in. That is before he went with us.
Q. And a Mrs. Townsend?
A. She made some, possibly, in the ledgers.

By Mr. Ransom:

Q. What is her position there?
A. She is bookkeeper in the commercial department.
Q. She works under your direction?
A. Yes.
Q. And part of the time Miss Mold of your staff was working s
worked under your direction?
A. Yes, sir.
203 Q. Miss Mold is still in the employ of the company?
A. Yes.
Q. And Mrs. Townsend?
A. Yes.
Q. And Mr. Foy?
A. Yes.
Q. And did any one else to your knowledge work on any of t
1919 books?
A. No one else.
Q. During the six months prior to May, 1919, you made most
the entries, but had some assistance on them?
A. Yes.
Q. For example, on the journal you had an assistant?
A. That is right.
Q. Prior to October, 1918, did you keep the books of accou
alone; did you do practically all the work on them?
A. I did practically all the work on them.
Q. And to your knowledge they were correctly kept during th
time?
A. Yes, sir.
Q. And correctly reflected the transactions of the company?
A. Yes, sir.

Mr. Neumann: Objected to.
Mr. Tobin: We object.
Mr. Neumann: Objected to on the ground it is incompete
irrelevant and immaterial, and should be confined to what this w
ness did himself. He cannot testify to whether other witnesses k
the books correctly.
The Master: Overruled.
Mr. Neumann: Exception.

204 Q. You correctly made the entries which appear therein in your handwriting in those earlier years?
A. Yes, sir.

Mr. Ransom: That is all.
The Master: All right, we will reserve this cross-examination, too.
Mr. Ransom: I have no objection to its being reserved today, but I think the defendants ought to understand that the time is close at hand when they must be prepared to——
The Master: I tell you what I think, this case is going to be a pretty short case, is it not?
Mr. Ransom: I think so.
The Master: Then get in all your direct proof and I will make them go ahead and finish their cross.
Mr. Ransom: I will do that as far as I can, and I think I probably can. I would not wish you to hold me strictly to that rule, because some things may come up on cross-examination that I will have to deal with later on direct.
The Master: But what I mean is, get all your records here and your proof in, and let the defendants look at it and go ahead with cross-examination.

Adjourned to Wednesday, May 5, 1920, at 2 P. M.

Last Complainant's Exhibit No. 66.

205 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 5, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.
Mr. Neumann and Mr. Deegan, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.
Mr. Van Steenburgh and Mr. Hyatt, of Counsel for Defendant Dennis O'Leary.

Mr. Hyatt: May it please your Honor, will you kindly have noted my appearance here in behalf of the District Attorney, representing the Corporation Counsel's office. Mr. Hyatt—Judson Hyatt. Do you wish any further evidence of that?
Mr. Ransom: There has been no substitution, and no notification from the District Attorney of Queens.

The Master: I do not understand Mr. Hyatt is the attorney.

Mr. Hyatt: I am not personally the attorney, but I have been asked to represent the Corporation Counsel in this matter.

The Master: Do you represent the District Attorney of Queens County as his counsel today?

206 Mr. Hyatt: No, I am asked to appear here by Mr. O'Brien. The District Attorney of Queens has asked the Corporation Counsel to appear in his behalf in this proceeding.

Mr. Ransom: Where is the request? Is it in writing?

Mr. Hyatt: I did not understand that was to be presented, your Honor.

Mr. Chambers: How is counsel on the other side interested in this at all?

The Master: I am not interested in that. Do you appear here as counsel, Mr. Hyatt?

Mr. Hyatt: Yes.

The Master: For the District Attorney of Queens County?

Mr. Hyatt: Yes.

The Master: That is all there is to it.

Mr. Chambers: Of course, that is all there is to it.

Mr. Ransom: Note my objection and exception.

MAYNARD H. SPEAR, recalled.

Direct examination continued.

By Mr. Ransom:

Q. Mr. Spear, referring to Complainant's Exhibits 60 and 61 for Identification, concerning which you testified at the last hearing, have you produced here today the vouchers, the original vouchers from the files of your company, kept under your direction, from which you took the various prices here shown?

A. Is that the exhibit of materials?

Q. Of materials.

207 A. Yes, I have (producing packages).

Mr. Ransom: I offer them in evidence.

Mr. Neumann: Objected to on the ground they are immaterial, irrelevant and incompetent, not within the province of this witness to testify to any of the facts set forth in that exhibit.

Mr. Hyatt: The District Attorney of Queens County joins in the objection on the same grounds.

Mr. Chambers: The Attorney General objects to them on the further ground that they are hearsay, secondary evidence, not properly proven, incompetent, irrelevant and immaterial. I guess that is enough.

Master: Are those the vouchers?

The Witness: These are the ones, and for 1919 are in these (indicating).

The Master: I do not know what that means, "These are the ones, and for 1919 are in these."

Q. Do you also produce here all of the vouchers?

Mr. Neumann: How about the objection? What ruling is there on the objection?

The Master: I have not heard any as yet, Mr. Neumann.

Mr. Neumann: I have not heard any ruling yet.

The Master: Neither have I. Your hearing is as good as mine. Go ahead.

Mr. Chambers: Is the question withdrawn?

Mr. Ransom: No.

Q. Have you also produced here all of the vouchers of the New York & Queens Gas Company from the files of your company
208 for the year 1919?

A. I have, with the exception of the coal and oil vouchers which have been——

Q. Already produced?

A. Already produced.

Q. And put in evidence. So far as the year 1919 and these exhibits 60 for Identification, 61 for Identification, and 62 for Identification are concerned, have you included in this bundle of 1919 vouchers, the vouchers from which you took the prices shown for 1919 on these exhibits?

A. I have.

Q. And so far as the other years, 1914, 1915, 1916, 1917 and 1918 are concerned, you have them in a separate bundle?

A. I have.

Mr. Ransom: Now I offer in evidence, first the vouchers from which these exhibits for identification were taken, as to the years 1914 to 1918.

The Master: That is this bundle (indicating)?

Mr. Ransom: That is that bundle.

The Master: And it is to this offer that the objections have already been made?

Mr. Neumann: That is right.

The Master: The objections are overruled.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

Marked as one exhibit, Complainant's Exhibit 67.

Q. Mr. Spear, you have one or two bundles comprising all of the 1919 vouchers?

A. Yes, with the exception of——

209 Q. With the exception of the coal and oil vouchers which are already in evidence?

A. Yes.

The Master: What have you got, one or two?

The Witness: Two.

Mr. Ransom: I offer in evidence the 1919 vouchers, other than the coal and oil vouchers hitherto received.

Mr. Neumann: Same objection as heretofore made to the introduction of the other exhibits.

Mr. Hyatt: Same objection.

Mr. Chambers: Same objection.

The Master: I will assume that all counsel make the same objections, and they are overruled with exception.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

Mr. Chambers: Exception.

The Master: The bundles will be marked as one exhibit.

Marked Complainant's Exhibit 68.

Mr. Ransom: I now offer in evidence Complainant's Exhibits 60, 61 and 62 for identification.

Mr. Neumann: May we see them first?

Mr. Ransom: Those are the ones of which copies were given to the defendants the other day.

Mr. Neumann: Objected to on the ground that they are immaterial, irrelevant, incompetent, based on hearsay, not within the province of this witness to testify to these facts, according to his own testimony, if interrogated question by question; upon
210 the further ground that there is nothing shown here that this tabulation is correct, nor complete.

The Master: Objection overruled. The stenographer will mark them in evidence.

Mr. Chambers: The same objection for the Attorney General.

Mr. Hyatt: The City joins in the objection.

Mr. Ransom: The City joins in the objection? I do not understand that the City——

Mr. Hyatt: We join in the objection. I do not mean the City. I mean the District Attorney.

Marked Complainant's Exhibits 60, 61 and 62 in evidence.

Q. Mr. Spear, in the month of April, 1920, did you take up with the St. George Coal Company of 149 Broadway, New York City, the matter of obtaining broken coal for future requirements of your company?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, in the present state of the record.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Hyatt: The District Attorney of Queens County joins in the objection, and takes exception.

A. They telephoned me asking me if we would——

Mr. Neumann: One moment. I object to the witness testifying to the conversation, as incompetent, irrelevant, immaterial, and hearsay.

The Master: He just asked, Did you take up any negotiations?

The Witness: Yes.

211 Q. And was there some telephone conversation with a representative of the coal company?
A. There was.
Q. And subsequently was there an offer for the supply of coal quoted to you by the St. George Coal Company in writing?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and calls for a conclusion of the witness.
The Master: Overruled.
Mr. Neumann: Exception.

A. There was.
Q. And is this communication dated April 9, 1920, such offer (handing witness)?
A. It is.

Mr. Ransom: I will have it marked for identification.

Marked Complainant's Exhibit No. 69 for Identification.

Mr. Hyatt: Of course, your honor, the District Attorney objects to the way the counsel for the complainant characterizes this communication. I think that is highly improper.
The Master: Next question.

Q. Mr. Spear, what was the maximum day's send-out of the New York & Queens Gas Company during the winter of 1919-1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not shown to be within the province of this witness to testify to any such fact.
The Master: I think I will sustain it on the last ground.
Mr. Ransom: Well, this witness is a gas manufacturer, and it has been shown by his qualifications.

212 By the Master:

Q. It is perfectly simple to ask this witness, do you know what it was?
A. I do.
Q. How do you know?
A. From the records of the company.
Q. That is the only way you know?
A. Yes.
Q. And the company has a manufacturing engineer?
A. Yes.
Q. And he knows, he makes the record, doesn't he?
A. He makes the record and turns it over to me.

The Master: Then we will have the manufacturing engineer here.
Mr. Ransom: Exception.
The Witness: And I am at the works every day and see these records made up.
The Master: That is why I asked you how you knew about it,

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and you told me nothing. When I asked you what you knew about it I thought you would tell me that you knew something about it.

By Mr. Ransom:

Q. Mr. Spear, during what period were you in actual direct and personal charge of the operation of this plant?

Mr. Neumann: I object to that on the ground that it calls for the conclusion of the witness. It is the same as an agent proving his own authority.

Mr. Ransom: Well, I will withdraw it.

The Master: You need not withdraw it. When were you in direct charge of operations?

213 Mr. Neumann: Exception.

The Witness: From 1902 to 1905 my office was at the works.

The Master: That is not the question, where your office was. Were you running the plant?

The Witness: Yes.

The Master: During those years?

The Witness: Yes, and since that time I visited the plant practically every morning and am in constant touch with it.

Q. You have had personal charge of the making of gas in this and other plants?

A. Yes.

Mr. Neumann: Same objection.

The Master: Overruled.

Q. And do you keep in close and continuous contact with the works and with what goes on at the works?

Mr. Neumann: Objected to both as to form and substance.

The Master: Yes, I think I will sustain that. He has told us how close his contact is. He stops there every morning, he says.

Q. And is that the only time you are there?

A. Well, sometimes at other parts of the day, but I make it a rule to go there practically every morning, the first thing.

Q. Do you know the holder capacity of the New York & Queens Gas Company, excluding relief holders?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not shown to be within this witness' knowledge.

214 By the Master:

Q. Do you know that?

A. I do.

Q. How do you know that?

A. Because I figured the capacity of the coal storage holder at 250,000 and the——

Q. Do you know what storage holders they have?
A. Oh, yes.
Q. Do you know where they are located?
A. Yes.
Q. Do you know their size?
A. Yes, sir.
Q. Tell us what their capacity is?
A. 1,250,000.

Mr. Neumann: I move to strike out the witness' answer, on the ground it is not responsive.
The Master: Motion denied.
Mr. Neumann: Exception.

By Mr. Ransom:

Q. What is the rated manufacturing capacity of the plant of the New York & Queens Gas Company per day?

Mr. Neumann: Same objection as last urged.
The Master: That will be overruled.
Mr. Neumann: Exception.
Mr. Ransom: Present capacity.

A. Under its present blower system, with a low pressure blast, about a million and a half.

By the Master:

Q. What is it rated at; what do you report it at?
A. A million and a half. Well, you say report it at. In the Public Service Commission report we report the size of the
215 machines and the capacity of those machines.
Q. Are you not required to report the manufacturing capacity of the works?
A. The capacity of those machines.
Q. Just of the machines?
A. Yes. For instance, we report two 7 foot 6 inch machines at a capacity at 1,500,000 and the 8 foot 6 inch machines at a capacity of 1,250,000.
Q. So you have a total capacity of 2,700,000?
A. 2,750,000.

By Mr. Ransom:

Q. That is the capacity of the machines?
A. Of the machines.
Q. And with your present blast system your plant capacity is, you say, about a million and a half?

Mr. Neumann: Same objection.
The Master: I do not understand that.

A. Well, we cannot run all the machines at the same time, because there is usually one machine that is down for repair, rechecketing and so forth.

Q. When your largest unit is shut down for repairs or otherwise, what is the largest capacity of your plant?

Mr. Neumann: Same objection as last urged.

Mr. Chambers: I do not think he stated that they do shut them down.

Mr. Neumann: The witness has shown by his own testimony that he is unqualified to answer these questions.

The Master: No, he has not shown that.

216 Mr. Chambers: He does not operate these machines.

The Master: He knows what machines they have there, and he knows what their capacity is. As I understand him, those machines there have a capacity of 2,750,000.

The Witness: Right.

The Master: Well, what are you trying to bring out?

Mr. Ransom: I am asking when the largest unit is shut down for repairs, or shut down through accident or otherwise, what is the manufacturing capacity.

The Master: Can't I see that myself? He said he had two units, one unit of 1,500,000 and another unit of——

The Witness: No, there are three units.

The Master: Give me the three units.

The Witness: There are two 7 foot 6 inch machines, each with a capacity of 750,000, that makes 1,500,000, then the 8 foot 6 machine with a capacity of 1,250,000.

By the Master:

Q. So if your big unit is shut down I know how much is left?

A. Yes, with the present blast pressure. With the high pressure blast which we are going to instal the capacity will be 2,000,000.

Mr. Chambers: I move to strike that out.

Q. What do you mean your capacity will be 2,000,000 with the high pressure blast, part of your equipment or all of it?

A. All of it.

Q. But you have 2,750,000 with the low pressure blast?

A. Yes.

217 Q. What will that be with the high pressure blast?

A. About 2,000,000.

Q. Will it be less with the high pressure blast?

A. No, it will be one more, you see.

Q. I say what you have there now you say has a capacity of 2,750,000?

A. Yes.

Q. That is the low pressure blast?

A. Yes.

Q. What will that 2,750,000 be with the high pressure blast?

A. 4,000,000.

Q. 4,000,000?
A. Yes.

Mr. Neumann: Is that an estimate, Mr. Spear?
The Master: Of course it is an estimate. That is an engineering estimate of what it will do.
Mr. Neumann: Yes, that is why I brought it out. Here is a man presumably offered by the complainant for the purpose of proving his books and we have now gotten into engineering propositions.
The Master: Yes, they qualified him for a little more than testimony on the books.
Mr. Ransom: Very much more.
The Master: I will take him for that.
Mr. Neumann: I take exception to it.
Mr. Ransom: His primary qualifications were as gas maker.

By Mr. Ransom:

Q. Do you regard your present holder capacity as adequate for our present and prospective requirements?

18 Mr. Hyatt: I object on the ground he has not qualified as an engineer.
Mr. Neumann: And I object on the further ground that it calls for a conclusion of an expert on engineering matters, and that this witness has not yet been qualified on those matters.
Mr. Chambers: I want to state my objection.
The Master: I will sustain that objection; I will let the witness state what their present requirements are in his judgment.
Mr. Ransom: Well, as to holder capacity.
The Master: What?
Mr. Ransom: As to holder capacity.
The Master: That is your question, holder capacity, is it not?
Mr. Ransom: Well, of course the question of holder capacity has relation to maximum demand and volume of sales.
The Master: Then why don't you bring out all the elements so we can see which is which?
Mr. Ransom: All right.

Q. Do you know the maximum day's send-out of your company during the winter of 1919-1920?
A. I do.

Mr. Neumann: I object to that on the ground it is incompetent, irrelevant and immaterial, not within the province of this witness.
The Master: By that you mean the maximum sales, practically, one day?
Mr. Ransom: Or going out to the consumers.
The Master: Called for.
19 Mr. Ransom: Called for, and in the case of a company like this, which is not connected with——
The Master: Yes, I will let him state it.
Mr. Neumann: Exception.

Q. What was it?

Mr. Neumann: Same objection.
The Master: Same ruling.
Mr. Neumann: Exception.

A. 1,698,000 cubic feet.
Q. What was the maximum day's send-out of the company during the winter of 1918-1919?

Mr. Neumann: Same objection as last urged.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. 1,189,000 cubic feet.
Q. What was the highest send-out at any time in the history of the company for seven consecutive days?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not within the province of this witness so to testify. It is a highly technical engineering calculation, to say the least.
The Master: You do not mean that. What is there of a highly technical engineering problem in knowing how much gas is sold in seven days?
Mr. Hyatt: Does he know this of his own knowledge, your Honor?
Mr. Neumann: This man is in the office and he knows nothing about the actual send-out each day; so how would he be able to testify that it was?
220 The Master: How would Judge Gary or the Board of Directors of the Steel Company know how much they sold in three months?
Mr. Neumann: He might not undertake to testify to that.
The Master: Objection overruled.
Mr. Hyatt: Exception.
Mr. Neumann: Exception.
The Master: How would I know how many cases I have in my office?
Mr. Neumann: Would you testify to that?
The Master: Yes.
Mr. Neumann: Of your own knowledge?
The Master: Sure, after I found out from the record what I had.

A. 11,044,000 cubic feet.
Q. When was that?
A. That was from December 15th to December 21st, 1919, inclusive.
Q. Can you give the figures for each day, and the total for the seven days, and the average during the seven days?

A. December 15th was 1,510,000.

Mr. Hyatt: Same objection to this testimony.

A. (continued). December 16th, 1,522,000; December 17th, 1,549,000; December 18th, 1,668,000; December 19th, 1,698,000; December 20th, 1,410,000; December 21st, 1,687,000. The total is 11,044,000. The average is 1,578,000.

The Master: What did you say your holder capacity was?
The Witness: 1,250,000.
Mr. Neumann: You are now reading this from a memorandum, are you, Mr. Spear?
The Witness: Yes.
221 Mr. Ransom: I object to the interruption.
The Master: I will allow it.
Mr. Neumann: I want the record to show just what he is doing.

Q. Do you know how many meters your company has in active service as of the present time, say, April, 1920?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not within the province of this witness to testify to that fact.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. I do.
Q. What is that number?
A. 10,711 meters.

By Mr. Neumann:

Q. You are reading that from a memorandum, are you, Mr. Spear?
A. Yes.

By Mr. Hyatt:

Q. You wouldn't know it without the memorandum?

Mr. Ransom: I object to the interruption of the self-constituted representative of the District Attorney of Queens County.
The Master: Objection sustained.

By Mr. Ransom:

Q. What is the main mileage of the company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not within this witness' knowledge.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. 124.7 miles.
222 Q. Have you personally kept the main records of the company?
A. I have.
Q. Since when?

A. Since 1903.

Q. That is the main records of this company throughout its history have been personally kept by you?

A. With the exception of the period that I was with the Williamsport Gas Company, 1905 to 1906.

Q. And they are kept in your handwriting?

A. Yes, sir.

Q. Were they correctly kept, to your knowledge?

A. They were.

Q. How many meters in service have you per mile of mains?

Mr. Neuman: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. 86.

The Master: This line of inquiry, Mr. Spear, that had to do with your holder capacity—have you in your judgment, based on your experience, sufficient holder capacity now?

Mr. Neumann: I object to the Master's question on the ground that it is incompetent, irrelevant and immaterial, and that this witness is not properly qualified to answer that question.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Just at the present time, but if the——

223 The Master: Just at the present time you have?

The Witness: Yes.

Q. Do you regard your present holder capacity as adequate for your prospective requirements?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

Mr. Hyatt: I object to it on the ground that the witness is not qualified as an engineer.

Mr. Chambers: I object to it.

Mr. Neumann: It is highly speculative anyway.

The Master: Objection sustained.

The Witness: We have to take care of these things.

Q. Having in mind the increase that you testified has taken place in your maximum day's requirement, and the increase in sales, do you regard your present holder capacity as adequate?

The Master: For what, for the future?

Mr. Ransom: For the future.

Mr. Chambers: I object to it on the ground that the witness is not qualified.

Mr. Hyatt: The District Attorney of Queens also objects on the same ground.

The Master: What testimony is there here as to the percentage of increase in the sales?

Mr. Ransom: Increase in the maximum day's demand—I am not ire that the increase in sales has been proved.

The Master: I will let the witness state this, what, based on his xperience, the holder capacity ought to be in relation to the maximum sales.

24 Mr. Neumann: That is, of course, over our objection.

The Master: I suppose are objecting to it now?

Mr. Neumann: I am objecting now.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

The Master: What do you say the holder capacity should be in elation to the maximum sales?

The Witness: It ought to be equal to the maximum day's send- nt in an isolated plant such as ours.

Mr. Neumann: I move to strike out from the answer the words, an isolated plant such as ours."

The Master: Motion denied.

Mr. Neumann: Exception.

Q. During recent years have the annual sales of your company ncreased or decreased?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Increased.

Q. Can you give an accurate or approximate statement of the ncrease in sales during recent years?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I know that our increase for the three months of 1920
25 is 31 per cent of the same corresponding months for 1919. April is about 28 per cent.

The Master: Has there been an increase in maximum days?

Mr. Ransom: We have already shown that. The increase was rom 1,189,000 on the first day of January, 1919, to 1,698,000 cubic eet on the 19th of December, 1919.

The Master: How did that compare with 1918? Was there a day n 1918 as high as any day in 1919?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Witness: No.

The Master: Anywhere near it?

The Witness: No; I would say that the highest day in 1918 was ot over 1,189,000 that we had in January, 1919.

The Master: Have you been increasing your main mileage over there in the last year?
The Witness: Yes.
The Master: More meters being put out?
The Witness: Yes.
The Master: More people coming into the section?
The Witness: Yes, and building is quite active.

Q. Have you recently been required by order of the defendant, the Public Service Commission, to make any considerable extensions of your main mileage?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The order of the Commission is the best proof of that.
The Master: Objection sustained.

226 Q. Have you recently made any considerable extension of mains into Douglaston?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. We have.

The Master: By "considerable" you mean what?
The Witness: About 15 miles. That is about 12 per cent of our total mileage.

Q. When did the New York & Queens Gas Company first begin to secure its supply of gas oil through being included in the Consolidated Gas Company's contract?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not within the province of this witness so to testify.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. May, 1913.

Mr. Hyatt: No foundation has been laid for a lot of these questions.
Mr. Neumann: We are jumping around like a hen on a hot griddle. A moment ago we were up in Douglaston, and now we are back in the oil contracts.

Q. At that time from whom were you obtaining your gas oil?

Mr. Neumann: I object to that on the same grounds.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Standard Oil Company of New Work.
Q. At what price?

227 Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.
Mr. Neumann: Exception.

A. 6.1 cent. May I add, that those contracts are now on file before the Master.

Mr. Ransom: Not in this case.
The Master: There is nothing on file before me.

Q. At that time had you already negotiated a contract with another company for your supply of future gas oil?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.
The Master: Are we at all interested in that ancient history, so far as this case in concerned?
Mr. Ransom: I will withdraw it at this time if you think it desirable.
Mr. Neumann: If the Master please, the vice of this line of examination consists in this, that here we have a man on the stand apparently permitted to testify to the prices of oil, with no opportunity on the part of the defendants to cross examine him, because the record indicates quite clearly that he does not make the contracts himself, and the contracts are not in evidence, and yet he is permitted to testify to the price of oil, and the price that the contract contains.
Mr. Ransom: He has paid——
The Master: Mr. Neumann, this witness has stated that in 1913 he bought oil from the Standard Oil Company at 6.1 cents. That is all he has testified.
225 Mr. Neumann: But he also testified that the oil contracts were made for him by the Consolidated Gas Company.
Mr. Ransom: Not up to that time. After that, but no before.
The Master: I haven't any price before me at all now as to what was paid after that date, except as the oil vouchers are in evidence.
Mr. Hyatt: May I ask your Honor whether or not this witness is a bookkeeper, or what particular function he subserves in the office of the complainant company, or is he a general utility man?
The Master: I will answer that by suggesting that you read the record that preceded your entrance into the case today.
Mr. Hyatt: He seems to cover about the whole scope of the work done by this complainant.
The Master: You read the record of his testimony.

Q. Why is it deemed advisable, Mr. Spear, to have the superintendent of the plant, Mr. Morrison, reside at the works?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.
Mr. Hyatt: Is there any proof in the record that he does reside there?
Mr. Ransom: Mr. Spear testified to that.
The Master: The trouble with Mr. Hyatt is that he did not hear a great deal of what went before.

Mr. Chambers: I object to that on the ground that that is a
229 question for the court to determine, and not the subject of opinion testimony.

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial.

The Master: Why is it incompetent?

Mr. Neumann: It is incompetent probably for this reason, among others: That in the first place they would have to prove that it was used and useful in the gas business.

The Master: Why is this question incompetent?

Mr. Hyatt: What does it tend to prove?

The Master: I am not talking about its materiality or relevancy, I am talking about competency. The objection is overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

Mr. Chambers: Exception.

A. So that he can be in constant touch at all hours of the day and night with the operation of the plant. In case of any trouble coming up at night he can be called quickly.

The Master: You don't think it would be as well if he lived six miles away?

The Witness: No, sir.

Mr. Deegan: How about across the street?

Q. Is it the judgment of the officers of the company that there are substantial advantages to the company in having a superintendent on the job twenty-four hours in the day?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. Neumann: I object to it.

The Master: Objection sustained as already covered.

Mr. Chambers: Exception.

230 Mr. Neumann: Exception.

The Master: What is the name of the man that runs that plant over there?

The Witness: Morrison.

Q. Mr. Spear, have you produced here the original main records of your company?

A. I have.

Q. As kept by you?

Mr. Neumann: I move to strike out from that question the words "as kept by you." There is no proof of that in this record at this time.

Mr. Ransom: He has testified that he kept them in his own handwriting.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I have.

Q. This is your handwriting?
A. It is.

The Master: How far back does your main record go, back to the beginning?
The Witness: April 1, 1901.

Q. That is, this goes back to the formation of the present company?
A. It does.
Q. The records from the formation of this company likewise are entirely kept in your handwriting?
A. Yes.
Q. And the entries were made therein by you correctly?
A. They were.
Q. Just what period are the records made by any one else? Can you just locate that period?

The Master: He said 1905 and 1906.

231 A. I made up this book after I came back from Williamsport from the old records.
Q. Are there any of these entries not in your handwriting?
A. Yes, there are three.
Q. What three?
A. Nos. 801, 802 and 803, following January 1, 1919.
Q. In whose handwriting are those?
A. William Raynor.
Q. Have you ever personally gone over those three entries?
A. No, I have not.
Q. The others are entirely yours?
A. They only amount to 380 feet.
Q. The others are entirely in your handwriting?
A. Yes, sir.

Mr. Ransom: May I have this marked for identification?
The Master: The main record book to which the witness has just referred, is now being marked for identification.

Book marked Complainant's Exhibit 70 for identification.

Q. Was this book turned over by you to Mr. Miller when he began his work, or shortly thereafter?
A. It was.

The Master: By this book you mean what?
Mr. Ransom: I mean Complainant's Exhibit 70 for Identification.

232 WILLIAM RAYNOR recalled.

Direct examination continued.

By Mr. Ransom:

Q. Mr. Raynor, referring to items Nos. 801, 802 and 803, January, 1919, in Complainant's Exhibit 70 for identification, concerning which Mr. Spear just testified, are those three entries in your handwriting?

A. They are.

Q. And were made by you at that time?

A. They were.

Q. And were correctly made by you?

A. Yes, sir.

Mr. Van Steenburgh: On what page are those entries?

Mr. Ransom: It is the page which in lead pencil paging is marked "page 106."

The Master: Mr. Van Steenburgh who represents the Queens County District Attorney here?

Mr. Van Steenburgh: As near as I know, I am counsel for him, that is all.

The Master: Is there any other counsel?

Mr. Van Steenburgh: Not that I know of, except the statement made here the other day.

The Master: Do you recognize any other counsel for the District Attorney of Queens County?

Mr. Van Steenburgh: I only know what Mr. Morissey said, and what Mr. O'Brien's assistant stated.

The Master: Is it your attitude that you represent the District Attorney of Queens County?

233 Mr. Van Steenburgh: I understand the City has been asked, or the Corporation Counsel, has been asked to appear for him.

The Master: The only purpose of my inquiry is that I am not going to permit two counsel for one defendant to examine or interrupt.

Mr. Van Steenburgh: That is the usual rule.

The Master: I wanted to know whom to recognize, whether to recognize you or to recognize Mr. Hyatt.

Mr. Van Steenburgh: I think there will be no difficulty about that when it comes to cross-examination.

The Master: Well, how about other matters?

Mr. Van Steenburgh: We will have to wait until a subsequent hearing before we can answer that.

Mr. Ransom: I offer in evidence Complainant's Exhibit 70 for Identification.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

Book received in evidence and marked Complainant's Exhibit 70.

(Witness excused.)

234 WILLIAM J. FOY, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Foy, where do you live?
A. 68 Prospect Avenue, Flushing.
Q. What is your business?
A. General bookkeeper in the New York & Queens Gas Company.
Q. What education have you had in your line of business?
A. I studied bookkeeping in the Flushing High School, and later took a course in a business college.
Q. Bookkeeping course, and accountancy?
A. Yes, sir.
Q. What has been your business experience?
A. I started in as a clerk for the Standard Mail Order Company, and later went with the New York & Queens Gas Company.
Q. What kind of a clerk were you with the Standard Mail Order Company?
A. Clerk in the Auditing Department.
Q. Audit clerk?
A. Yes, sir.

Mr. Neumann: Why not let the witness testify what he did.

Q. In 1914 what?
A. In 1914 to 1917 I was assistant to Mr. Raynor, helping on the general books, working on consumers' ledgers, and at different times acting as cashier.
Q. This was with the New York & Queens Gas Company?
235 A. With the New York & Queens Gas Company.
Q. That lasted down to what time?
A. October, 1917.
Q. Then what did you do?
A. I then went with the L. W. F. Engineering Company. Later on I went to Bridgeport with the Remington U. M. C. Company as a machinist or lathe hand.
Q. Then after that what?
A. From there I went with the Federal Reserve Bank as a clerk for a few months, until May, 1919, when I went back to the New York & Queens Gas Company as general bookkeeper.
Q. In your position as general bookkeeper have you, under Mr. Spear and Mr. Raynor, had since May, 1919, charge of the keeping of the general books of this company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not within the province of this witness so to testify.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. From about the middle of May, 1919.
Q. Are you now taking any night course in accountancy?
A. Yes, sir.
Q. Where?
A. Pace & Pace Institute.
Q. Since May, 1918, are substantially all of the entries in the general books of account in your own handwriting?
A. Yes, with the possible exception of a few entries that have been made by Mr. Raynor.
236 Q. In the journal?
A. In the journal.
Q. Do you generally make the various entries in the general books of account, beginning with the journal entry and including the posting to the general ledger and other books?
A. Yes, sir.
Q. During the period that the entries in the books have been made by you have they been correctely made by you?
A. They have.
Q. From the original reports and data furnished to you by the officers of the company?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial, and most leading. The witness ought to testify what he took his entries from, not the witness Ransom.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. They have.

Mr. Ransom: That is all.
The Master: I think you can cross-examine this witness and get through with him.
Mr. Chambers: Do you want us to cross-examine?
The Master: Yes, I think so.

Cross-examination.

By Mr. Chambers:

Q. You are head bookkeeper you say?
A. General bookkeeper.
Q. How old are you?
A. Twenty-three.
Q. Who is over you as bookkeeper now?
A. Mr. Raynor.
237 Q. Is he the head bookkeeper?
A. Mr. Raynor is assistant secretary of the company.

Q. And he is your immediate superior, is he?
A. He is.
Q. How many under you as bookkeepers?
A. No one.
Q. Just he and you attend to the books?
A. The general books.
Q. Now, what books do you keep?
A. General ledger, accounts payable ledger, operating expense ledger, journal, general cash book.
Q. At the present time?
A. At the present time.
Q. What did they keep when you first entered the service of the company, the same kind of books?
A. Yes, sir.
Q. When did you say you entered the service of the company?
A. About the middle of May, 1919.

The Master: That is the last time?
The Witness: The last time.

Q. When were you there before that?
A. From 1913 to 1917.
Q. You must have been pretty young in 1913. Were you head bookkeeper then?
A. No, sir.
Q. What was your position then?
A. I started in as an office boy.
Q. You were not keeping the books that first period?
A. No, sir.
Q. Where do you get your data for entries in the books, say the ledger?
238 A. In the ledger?
Q. Yes, the entries you make in the ledger?
A. From the journal.
Q. You get your data all from the journal?
A. I enter from the journal to the ledger.
Q. Where do you get your data for entries made in the journal?
A. From the various reports.
Q. Whose reports?
A. Made up by Mr. Spear or by Mr. Raynor.
Q. Mr. Spear or Mr. Raynor?
A. Yes, sir.
Q. What kind of reports are they?
A. On coal used for the month, oil used for the month, water used for the month, stationery used, different supplies used at the works.
Q. Anything else?
A. I get data from the bills, the vouchers that come into the company.
Q. And those are handed to you?
A. Yes, sir.
Q. And you enter them in the journal?

A. Yes, sir.

Q. You don't know anything about the correctness of those yourself?

A. I check all additions and extensions?

Q. What additions and extensions?

A. On the bills.

Q. But you don't know anything whether the coal was received, or anything about that, of your own knowledge, except what is on the voucher?

A. Except where it is o. k'd on the voucher.

Q. You go by that?

A. I go by that.

239 Q. And you haven't any original knowledge of any of these matters except what is on these papers, is that right?

A. You mean that I do not receive the material?

Q. Yes, you don't know whether the oil has been received or anything like that, do you, of your own knowledge?

A. Only from where the bill has been o. k'd. that it has been received.

Q. If that o. k. was not on there you would not know whether it was or not?

A. No, sir.

Q. You rely on that o. k.?

A. I do.

Q. Who puts that o. k. on there?

A. For what?

Q. In cases where the o. k. is on?

A. The one who receives the goods.

Q. Well, who is that?

A. Different people for different kinds of material.

Q. What do you do, have half a dozen different kinds of men who o. k. the bills?

A. There may be in some cases.

Q. Who are some of them?

A. Mr. Morrison at the works; Mr. McKenna at the shop.

Q. What kind of goods does Mr. McKenna receive?

A. Meter materials.

Q. He is in charge of meter materials, is he?

A. He is.

Q. And Mr. Morrison is what—what kind of goods does he attend to?

A. Anything received at the works.

240 Q. Like coal and oil?

A. Coal and oil.

Q. And who else puts o. ks. on?

A. Mr. Spear.

Q. What kind of goods does he take charge of, or what kind of work?

A. He does not o. k. for material.

Q. What does he o. k. for?

A. He o. ks. the vouchers for final payment, vouchers to be passed for payment.

Q. Who handles the labor?
A. At the works the pay roll is made up by Mr. Morrison; at the shop it is made up by Mr. McKenna; I make up the office pay roll.
Q. Who are some of the other men who o. k.? You said there were a number of them, and you have named three?
A. Well, anything that comes in the office that I personally see myself, I o. k. for.
Q. Is there anyone else?
A. That is all I think.
Q. Just four of you?
A. Yes.
Q. Now, you are speaking of 1919, are you?
A. Yes, sir.
Q. You don't know anything about the books prior to that?
A. No, sir.
Q. You don't hold any office in the company, do you?
A. No, sir.
Q. What do you do with these vouchers after you make the entries in the journal?
A. I hold them for payment until I draw checks for them.
241 Q. You don't sign the checks, do you?
A. No, sir.
Q. What do you do, just make ou- the amount, and to whom it is payable?
A. Yes, sir.
Q. To whom do you deliver those checks for signature?
A. Mr. Raynor first, and Mr. Spear.
Q. How do you keep track of the labor? That comes in on a voucher, does it, o. k.'d by Mr. McKenna, did you say?
A. Yes, sir.
Q How does that come in, on kind of a pay roll?
A. A pay roll.
Q Each man's name set down?
A It is.
Q. And with the amount of time that he has put in?
A. Yes, sir.
Q. And the amount he is to receive?
A. Yes, sir.
Q. Is everybody in the shop over there included, in the plant?
A. On one pay roll?
Q. For instance, is your time on that same pay roll?
A. Not on the same payroll with the shop, no, sir.
Q. You have two pay rolls?
A. Three pay rolls.
Q. One for the shops?
A. Yes, sir.
Q. One for the office?
A. Yes, sir.
242 Q. And what is the other one for?
A. The works.
Q. And those are separate?

A. Yes, sir.
Q. Mr. McKenna o. ks. the ones from the shop?
A. He does.
Q. Who o. ks. the ones from the works?
A. Mr. Morrison.
Q. And who o. ks. the one from the office?
A. I put my name on it, and Mr. Raynor signs it.
Q. What about the higher salaried officers like the treasurer, for instance, is that on it?
A. No, sir.
Q. Any of them?
A. No, sir.
Q. Do you know anything about those?
Q. What do you mean?
Q. Do you enter up the salaries of anybody except those three?
Q. I draw a check for them.
Q. For everybody who is paid by the company?
A. I do.
Q. That includes the superintendent?
A. It does.
Q. And the other officers?
A. Yes.
Q. Do you ever draw any for a man by the name of Alrich?
A. I do not.
Q. Or Mr. Carter, who is treasurer?
A. I do not.
Q. Or Mr. Brundage?
A. I do not.
Q. Or Mr. Palmer?
A. I do not.
243 Q. You never have anything to do with any of those?
A. I do not.
Q. Who pays those men I have named, or don't they appear at all, or don't you know? Do you know?
A. No, sir.
Q. Those don't go through your books at all?
A. No, sir.

Mr. Ransom. That assumes that there is anything to go through the books.

Q. Does anybody audit your books?
A. Yes.
Q. Who does that?
A. I don't know the name of the gentleman, over in New York.
Q. Is that Mr. Palmer or Mr. Brundage?
A. Mr. Palmer may do it.
Q. Did you ever see them auditing your books?
A. I did not.
Q. Then you don't know whether they do audit them or not?
A. No, I don't.
Q. Do you know whether anybody does audit your books?

A. I never seen any one auditing them.
Q. So you don't know whether there is any fault found with your bookkeeping or not?
A. I never heard of any.
Q. You never heard of any?
A. No, sir.
Q. No corrections made of any kind?
A. I haven't seen any.
Q. You have made some yourself, haven't you?
A. I have.
Q. You find some errors once in a while, don't you?
A. I do.
Q. And you find some errors in the vouchers don't you sometimes, the vouchers that you enter in the journal?
A. Errors in the vouchers or errors made by me?
Q. Errors in the vouchers?
A. If I find an error in a voucher I never put it through until it is corrected.
Q. Do you find some errors like that?
A. I have in cases found errors in addition or multiplication made by the company sending in the bill.

By Mr. Neumann:

Q. How frequently do you take a trial balance?
A. Once a month.
Q. Do you do that yourself?
A. I do.
Q. Do your duties keep you in the office continuously each day, or is there part of the day that you are out, excluding the lunch hour?
A. I am inside all day.
Q. Inside all day?
A. Yes, sir.
Q. You are not away from the office?
A. No, sir.
Q. So that if the books were audited at any time by any one you would know it?
A. I would.
Q. What I mean is this, to be fair with you, there could not be any possibility of those books being audited and you not know of it?
A. They might be audited and I still not see it.
Q. That is, it would have to be done at some other time than during the day in order to be audited and you not see it?
A. No.
Q. What do you mean by that answer "no?"
A. The books are sent to New York to be audited.
Q. They are sent to New York to be audited?
A. They are.
Q. Then you did not mean to be understood to testify that the books are not audited?

A. No, I said I never seen them being audited.
Q. How frequently are they sent to New York?
A. Once a month.
Q. For how many days do they remain in New York?
A. Part of one day.
Q. And is that usually around the last day of the month?
A. No, sir.
Q. When, what time of the month is it?
A. Around the middle of the month.
Q. And is that the uniform custom, around the middle of the month?
A. It is.
Q. Do you know when your board of directors meet?
A. I do not.
Q. Do you know whether they meet in Flushing or whether they meet in New York?
A. They meet in New York when they meet.
Q. They don't meet in Flushing?
A. Not as far as I know.
Q. So far as you know, you have not seen any board of directors meetings or been present while there were any board of directors meetings held in Flushing?

246 Mr. Ransom: I object to that as incompetent and not cross examination and not within the scope of anything concerning which this witness has been interrogated.
The Master: Objection overruled.
Mr. Ransom: Exception.

A. I do not.
Q. Now, Mr. Foy, if I understand your testimony correctly, it is to this effect, that if the underlying data from which you make the entries is incorrect, then the entries in the books are also incorrect, and if the underlying data is correct, then the entries in the books are correct—is that true?
A. I never checked back any underlying data. I take what is given to me as being correct.
Q. So that if there are any errors in this underlying——

The Master: Don't repeat that, it is argumentative.

Q. Do you know what the works reports are?
A. Yes, sir.
Q. The works reports contain statements in Mr. Morrison's handwriting as to coal and oil, do they?
A. They do.
Q. Do you use those works reports in order to make entries in the books?
A. I do not.
Q. Where do you obtain—from what source do you obtain the information that is contained in the books as to the amount of coal that is used?
A. From Mr. Spear.

Q. Is that a personal direction from him, a verbal direction?
A. It is not.
247 Q. Is it in writing?
A. It is.
Q. Is it in the form of a report?
A. It is.
Q. And on file in your office?
A. It is.
Q. And from which you make entries in the books?
A. I do.
Q. And is that true likewise of the station reports?
A. What station reports are you referring to?
Q. The information that is contained on that. Do you know what a station report is?
A. I do not.
Q. Do you know whether your company keeps a book called "The Manufacturing Station Report"?
A. Book?
Q. Yes.
A. I do not.
Q. Do they keep loose leaf records?
A. Of what?
Q. Of the manufacturing stations?
A. There is a manufacturing report that comes in from the works once a month.
Q. What form is that in, is it in a book or loose leaf?
A. Why, it is merely one sheet. It is not kept in book form, but folded
Q. Whose handwriting is that in?
A. Mr. Morrison's.
Q. And do you make entries direct from that in the book, or is there some intermediate from which you make the entries?
248 A. There is an intermediate report from which I make the entry.
Q. Who makes that intermediate report?
A. Mr. Spear.
Q. And that is true also of all of the other reports, is it, that are handed up from time to time, they are first given to Mr. Spear and he makes a report to you, and thereupon you made entries in the books from the report handed to you by Mr. Spear?
A. I do.
Q. While you were testifying as to your qualification, there was a part of the time that you were not engaged as a bookkeeper. What period of time was that?
A. October, 1917 to May, 1919.
Q. What occupation were you engaged in then?
A. From January, 1918 to November, 1918, employed as a lathe hand, Remington U. M. C. Company.
Q. What do the letters "U. M. C." means?
A. Remington Union Metallic Company.

Q. You had nothing to do during that period of time with bookkeeping at all?
A. I did not.

Mr. Neumann: That is all.

Redirect examination.

By Mr. Ransom:

Q. Mr. Foy, when the books come back from this trip to New York for audit, do they bear any stamp or certification of audit which you find on them?
A. They do.
Q. Showing an audit as of a certain date?
A. A stamp on there marked "Audit Committee" with the initials on it.
249 Q. And date?
A. And date.
Q. Before any invoice is paid is it approved by Mr. Spear?
A. It is.
Q. When invoices come to you do you or would you make any entry from a bill into the books of account unless it had been O. K.'d by the proper person?

Mr. Neumann: I object to that as immaterial.
Mr. Hyatt: And calling for a conclusion.
Mr. Neumann: Certainly, who is the proper person?
The Master: Objection sustained.

Q. Would you enter and do you enter in the books any bill or voucher for any kind of materials or supplies unless and until it has been O. K.'d by the head of the department receiving or charged with the duty of receiving the supplies?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. It has been shown by this witness already that he pays some bills on the O. K. of Mr. Spear, who has charge of no particular department.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. No, I do not.

Mr. Ransom: That is all.

(Witness excused.)

250 JOHN J. HALLERAN, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Where do you reside, Mr. Halleran?
A. Flushing, Long Island.
Q. What is your business?
A. Real estate broker and appraiser.
Q. Auctioneer of real estate and the like?
A. Yes.
Q. Where is your place of business?
A. Flushing, Long Island, southwest corner of Broadway and South Prince Street.
Q. How long have you lived in Flushing?
A. Forty-five years, all my life, practically.
Q. How long have you been engaged in the real estate business in Flushing?
A. About fifteen years.
Q. Have you ever held any public office in the City of New York?
A. Yes, sir, I was Commissioner of Taxes and Assessments.
Q. During what administration?
A. During the administrations of Mayors McClellan, Gaynor and Mitchell, upwards of about ten years.
Q. And your duties in the Department of Taxes and Assessments related especially to the Borough of Queens?
A. Borough of Queens and the City of New York.
Q. Are you connected with any corporation or institution engaged in dealing in real estate mortgages and the like?
251 A. Yes, I am a director of the First Mortgage Guarantee Company of Long Island City, a member of the executive committee, and a member of the board of directors.
Q. What does that company or its executive committee do?
A. Buys and sells mortgages, makes loans on properties in Queens Borough.
Q. Loans on real estate?
A. Yes, sir.
Q. Buys and sells real estate mortgages?
A. Yes, sir.
Q. In Flushing and other parts of Queens Borough?
A. Yes, sir.
Q. In what ward of the Borough of Queens in Flushing?
A. The Third Ward.
Q. Do you know whether the Third Ward of the Borough of Queens comprises the same territory as the former town of Flushings in the County of Queens?
A. It does, the exact territory.
Q. Have you had experience in buying, selling and appraising real estate in the old town of Flushing in the Third Ward of the Borough of Queens?

A. I have.
Q. You said about how many years, all told?
A. Fifteen years.
Q. Have you kept yourself informed upon sales, leases, mortgages and other transfers relating to real estate in the Third Ward of the Borough of Queens during those fifteen years?
A. I have.
252 Q. Have you made many appraisals of real estate in this Third Ward of the Borough of Queens?
A. Yes, very many, hundreds, I should say, throughout the entire ward, appraisals for real estate mortgages, transfer tax purposes, and other appraisals.
Q. Are you, and have you been familiar with the values of real estate in the Third Ward of the Borough of Queens, and particularly in the vicinity of Myrtle Avenue and Farrington Street in the former village of Flushing?
A. Yes, sir.
Q. Are you and have you been familiar with the property of the New York & Queens Gas Company, situated at the corner of Myrtle Avenue and Farrington Street in the old village of Flushing?
A. Yes, sir.
Q. Did you at the request of the New York & Queens Gas Company make an appraisal of certain property as of the New York & Queens Gas Company at or near the corner of Myrtle Avenue and Farrington Street, in Block 170 and Block 171?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and no time fixed.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. I did.
Q. As of what time did you value this property that you were asked to appraise?
A. The 2nd of April, 1920.

The Master: What was this, land?
253 The Witness: Land.
The Master: Just land?
The Witness: Just land.
The Master: Just the land for the operating plant, that the operating plant is on?
The Witness: Exactly.

Q. You inspected this property personally for this purpose?
A. I did.
Q. You see this property frequently?
A. Yes, sir.
Q. Will you briefly describe the property which you were asked to appraise and which you did appraise? First Lot 31, Block 170?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial. In the present state of the record

the complainant has not yet proven what land the New York & Queens Gas Company does own or possess. The witness Alrich attempted to testify——

The Master: I know what the witness Alrich testified. Is that the ground of your objection?

Mr. Neumann: Yes.

The Master: I overrule it on that ground.

Mr. Neumann: Exception.

Mr. Hyatt: Does not the question involve also the question of ownership?

The Master: No. I don't care who owns the property that Mr. Halleran has been asked to appraise.

Mr. Hyatt: It may be held under a lease, and in that event the value of the property to the company would be very much less.

254 The Master: Yes, but we will hear what Mr. Halleran was asked to appraise.

Mr. Hyatt: How can he testify to the value of a property as to which there is no proof of ownership?

The Master: When you ask a question like that, you always draw fire from me. Is there any reason why I could not ask Mr. Halleran to go and appraise the Equitable Building?

Mr. Hyatt: I guess not, but what would that prove?

The Master: I don't know that it proves anything, but he was asked to appraise something. I am going to find out what it was that he was asked to appraise.

Mr. Hyatt: The question involves a matter of ownership.

The Master: It does not at all.

Mr. Hyatt: I would like to hear the question read.

The Master: No, you will not hear it read. I heard it.

Q. What did you appraise?

A. The property bounded on the north by Center Street; on the east by Farrington Street; on the south by Myrtle Avenue; on the west by Byrd's Alley. That would be described as lot 31, block 170.

The Master: On the tax map?

The Witness: On the tax map.

Q. What frontage on Myrtle Avenue?

A. Frontage on Myrtle Avenue, 334.09 feet; 298.32 feet on Farrington Street.

Q. What is its frontage on Byrd's Alley?

A. Bounded on the west by Byrd's Alley, having a frontage there of approximately 300.72 feet.

255 The Master: According to the tax map?

The Witness: Yes.

The Master: All these dimensions are according to the tax map?

The Witness: No, these dimensions were furnished to me by the Gas Company, which I am informed is an exact survey.

Mr. Neumann: In view of that answer I move to strike out the witness' entire answer, on the ground that the survey is not in evidence here.

The Master: I will let it stand.
Mr. Neumann: Exception.

Q. Now, what about Lot 40, Block 171?
A. Lot 40, Block 171, is located on the north side of Center Street, 150 feet west of Farrington Street. It is 125.85 front by 100 feet in depth.

The Master: Where did you get those dimensions?
The Witness: Those dimensions were furnished also by the company?
Mr. Neumann: I make the same motion to strike out.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. On the basis of those dimensions what is the number of square feet in Lot 40, Block 171?
A. Lot 40, Block 171, the number of square feet is 12,585.

The Master: Based on the dimensions given you?
The Witness: Based on the dimensions and the diagram furnished by the company.

Q. What in a similar way is the number of square feet in Lot 31, Block 170?
256 A. Lot 37, Block 170——
Q. Lot 37?
A. Lot 31, Block 170, is the large parcel bounded on the north by Center Street, on the east by Farrington Street, on the south by Myrtle Avenue, on the west by Byrd's Alley, containing 92,231.59 square feet.
Q. You have been familiar, Mr. Halleran, with the prices at which other parcels of land in that neighborhood have been bought and sold and mortgaged and leased?
A. I have been.
Q. Will you please state, Mr. Halleran, what in your opinion, as of the time of your appraisal, was the value unimproved of the parcels of real property which you have described, Lot 31, Block 170, Lot 40, Block 171, in the Third Ward of the Borough of Queens?

Mr. Hyatt: Objected to as incompetent, irrelevant and immaterial, no basis for the opinion that the witness is about to give. I think the basis ought to be on the record so that everybody could determine whether his opinion is a reasonable one.
Mr. Chambers: I object to the question upon the following grounds: That the time of which the witness speaks, April 2, 1920, is an abnormal time, and the values or prices as of that date, or as of the present time, are abnormal and unusual and no test of the true value of the property. On the further ground that it is incompetent, irrelevant and immaterial and not the proper value—if it is any value—to be placed upon the property of this public service for rate-making purposes.

257 I object upon the further ground that the witness has not been shown to be qualified to give the value of this kind of property.

The Master: Have I heard all of the objections?

Mr. Neumann: The Public Service Commission joins in all of them.

The Master: As to the last ground first, the Master rules that Mr. Halleran has been shown on this record to be fully qualified to testify as an expert. Going back to the other grounds, your contention, Judge Ransom, is that you are entitled to a return upon the present value of the property?

Mr. Ransom: It is.

The Master: And your contention, Mr. Chambers, is that the complainant is not entitled to a return on the present value of the property?

Mr. Chambers: It is.

The Master: What is your contention as to the rate base?

Mr. Chambers: That is one thing.

The Master: Tell me what your contention is as to the basis on which the return must be made.

Mr. Chambers: On the land?

The Master: Yes.

Mr. Chambers: The cost to the company of this land and, if that is not taken—I say that is the best rule to follow, and if that is not taken, then the fair and reasonable value of this land—pre-war prices, and not in any abnormal period.

The Master: For the record I will state that my opinion is in line with the claim made by the counsel for the Attorney
258 General. I shall, however, overrule the objections and receive the proof in order that the court reviewing my decision may have it on the record.

Mr. Neumann: Exception.

Mr. Ransom: What is the figure?

A. $55,000.

The Master: For which piece is that?

The Witness: That is for both parcels.

Mr. Ransom: That is all.

The Master: Cross examine.

Mr. Chambers: What did you say—cross?

The Master: Yes.

Cross-examination.

By Mr. Chambers:

Q. Do you know what this property cost, upon which you have placed a value as of April 2, 1920, of $55,000?

A. No, sir; I do not, Mr. Chambers.

Q. You do not?

A. I do not.

Q. You are satisfied that it was a sum way down below or less than that you have given?

Mr. Ransom: Objected to as incompetent and an improper question. He has not said he was satisfied—has not said anything about it.

Mr. Chambers: I am asking him.

The Master: I will allow it. I take a question of that kind to mean, Do you believe it, or Do you think so.

Mr. Ransom: As of what time?

Q. Do you believe it was less than $55,000.

A. Do you mean to say when the gas company was first started?

259 The Master: When it was bought by the gas company.

Q. Do you know when the gas company brought it?

A. I don't know; about forty or fifty years ago.

By the Master:

Q. Do you know anything about it?

A. No.

Q. Then tell him so.

A. I do not know when the land was bought.

By Mr. Chambers:

Q. When did you first know anything about the prices in Flushing?

A. About fifteen years ago, I should say.

Q. What was the value of it fifteen years ago when you say $55,000 is the value of it now?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial; and the value at that time has nothing to do with the issues here.

The Master: I will sustain that. I am inclined to agree with you, Mr. Chambers, that it was the cost of the property; at any rate its average value prior to the war. I will let you ask the witness what has been the trend of prices in Flushing, and develop that point.

Mr. Chambers: Yes.

Q. Confining yourself to land now——

By the Master:

Q. Confining yourself to this land, has there been an up trend or down trend in the last five years?

A. Well, I should say in the last years there has been no material movement in land. There has been a boom in dwellings.

260 But in land I should say it is approximately what it was five years ago.

Q. In other words, you think that this price of $55,000 is about what it was worth in 1914?

A. Exactly.
Q. In 1912?
A. 1912.
Q. 1910?
A. Yes, I should say there has been no material change in ten years.
Q. Well, since along about 1907 or 1908 there has been no change over there?
A. That would be what, ten years ago?
Q. Yes, ten or twelve years ago.
A. No, there has been no substantial change.
Q. The boom over there was in 1907 or 1908?
A. 1905 to 1907.
Q. Since that time it has been rather dormant?
A. Yes.
Q. And has been where it was ten or twelve years ago?
A. Just about.

By Mr. Chambers:

Q. Did you say you were a Tax Commissioner or Deputy Tax Commissioner?
A. A Tax Commissioner.
Q. A deputy?
A. A Tax Commissioner.
Q. Did you value or appraise any land for taxation?
A. No.
Q. Did you review assessments?
A. Yes, sir.
Q. Did you review an assessment on this very piece, ever?
261 A. I do not recall ever having passed on an application for a reduction of this property.
Q. I did not ask you that; I meant did you pass on the valuation of this piece, put on it by a deputy?
A. No, sir; I never did that.
Q. Don't you know what it was assessed for in any year?
A. No, I do not know that I do.
Q. It was never assessed for $55,000, was it, ever?
A. I would not say. I would not say offhand whether it was or not.
Q. You do not know anything about it?
A. I do not recall anything about it. I would know all about it if I had the records before me, or something I could refresh my memory from.
Q. What did you base your value of $55,000 on?
A. On the sale price of the adjoining lands.
Q. What adjoining lands were sold; tell us?
A. I will give you a few of them here. A lot 25 by 100 on the north side of Myrtle Avenue, 125 feet west of the railroad, 2,500 square feet, sold for $1,000 ten years ago by Lawrence B. Halleran
Q. How many square feet were in that?
A. 2,500 square feet. It is a lot 25 by 100.

Q. Where is that relative to this particular piece?

A. It is about—well, about 300 feet west of the corner of this property, and formed by the corner of Myrtle Avenue and Byrd's Alley.

Q. Where did you get your date for that sale from?

A. My brother Lawrence B. Halleran sold it to the purchaser, Mary Foley, ten years ago.

262 Q. And you used that as one of the factors?

A. That is one element.

Q. Yes, and any other?

A. The south side of Myrtle Avenue, 75 feet west of Linden Avenue, a plot 50 by 125, two lots, $2,000, Betts Estate, for the Borden Condensed Milk Company, sale made in January, 1920.

Q. How many square feet in that piece?

A. That piece would have about—50 by 100, that would have about——

The Master: By 125.

Mr. Neumann: 50 by 125.

The Witness: The first one would have 25 by 100.

Q. The first one that you spoke of?

A. Yes, sir.

Q. What frontage was there; what are the factors and how much would that be a front foot?

A. That would be at the rate of $40 a front foot, or 40 cents a square foot.

Q. Where on this map, Exhibit 47 for Identification, is that property?

A. I will show you it right here (producing map).

Q. You have another map, have you?

A. I have a map here that we use in the office and a reference here probably may help you. This first lot that I testified to is located right here; call it A, if you please. That is 25 by 100. Here is the Gas Company (indicating).

Q. All right; now your second piece.

A. The second piece is on the south side of Myrtle Avenue, west of Linden Avenue. That is over here (indicating). Call that B.

Q. How much a front foot was that?

263 A. That is 50 by 125 feet, and that sold for $2,000. That would be something less than 40 cents a square foot.

Q. Those sales relate to the land only?

A. That is land only. That sale was made in January, 1920.

The Master: At what rate did you figure the land per square foot?

The Witness: I figured this property of the New York & Queens Gas Company about 50 cents a square foot, making no allowance for plottage. In other words, I figured this entire block bounded by these four streets at 50 cents a square foot and $750 for each of the four corners, the corner influence applying to the entire property. In other words, the difference between this tract at 50 cents and this other at 40 cents——

Q. This last tract you put at 40 cents?

A. A little less than 40, Mr. Chambers, for the reason that it is a hundred feet in depth, but the additional depth here, that is to say 25 feet—that additional rear footage there of 25 feet would not be of any particular consequence.

Q. All right, go ahead.

A. The south side of Myrtle Avenue, 150 feet west of Farrington Street, a lot 25 by 100 with a small five-room shack. That would be right here (indicating on map).

Q. That is across the road?

A. Yes. Call that C, if you please.

Q. Across the street from the gas company?

A. Well, now, that was a contract between the Flushing Realty & Construction Company and Rocco R. Martino for $1,800. This is 25 by 100.

264 Q. That would be how much per front foot?

A. Figuring the land at $1,000 and the building at $800, that would be 40 cents a square foot, or $40 per running foot.

Q. They all seem to run about 10 cents a square foot less than this?

A. Yes, they do. The north side of Center Street, 100 feet west of Farrington Avenue; I will call that D, if you please.

Q. How big a piece?

A. That is 50 by 100, Mary Powers.

Q. For how much?

A. $2,600. It is improved with a small two-story dwelling.

Q. How much is that a front foot?

A. 40 cents a square foot. It is a little more than 40 cents, figuring the building.

Q. Forty cents a front foot?

A. No, a square foot. The total purchase price is $2,600.

Q. Building and all?

A. That is 50 feet of land and a small two-story building.

Q. How much a front foot, 40 cents?

The Master: No, $40 a front foot, and 40 cents a square foot on area.

A. I estimate the land under this building to be worth 40 cents a square foot.

Q. It is still running 40 cents.

A. Yes. That is the standard price out there.

Q. Why didn't you put that standard price on the gas company's property?

A. Do you want to know?

The Master: Let me have Mr. Halleran's answer to that, will you?

When you worked out the other sales and transactions referred
265 to, running 40 cents a square foot, let us have on the record why you made this piece you appraised 50 cents?

The Witness: The reason for the difference in that is that this property is one intact square block not intersected by any streets,

and also is in proximity to the railroad siding here, which gives it a right of railroad connection, and also it is located in the unrestricted district under the new zoning law of the City of New York, which in my opinion adds more than 10 cents to the value per square foot.

Q. So are these others in the unrestricted district, are they not?

A. Yes, but they are individual lots, Mr. Chambers.

Q. You did not add anything for plottage to that parcel the gas company handed you to appraise?

A. I included it at 50 cents a square foot; including plottage.

Q. How much would that gas company's property, as they gave you the description of it, be worth at 40 cents instead of 50?

A. It would be worth 10 cents a square foot less. I have not figured it; I should say in round figures $10,000 less.

Q. About $45,000 then?

A. Yes. I estimate there are 105,000 square feet in it.

Q. That would not be a bad idea, would it, to make that $45,000?

A. I consider this property worth 50 cents a square foot.

266 Q. I know you did at first; but looking at it in the light of these four pieces of property all around it, and it is all in the unrestricted zone, if somebody came along and said $45,000 you would not say he was very much off, would you?

A. Yes, I would, because——

Q. You would say——

Mr. Ransom: Let him finish his answer.

Q. You would say he was off?

A. I would say he was off because he was not giving due consideration to the fact that this property is all in one square block. These prices I have given you, it seems to me, would more than sustain this 50 cents a square foot, because if the individual lots are worth 40 cents, lots in one block would be worth more than 40 cents a square foot or more than 50 cents a square foot.

By the Master:

Q. Putting it another way, Commissioner, if you were to figure them all at 40 cents you would add the difference for plottage?

A. Yes, sir. Instead of wrangling about the plottage charge I put it at 50 cents a square foot for lots within that block, of the company.

Q. If you took $45,000 as the basis of individual lots, adding something to the corner and adding 20 per cent for plottage, you would get the same result?

A. Practically.

Q. Would 20 per cent be high or low for plottage?

A. 20 per cent for plottage in a case of that kind, in an unrestricted district used for that particular purpose, would be low, because the amount of property that could be used for unrestricted uses is very limited.

267 Q. Around that section?

A. All over Greater New York, since the passage of the Building Law.

By Mr. Chambers:

Q. Have you got any others there that run any different than those four you gave me?

A. No, I would say they are right in the immediate vicinity.

Q. You picked out those four?

A Picked out those four because we have actually sold them and know all about them.

Q. It is fair to assume if there are any others you would probably have told us or would have them?

A. Exactly.

The Master: In other words, those four sales were the only ones you knew of around that immediate section?

The Witness: Exactly.

Q. Property is kind of dead around there, I take it?

A. Well, the sale of vacant land is not very brisk, anyway, just now.

Q. And that has something to do with the market price of this piece of property, too?

The Master: It has not put it up any.

A. Vacant property you can make less use of than land with a building, because of the cost of materials.

Q. What about that alley, does that run right through the plant?

A. It is the westerly boundary of the company's property, running from Myrtle Avenue to Center Street.

Q. I mean none of it is on the other side of the alley?

268 A. None of it is on the other side.

Q. There is no street or alley running through it?

A. No, sir.

Q Of any kind. It is in kind of a queer shape here according to this map I have got.

A. Well, that is apt to happen to property, you know.

Q. Your map does not show anything that looks like this.

A. Yes, it does; on a little enlarged scale (indicating on map).

Q. You have a street, then, running right through it; your piece is not all one piece, you have Center Street running right through it?

A. I am testifying to two parcels of property, one of which is this one, and one here the other (indicating).

Q. I know, but you run them all in together at $55,000 with the plottage. You have two pieces of property that are separated by streets.

Mr. Ransom: I do not think we better try to fight out that question as to whether there is or is not a street there.

Mr. Neumann: Yes, but you have not yet proved where your property is, or what it is.

Q. Is it not a fact that in the piece they gave you Center Street runs right through and segregates the one from the other?

A. Well, that property is fenced in from here to there (indicating).

Q. On this map you have got Center Street segregating these two pieces of property?

A. Well, I tell you, I would not testify to the truthfulness of this map in the sense that——

Q. I am not asking you that.

269 Mr. Ransom: Let him finish his answer.

A. I mean by that, this we use only as a picture map.

Q. Did you assume that there was no street in there, Center Street?

A. No.

Q. You assumed this company owned, or these figures that were given you covered the whole property joined together?

A. Oh, no, I am very clear and distinct on that, Mr. Chambers. Here is one parcel on the north side of Center Street (indicating). The number of square feet in both these parcels is 105,000 square feet, figured at 50 cents a square foot.

Q. How much did you figure that little thing at (indicating)?

A. Fifty cents a square foot.

Q. How do you explain that to the Master, that little piece, in comparison with these other pieces? By that little piece I mean the piece north of Center Street, 100 by 125.85?

A. Because it is used in connection with that plant.

Q. I know, but it is separated by a street.

Mr. Ransom: No, it is fenced in.

Mr. Chambers: Will you keep quiet for a minute?

The Master: It does not make any difference; he has appraised two separate parcels here.

Q. Can you offer any explanation for that small piece I have just described by dimensions—why that is not in the same situation as these other three little pieces you have spoken of?

270 Mr. Ransom: Objected to. If counsel will read the deed, of which we sent him copies, he will find out why.

The Master: Objection overruled.

A. What explanation do you mean, Mr. Chambers?

The Master: Why didn't you figure that at 40 cents rather than 50; it is a small parcel?

The Witness: The reason I did that is it is used in connection with the plant, it is 100 by 125.

Q. That is the only reason?

A. For the same reason. Those other parcels I have given you, none of them is more than 50 feet.

Q. How much plottage did you allow for that piece?

A. No plottage.

Q. What value would you put on that little piece 100 by 125.85 if it was owned by somebody else?

A. I would not change the value at all.

Q. Even though a third person owned it?

A. No, sir; it would not make any difference.

Q. Then if somebody else owned it and the gas company did not, how do you reconcile that with your testimony a minute ago?

A. Because the other parcels are individual parcels.

Q. This will be then.

The Master: It will be five lots together.

A. Just a moment. Individual parcels, not more than 50 feet front, while this parcel has 125 feet front, as against 5,000 square feet in one parcel.

271 Q. If an individual owned that would you allow anything for plottage on the small piece north of Center Street?

A. I might if it was used for garage purposes or some such purpose.

By the Master:

Q. You would not if you took it in at 50 cents?

A. No.

Q. You have included plottage in the rate of 50 cents?

A. Per square foot.

By Mr. Chambers:

Q. Would you allow plottage in that?

A. Not at 50 cents.

The Master: At what price?

Q. Not at 50 cents you would not?

A. No.

Q. Would you at 40 cents?

A. Yes, I think I would.

Q. How much?

A. Well, probably 25 per cent, if it was all improved under one roof and used for one particular purpose.

Q. Do you always allow plottage for every plot that is over 50 feet?

A. Well, it depends entirely on the location. You might apply plottage to a 50 foot plot on a prominent street, or you might—I should say you could not apply plottage out there until you got beyond 50 feet.

Q. One of these parcels you spoke of is right adjoining that, fronting on Center Street, adjoining that to the east, is it not?

A. That is right.

Q. Just a few feet away?

272 A. Yes, sir. That is a 50 foot plot improved with a small frame house, just sold for $2,600.

Q. Did your company loan any money on this gas company property?
A. No, sir; we do not loan on gas——
Q. You do not loan on that kind of property?
A. No, we do not have money enough.
Q. Is that a street there, that Center Street?

Mr. Ransom: Objected to as incompetent. The witness is not competent to tell whether it is. The deeds are in evidence.

A. It is a paper street.
Q. How did it look?
A. What do you mean, how did it look?
Q. Does it look like a street?

The Master: Do you know that section?
Mr. Chambers: No.
The Master: Well, very often you cannot tell whether it is a street except by looking at a map.

A. I think the best you can say is, it is a paper street.

Mr. Ransom: It is on the map, fenced in and used all the while.

Q. You treated it as a street when you testified about this other parcel, did you? Did you treat it as a street?

The Master: I will not allow the question, because it has been thoroughly covered. He has indicated he valued two separate parcels, one bounded by Center Street, Byrd's Alley, Farrington Street and Myrtle Avenue, and the other one lying on the north side of Center Street. We have had enough of it.
Mr. Ransom: He took into account that they were contiguous and used together.
273 Mr. Neumann: Why not let the witness say what he did?

Q. Have you been retained by the Consolidated?

The Master: Yes, the witness is retained by the Consolidated Gas Company, employed and paid by them. He is a hired expert.

Q. Were you retained by the Consolidated?
A. I was retained by Mr. Spear of the New York & Queens Gas Company.

The Master: And you are going to be paid for your testimony?
The Witness: Yes, sir.
Mr. Chambers: That's good. I hope so.
Mr. Ransom: Well, we hope to be able to pay him.
The Master: That is a perfect waste of time, to ask a man who has no interest in a litigation whether he is being paid for it.
Mr. Chambers: Well, I disagree with you.

Exception.

Cross-examination.

By Mr. Neumann:

Q. Are you employed by the company in any way, or interested as a stockholder?

A. No.

Q. Do you know of any sales involving a whole block of property that have taken place within the last ten years within the radius of this property you have testified to?

A. Yes, sir.

Q. What block was that?

A. The block bought by the Ranier Motor Company.

Q. When?

A. That was an acreage tract and contained about four and one-half acres and about—oh, it was seven or eight years ago, I should say.

274 Q. Is that more or less than in this particular parcel you testified to?

A. I should say that would be more.

The Master: It is a good deal more.

The Witness: Yes.

Mr. Ransom: It is down on the Meadows.

The Master: A good deal more.

The Witness: That is four and a half acres, and 42,000 square feet, that would be about two and a half acres, as against about four and a half.

The Master: About twice as big a plot.

The Witness: Yes.

Q. What price was paid?

A. This property——

Q. I mean do you know what price was paid?

A. I know because I made the sale. This property was sold at the rate of about $500 a lot.

Q. Figured on the square foot and square inch basis, how much would that be?

A. Per what, per acre?

The Master: Per square foot.

Q. Per square foot.

A. That would be at the rate of 20 cents a square foot.

Q. $20 a square foot?

A. No, 20 cents a square foot.

Q. And $20——

A. A running foot.

Q. That is it.

A. Now you want me to describe the kind of property this is?

Q. No, I do not want anything more than I have asked you, for the present.

The Master: The Master does.

275 By the Master:

Q. Tell us what kind of property this was.

A. The difference in this property is that this property is meadow land, and when it was sold at that time it was sold in its raw virgin condition. Since that time it has been filled and a railroad siding has been built to it.

Q. What kind of property is this that the gas company is on?

A. It is filled property with improved streets, macadam roads around it, curbed and sidewalked, and to that extent it is different from this property, which was meadow land.

Q. Was it on grade or below grade?

A. Below grade.

By Mr. Neumann:

Q. I understand you to say you did not know what the price was that the company originally paid for this property?

A. That is true.

Q. Will you tell us just what factors you took into consideration in arrivnig at your value?

The Master: Well, I do not understand that, Mr. Neumann. I thought he told us how he arrived at his value.

Mr. Neumann: I do not think he has just yet.

The Master: What do you want to know especially?

Mr. Neumann: I want to know what he took into consideration in arriving at this value.

The Master: Do you want him to repeat all he said before?

Mr. Neumann: No. I think that is a perfectly plain ques-

276 tion. When a man values a piece of property he takes into consideration the sales of other properties, the leases of other properties.

The Master: He has told us that.

Mr. Neumann: No, he has not; he has told us about sales only. I want to know what are all the factors he took into consideration in valuing this property.

Mr. Ransom: I object to its as fully covered.

The Master: I think the witness has fully covered it. If there is any particular factor you want to call his attention to, you may do it.

Mr. Neumann: May I have an exception?

The Master: Certainly.

Q. Did you look up the assessed value of this property?

A. No, sir.

Mr. Ransom: Objected to as fully covered.

The Master: He has already covered that. He said he had not.

Cross-examination.

By Mr. Hyatt:

Q. I would like to ask you whether this is a residential or business neighborhood?

A. I have testified, Mr. Hyatt, it is in the unrestricted district under the new zoning law.

Q. Are there any residences there at all?

A. A few workmen's residences scattered here and there.

Q. What is the character of the buildings where the workmen reside?

A. Frame.

277 The Master: I get the impression of pretty old ramshackel things around there.

The Witness: Yes, sir.

Q. In what state of repair are they?

Mr. Ransom: Objected to as immaterial.

A. Why, some of them are in a poor state of repair.

Q. Have you seen them for a long time?

A. Yes.

Q. How long have they been in that state of repair?

The Master: What is the point of this, Mr. Hyatt?

Mr. Hyatt: Why, the general character of the neighborhood. You know that determines the value of the property as well as other factors.

The Master: What condition the dwellings are in?

Mr. Hyatt: Yes, sir. Am I allowed to have the question answered?

The Master: Yes.

A. There are no new dwellings being erected in this locality for residential purposes. The reason for that is that the land having been zoned for unrestricted uses is more valuable for manufacturing purposes than it would be for dwelling house uses or dwelling house purposes, and any of the dwellings that are there have been there for a number of years and are to some extent out of repair.

Q. And is the locality also devoted to business purposes?

A. No, there is no—there is no business in that particular locality. There is nothing there to support it.

278 Q. How many feet above sea level, about, is it at the present time?

A. Why, I suppose it is about, offhand, between seven and ten feet, I suppose, above high water mark in Flushing Creek.

Q. Do you know who filled in this land?

A. Do I know who filled it in?

Q. Yes.

A. I should say the gas company filled in a part of it.

Q. Do you know? I asked you if you knew.

A. No, I would not like to say that.

Q. Would it be suitable for any purpose other than that which it is used for now?
A. Any other manufacturing purpose.
Q. Is the atmosphere in a noisome condition at times?
A. I would not like to pass on that. My nose——
Q. Well, that is a matter of fact that you could determine from ordinary observation.

The Master: What do you mean, due to the gas company's works?
Mr. Hyatt: Yes, in the vicinity of the gas works.

A. I never noticed that there was anything particularly offensive about it. I have lived right around there for a number of years.
Q. Do you know of any property sold there in the last ten years for thirty cents per square foot?
A. No, I do not.
Q. Any at thirty-five cents a square foot?

The Master: One minute now. Do you, Mr. Hyatt?
Mr. Hyatt: Yes.
The Master: All right, then; answer the question.

279 A. No, I do not offhand.
Q. Would you know as a matter of fact if such property had been sold for thirty-five cents a square foot?
A. It might have gotten by me without knowing it.
Q. How far back did you look in your investigation?
A. We went over the records of our office; I went over the records with by brother—well, back ten years, back to that Foley sale.
Q. Does your office keep a record of all the transfers, sales and rentals for the last ten years?
A. Not in that form. We keep them marked on Hyde's Atlas and also Bromley's Atlas.
Q. Do you keep this record yourself?
A. Personally?
Q. Yes.
A. No, it is done by one of the clerks in the office.
Q. Do you know that he does accurate work?
A. I have never caught him in very many mistakes.

Mr. Hyatt: That is all.

Redirect examination.

By Mr. Ransom:

Q. Mr. Halleran, at the time this Ranier Motor Company plot was bought on the meadows was there any improved street leading to it?
A. No, it was virgin land.
Q. This Ranier Motor Company plot on the meadows was adjacent to water, adjacent to the creek?
A. It fronts on so-called Mill Creek. Mill Creek is not navigable and it is a tidal creek.

280 Q. Was the general character of the plot bought by the Motor Company marshy?

A. Marshy and swampy, and required piling for the buildings, and filling and all that sort of thing.

Mr. Hyatt: I move to strike that out, that it required piling and filling for the building.

The Master: Motion denied.

Mr. Hyatt: Exception.

Q. Have you ever had occasion to investigate or ascertain in connection with building operations the approximate depth of the mud in that location?

A. I know something about it in connection with the Ranier Motor Corporation, for the reason that I represented the people who had the second mortgage, and when the land was sold it was sold without any money having changed hands, and the purchasers taking a second mortgage for the land; and I happen to know at that time the piles that were driven under the building were driven from twenty to thirty-five feet into the mud before they were fetched up.

Q. The New York & Queens Gas Company property is not in that marsh or meadow region?

A. No, sir.

Q. That is on firmer ground?

A. It is on upland whereas this is just on the edge of the upland.

Mr. Ransom: That is all.

The Master: That is all, Mr. Halleran.

Mr. Ransom: Before taking up the examination of Mr. Addicks, I offer in evidence Complainant's Exhibit 53 for Identification, and state my intention to offer in evidence the other books of
281 account hitherto marked for identification for the years 1919, and 1920 to date.

Mr. Neumann: I object to this upon the following grounds: It is immaterial, irrelevant and incompetent; it is not shown to be a book of original entry; it has not been properly proved; not properly proved to have been kept in the regular course of business; the underlying data upon which this book is based has not been produced in evidence.

I object on the ground that the defendants will be deprived of their opportunity of cross examining the witness who made the entries in the books, prior to the introduction of the books in evidence. Upon the ground that the books have not been proved to be truly and correctly kept. Upon the ground that the entries therein contained, purporting to be merchandise sold and delivered to this complainant company have not been properly proven and are not properly provable in this way. Upon the ground that the books are not proved to have been kept in accordance with the Uniform System of Accounts as set forth pursuant to and in accordance with the order of the Public Service Commission for the First District, and on the ground that they are self-serving declarations.

The Master: The objections are overruled.
Mr. Chambers: Exception.
Mr. Hyatt: The District Attorney of Queens County joins in the objection.
Mr. Chambers: I join in the objection.
Mr. Neumann: Exception.
Mr. Hyatt: Exception.
Mr. Ransom: Then the Journal, now Complainant's Exhibit 53 for Identification, becomes Complainant's Exhibit 53.

282 Marked Complainant's Exhibit 53 in evidence.

Mr. Ransom: The Operating Expense Ledger which is now Complainant's Exhibit 54 for Identification, I offer that in evidence.
Mr. Neumann: Same objections.
The Master: Same ruling.
Mr. Hyatt: Same objection.
Mr. Neumann: Exception.

Marked Complainant's Exhibit 54 in evidence.

Mr. Ransom: I offer the Accounts Payable Ledger No. 4 which is now Complainant's Exhibit 55 for Identification.
Mr. Neumann: Same objection.
The Master: Overruled.
Mr. Neumann: Exception.

Marked Complainant's Exhibit 55 in evidence.

Mr. Ransom: The General Cash Book No. 3 which is now Complainant's Exhibit 56 for Identification I offer.
Mr. Neumann: Same objection.
Mr. Hyatt: Same objection.
The Master: Same ruling.
Mr. Hyatt: Same exception.
Mr. Neumann: Exception.

Marked Complainant's Exhibit 56 in evidence.

Mr. Ransom: And the General Ledger No. 4, which is now Complainant's Exhibit 52 for Identification.
Mr. Neumann: Same objection.
Mr. Hyatt: Same objection.
The Master: Same ruling.
Mr. Hyatt: Exception.

Marked Complainant's Exhibit 52 in evidence.

283 Mr. Neumann: May I add one objection to those, which I have not already enumerated, that a part of a year is not a basis on which the Master can make any findings, and that the books are therefore objectionable upon the further ground that they only contain part of a year.

WALTER R. ADDICKS, called as a witness in behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Where do you reside, Mr. Addicks?
A. Mount Kisco, Westchester County, New York.
Q. What is your connection with the Consolidated Gas Company?
A. Vice-President.
Q. How long have you been connected with the Consolidated Gas Company?
A. From March, 1903.
Q. What other official positions have you had with that company?
A. I am a trustee of the company.
Q. What is your relation to the executive committee?
A. I act as secretary of the executive committee and technical adviser to the president and executive committee.
Q. You personally keep the minutes of the executive committee?
A. I do.
Q. And have during what time?
284 A. Well, regularly for probably two years, about 1905 and 1906, somewhere about that time, and up to the present time, except when I was out of the City.
Q. Are you an engineer?
A. I am.
Q. What has been your academic and technical education?
A. I was educated at the Episcopal Academy in Philadelphia and then entered the United States Naval Academy, Class of 1882 Engineer Corps.
Q. When were you graduated from the United States Naval Academy?
A. June, 1882.
Q. What have been your occupations and experience since graduation from the Naval Academy?
A. After leaving the Naval Academy I went with the Pennsylvania Railroad for about four years, in their motive power department, during which time I was in the drafting department in connection with plans in connection with locomotives and cars, and I acted as inspector in connection with various work in the Altoona shops. I surveyed all the shops and shop yards of the Pennsylvania System east of Pittsburgh and Erie. After that I left the Pennsylvania Railroad and went as engineer for the Beacon Construction Company of Boston, erecting the plant of the Bay State Gas Company of Boston.
Q. That is, you were engineer to this company which constructed the works and plant of the Bay State Gas Company of Massachusetts?
A. Yes, sir.
285 Q. Then what did you do?
A. I became engineer of distribution of the Boston Gas Company.

Q. Before that did you work in Chicago for a while?

A. During a certain period while I was in Boston, during the winter. When building operations were suspended, I went to Chicago and worked in the Consumers Gas Works, doing all the work that the men in the gas works did, making gas, cleaning purifiers, and work of that nature.

Q. What other companies in that region, in the Boston, Massachusetts, region, did you become engineer for, or consulting engineer?

A. After being in charge of distribution I then succeeded to superintendent of the North End Gas Works, which was the largest gas works in New England, coal gas and some water gas. Later it was altered and for a time was exclusively water gas, although they continued to maintain the coal gas retorts. I became engineer of the South Boston Gas Company, or the Dorchester Gas Company, of the Roxbury Gas Company and of the Brookline Gas Company, and I was consulting engineer for the Massachusetts Pipe Line Company, and in some respects in connection with the New England Gas & Coke Company, which was a coke oven plant. I then became chief engineer of all the companies I have mentioned.

Q. The Boston Gas Light Company?

A. The Boston and affiliated companies, but not of the Pipe Line Company or of the Coke Company.

Q. Were you engineer of distribution of the Boston Com-
286 pany?

A. I mentioned that.

Q. What would you say as to the size of the Boston Gas Light Company? Was it the largest in New England?

A. Yes, sir; the largest plant, and they had the largest output of any New England company.

Q. Would it be true to say that you have worked in practically every department of gas operation except the treasurer's office?

A. Yes. I have been paymaster and paid the men, and did all the work in connection with the actual manufacture, bought materials and constructed plants, constructed them from the foundation up in connection with the Bay State Gas Company.

Q. Laid distributing facilities?

A. Beg pardon.

Q. Laid distributing facilities?

A. I laid pipes, yes, sir. I acted as superintendent.

Q. And you purchased materials and employed labor in both construction and operation?

A. Yes, sir.

Q. Of gas plants?

A. Yes.

Q. What generally have been your duties and functions in connection with the business, operation and property of the Consolidated Gas Company?

A. Well, all the duties that devolved upon me and any matters brought before the Executive Committee. I had to familiarize myself with all questions of new construction and expenditures of larger moment, and contracts for oil and coal and so forth.

287 Q. Have you for a number of years had in charge the purchase of oil for the Consolidated Gas Company?

A. I have.

Q. Have you also in charge the purchase of coal for the Consolidated Gas Company?

A. I have.

Q. Has it been the practice of the Consolidated Gas Company to purchase its gas oil at irregular times and in quantities limited to its immediate requirements, or to purchase oil on contracts extending over periods?

Mr. Hyatt: I object to that as immaterial.

Mr. Neumann: It is incompetent, irrelevant and immaterial how the Consolidated bought it. The question is how this company bought it.

The Master: I think I understand the purpose of the question. I will allow it.

Mr. Neumann: Exception.

A. It has been the custom of the company to purchase its oil under a contract for a period of time.

Mr. Neumann: I move to strike the witness' answer out.

Mr. Hyatt: It calls for a conclusion, too.

The Master: Denied.

Mr. Neumann: Exception.

Q. Does the company make contracts for deliveries over a stipulated period at a stipulated price?

A. Yes, sir.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

288 Q. Have you personally negotiated agreements with the Consolidated Gas Company during your connection with the company, on practically that time?

A. Substantially so. I think the first year I may not have done it.

Q. Were the results of your negotiations submitted for the approval of the Executive Committee?

Mr. Neumann: Whether the Consolidated Executive Committee approved his action is of no particular concern to the New York & Queens at this time.

Mr. Ransom: It is part of his knowledge.

The Master: I will overrule that.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

A. Yes.

Q. Have your negotiations for the purchase of oil for the Consolidated embraced also the oil requirements of certain gas companies affiliated with the Consolidated Gas Company?

The Master: Including the New York & Queens.
Mr. Ransom: Including the New York & Queens?
Mr. Hyatt: I object to the form of that question, and no foundation has been laid for it.
Mr. Neumann: I object.
The Master: Objections overruled.
Mr. Hyatt: The word "affiliations" is objectionable.
The Master: The question is did your oil contracts include the New York & Queens requirements?
289 The Witness: Not all, but latterly.

Q. Since about what time?
A. I would not like to state definitely, but I think 1913 or 1914 or 1915 somewhere, or around those years.
Q. As to coal, have all purchasers of coal during 1919 and 1920 and theretofore been submitted by you for the consideration of the Executive Committee?

Mr. Neumann: One moment. I object to that on the ground it is incompetent, irrelevant and immaterial.
The Master: I will sustain that objection.

Q. Does the Consolidated Gas Company also purchase anthracite generator coal for the New York & Queens Gas Company?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, no foundation laid for it.
The Master: Overruled.
Mr. Neumann: Exception.

A. They do.
Q. And are there any of the contracts of the Consolidated Gas Company for anthracite generator coal submitted by you to the Executive Committee of the Consolidated Gas Company?

Mr. Hyatt: That is objected to as incompetent, irrelevant and immaterial.
The Master: It cannot do any harm. Overruled.
Mr. Hyatt: Exception.
Mr. Neumann: Exception.

A. Yes, sir.
Q. Referring now to the oil used during the year 1919, did you negotiate the contract for such oil for the Consolidated Gas
290 Company and certain of its affiliated companies, including the New York & Queens Gas Company?

Mr. Hyatt: I object to that word "affiliated," your Honor.
Mr. Neumann: I move to strike out from that question the words "and certain of its affiliated companies," and confine it to the Consolidated and the New York & Queens.
The Master: Overruled.
Mr. Hyatt: I object to the characterization anyway. Exception.
Mr. Neumann: Exception.

A. I did.
Q. Was there a contract made with any company for the supply of gas oil during 1919?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.

A. There was.
Q. With what company?

Mr. Neumann: Same objection.
The Master: Overruled.
Mr. Neumann: Exception.

A. The Standard Oil Company of New Jersey.
Q. Have you that contract here, produced from the files of the company?
A. Yes, sir, I have.
Q. As negotiated by you?
A. Yes, sir (producing paper).
Q. This is the original contract?
A. It is.
Q. Signed by you in behalf of the Consolidated Gas Company?
A. Yes, sir.
291 Q. Attested by Mr. Brundage as secretary?
A. Yes, sir.
Q. Do you know the signature of Mr. Brundage?
A. Yes, sir.
Q. And this is the contract under which oil was received during 1919?
A. That is for a portion of 1919.
Q. During a part of it.
A. Yes.

Mr. Ransom: I offer it in evidence.
Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.
The Master: Why is it incompetent, and why is it irrelevant, and why is it immaterial?
Mr. Hyatt: What does it tend to prove?
The Master: What?
Mr. Hyatt: I do not know what it tends to prove at the present juncture of affairs.
The Master: It probably tends to prove what they paid for oil. And I have heard this immaterial, irrelevant, incompetent thing all afternoon. Let us hear why this is incompetent, irrelevant and immaterial.
Mr. Neumann: Well, I took it, your Honor, from what you said, that you did not want us to elaborate on the objections.
The Master: I asked once or twice that you elaborate and nobody

seems to know why objections are put in, and I will ask you again why is it put in to this paper; what is wrong about it?

Mr. Chambers: Why, they have not proved the paper, for one thing.

292 The Master: The witness has sworn it was a contract between his company and the Standard Oil Company of New Jersey.

Mr. Chambers: He swears to his signature and Mr. Brundage's for the Consolidated.

Mr. Neumann: Can they prove the signature of one party to a contract?

The Master: The witness swears that is the contract under which they operate.

Mr. Neumann: Your Honor will recall in the Consolidated case we were compelled to prove the signatures of both buyer and seller before they were allowed to go into evidence.

The Master: I am not trying the Consolidated case now.

Mr. Hyatt: It is a very extraordinary way of offering proof here, your Honor; it is not connected up with any particular fact under discussion for any period of time prior to offering the instrument. I do not know what it tends to prove.

The Master: Well, look at it, maybe you will know when you look at it.

Mr. Hyatt: It may have something in it that has already been connected up or may not. I cannot tell and nobody can tell unless they were very familiar with the record. The proof here is all fragmentary, anyway; you will have to take judicial notice of a great many things.

The Master: For instance?

Mr. Hyatt: This matter of affiliations. I do not know about the——

The Master: Who has asked me to take judicial notice of that?

293 Mr. Hyatt: I do not say that, but their use of the word "affiliated" is highly objectionable.

The Master: We are paying no attention to any other company but the New York & Queens.

Mr. Hyatt: Why is the word "affiliated" used, then?

The Master: I do not know. It is perfectly useless to me, but I do not see as it does a lot of harm. Call it "married," for all I care.

By the Master:

Q. While counsel is looking at that paper, Mr. Addicks, was any consideration given by you to the price or other terms at which you obligated your company before you signed that contract?

A. Yes.

Q. Tell us what you did or knew or thought with reference to the obligation as to the price, the time of delivery and other terms, as indicating the reasonableness of that contract or the unreasonableness of it?

A. I asked for prices of oil from other companies before that contract was made.

Q. Have you made any study of oil conditions, where you could get oil, or did you know anything about it other than the mere signing up of the contract?

A. Yes, sir.

Q. Tell us what you knew about it so that I can tell whether this price is reasonable or a price that came out of the air.

A. Well, I have kept myself informed about oil for a great many years, as to the prices of oil.

294 Q. As to where you can get it?

A. Yes, sir, and during the period in which this oil was purchased for the New York & Queens Gas Company particularly.

Q. Did you give any consideration to the sources of supply, and who had the quantities, or anything of that sort?

A. Yes, sir, and as to their ability to supply our needs. I knew of the principal companies that were supplying this vicinity, and I inquired of all the companies I felt could supply us their price and deliveries for oil during the period in question.

Q. Did you know what crude oil was selling for?

A. I did at the time, yes, sir, and I kept a careful record of what the price of crude oil was and what the price of the type of oil known as Standard White was, which is an oil largely shipped for export, used for illuminating purposes on the other side, and kept track of the trend up and down at all times, took particular note of it at the time we were considering a contract.

The Master: Any other specific grounds of objection to this paper that is offered?

Mr. Neumann: I have none other than I have already urged for the record.

The Master: Anything more that you want to state on the record, Mr. Hyatt?

Mr. Hyatt: No, I have stated all I have.

The Master: The objections are overruled.

Mr. Hyatt: I suggest the counsel for complainant state what he offers it to prove. I think a blanket offer of that kind, of an instrument of that sort, is highly objectionable unless it tends to

295 prove some definite thing that is already on the record or he wants to put on the record.

The Master: The objections are overruled and exception allowed.

Mr. Hyatt: Exception.

Contract marked Complainant's Exhibit 71.

By Mr. Ransom:

Q. Mr. Addicks, on page 2 of Exhibit 71 is shown a paragraph 4, "New York & Queens Gas Company, Flushing, Long Island, in lots of not less than 2,000 barrels, 7.7472 cents?" Does that have reference to the quantity for the New York & Queens Gas Company?

A. That had reference to the supply of the New York & Queens Gas Company; yes, sir.

Q. And that price of 7.7472 cents is the base price plus the cost of water transportation by tank boats to Flushing?

Mr. Chambers: I object to that. The paper speaks for itself now that it is in.

The Master: Doesn't that appear from the papers?

Q. Is that the case, Mr. Addicks?

A. Yes, sir——

Mr. Neumann: Why, that is objected to.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Witness: Seven and a half cents plus lighterage.

The Master: Why do you say seven and a half? I thought it was 7.7472. That includes lighterage?

The Witness: Yes, sir.

296 Mr. Hyatt: Your Honor, I object to anything here that tends to have the witness interpret the instrument. The instrument will speak for itself. Your Honor will interpret the instrument.

The Master: In this case I will let Mr. Addicks help me.

Mr. Hyatt: I think it is highly objectionable to let him tell what his interpretation of the instrument is.

Mr. Neumann: I will ask counsel for the complainant if we may have a copy of this exhibit?

Mr. Ransom: Photostat copies of this exhibit were furnished to the defendants in the other case, who are the same as the defendants in this case. I can, if necessary and counsel insists on it have other copies made and furnished.

The Master: I do not see any necessity for it.

Mr. Neumann: I might say this: Colonel Hayward, who was counsel in that case, has those exhibits, I haven't them, and it is a disadvantage to me to say they were introduced in the last case. That does not help me in the trial of this case.

Mr. Ransom: If the exhibits are not turned back to you by Colonel Hayward, I will see that you get copies.

Q. And the contract was made subject to increase or decrease in price according to the increase or decrease in prices during war time?

Mr. Hyatt: I object to that.

The Master: Objection sustained, the contract speaks for itself.

Mr. Ransom: I only wanted to call attention to that phase of the matter.

297 Q. Subsequently, in March, 1919, was this contract of December 18, 1918, modified in any particular?

A. It was modified prior to that, Judge.

Q. What was the first?

A. Under date of January 8th.

Q. 1919?

A. 1919. The Standard Oil Company notified of a change in transportation rates.

The Master: In writing?
The Witness: In writing, effective February 8th, which modified slightly the price of oil, making 7.7833 cents in place of 7.7472. It is very slight.
The Master: Haven't we got that writing here?
The Witness: Yes, sir.
The Master: Let us have it. We better have it on the record.
The Witness: This is it (producing paper).
The Master: Of January 8th?
The Witness: Yes, sir.

Q. This letter from the Standard Oil Company of New Jersey, dated January 16, 1919, addressed to you, is the communication to which you refer?
A. Yes, sir.

The Master: I understand Mr. Addicks to say under date of January 8th. What is the explanation of that variance in dates?

Q. Was there an original notification of it on January 8th and then the further details, full details, given on January 16th?
A. There was.

Mr. Neumann: I object on the ground it is immaterial, irrelevant——

298 Q. This document is the letter of January 8th (handing witness)?
A. Let me just glance at it again (examining letter). Yes, sir.
Q. And this letter of January 16th, 1919, referring to the letter of January 8th, gives the details of the change to increased lighterage rate?
A. Yes, sir.

Mr. Ransom: I offer in evidence the letter of January 8th and the letter of January 16th, 1919.
The Master: As one exhibit. The two letters are offered as one exhibit?
Mr. Ransom: Yes.
Mr. Neumann: Before your Honor passes on them, will you give me an opportunity of examining them. (Examines papers.) I make the same objection that I made to the original contract.
Mr. Hyatt: All I have to say is, your Honor, that it is a poor way of proving an increase in lighterage fees.
The Master: Objection overruled.
Mr. Hyatt: If your Honor wants to take it in evidence, especially, I think it is highly improper.
Mr. Ransom: If you want to know why lighterage rates went up, ask the Corporation Counsel.

Letters marked as one exhibit, Complainant's Exhibit 72.

Q. Subsequently to that, Mr. Addicks, was there a modification of the agreement which is Complainant's Exhibit 71 in another respect?

A. There was.

299 Q. In the form of a written agreement?

A. In the form of a written agreement.

Q. And have you produced such written agreement from your files?

A. I have, sir (producing paper).

Q. This is it?

A. It is.

Mr. Chambers. How long are you going to sit today?

The Master: Until about six o'clock.

Mr. Ransom: I offer it in evidence.

The Master: What do you offer in evidence? You better describe it.

Mr. Ransom: The agreement made on the 28th day of March, 1919, between The Standard Oil Company of New Jersey and the Consolidated Gas Company of New York.

Q. This bears the signatures of yourself and the assistant secretary?

A. Mine and Mr. Barnitz's.

Q. Of your company?

A. Yes, sir.

Mr. Hyatt: That is objected to, your Honor. There is no proof on the record that it is binding on this complainant.

Mr. Neumann: In addition to the objections which are urged as against the introduction of the original contract, I specifically object to this upon the ground that what counsel here is evidently intending to do is to impeach his own testimony.

The Master: Objection overruled

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 73.

Q. Mr. Addicks, at any time during 1919, did you take up the matter of obtaining a contract for the delivery of oil for the

300 Consolidated Company, including the New York & Queens Gas Company, for the year 1920?

A. Yes, sir, I asked for prices for oil in a similar way in 1920, and I asked one or two other companies that I added to my list.

Q. And as a result in of your negotiations was a contract made for 1920 oil?

A. Yes, sir.

Q. As to what date?

A. The 4th day of December, 1919.

Q. With whom?

A. With The Standard Oil Company of New Jersey.

Q. And have you produced here the original agreement?

A. Yes, sir.

Q. Bearing the signatures of yourself and Mr. Barnitz in behalf of the Consolidated Gas Company?

A. I remember my own, but I would have to look and see Mr. Barnitz's. (Examines paper.) Yes, sir.
Q. This is the original contract from your files?
A. Yes, sir.

Mr. Ransom: I offer it in evidence.
Mr. Hyatt: Objected to on the ground that it is not shown to be binding on the complainant company.
Mr. Neumann: I object to this contract upon the grounds heretofore urged as against the first contract, and the additional ground that this contract has a paper attached to it that evidently was not on the contract when it was entered into between the parties.
301 It is something that was placed there after the contract was entered into.
The Master: What is it?
Mr. Neumann: I refer to the little memorandum signed by Mr. Armstrong, dated December 17, 1920.
The Master: What does it say?
Mr. Neumann: Well, I do not think it ought to go into the record. I will show it to the Master.
The Master: Read it to me off the record.

(Mr. Neumann reads the paper to the Master.)

The Master: That is no part of the exhibit.
Mr. Ransom: We consent that it be disregarded.

Marked Complainant's Exhibit No. 74.

Q. The contract which is Complainant's Exhibit 74 is still in effect, there has been no modification of this?
A. That contract is a six-months' contract, with the right on the part of the company to have a supply of oil for a stated period, to July 1, 1920.

The Master: You are operating under it now?
The Witness: We are operating under it now.
Mr. Hyatt: I move that it be stricken out as not responsive and, not only that, it is an interpretation of the contract.
The Master: Motion denied.
Mr. Hyatt: Exception.

Q. These two contracts of 1919 and 1920 represent your
302 best efforts to secure the lowest possible price for oil for the Consolidated Gas Company and the New York & Queens Company?

Mr. Neumann: I think that calls for a conclusion of the witness.
The Master: I think so, too. I will sustain the objection. I think the witness has testified to what he did, and I will find as a fact that it does represent his best efforts unless something develops to the contrary.

Q. Are you at the present time in charge of the purchase of coal for the Consolidated Gas Company and its affiliated companies, including the New York & Queens Company?

A. Yes, sir.

Q. For how long a time have you had charge of this work?

A. Since Mr. Gawtry left the company.

Q. About the first of the year?

A. It was during the early part of the year he resigned; I do not recall the exact date.

Q. And since that time you personally conducted the negotiations with coal companies for the different kinds of coal required by the Consolidated and its affiliated companies?

A. Yes, sir. May I modify some of my past answers about oil? I neglected to omit the New York Mutual Gas Company.

Mr. Ransom: I did not ask you for all the affiliated companies. I said certain of the affiliated companies.

Mr. Neumann: If Judge Ransom would only keep out the word "affiliated" I think he would avoid trouble.

Mr Hyatt: It has a very indefinite meaning the word "affiliated".

303 Mr. Neumann: You are only mixing your own witness up.

Mr. Hyatt: In fact it arouses suspicion, your Honor.

The Master: What difference does it make?

Q. And prior to the time that Mr. Gawtry ceased to be connected with the Consolidated Gas Company and prior to the time when you took over his duties in connection with the purchase of coal, did you in the course of your duties as secretary of the executive committee and as the officer charged with submitting such matters to the executive committee, keep in touch with the prices demanded and paid for the different grades of coal and with the condition of the coal market?

Mr Neumann: If the Court please, in the Consolidated case, and which this Master presided at, I think the record was quite clear, that Mr. Gawtry was the man who made the contracts for coal, he obtained the prices for it; Mr. Addicks obtained the prices for oil, and this evidently is in conflict with that.

Mr. Ransom: Not at all.

Mr. Neumann: Mr. Gawtry testified in that case he was the one who made the contracts for coal.

The Master: Are you going to have Mr. Gawtry here?

Mr. Ransom: I do not believe it is necessary.

The Master: It may not be necessary, but I would prefer it. You can probably make your record through Mr. Addicks, too.

304 Mr. Ransom: We have the contracts here. They are in the files, and certainly the man who submits these matters to the executive committee, so far as 1919 is concerned, and who has had control over the matter since the first of the year, can testify to this.

The Master: I will let you prove anything you want by Mr. Addicks, but I am indicating to you that I would rather have Mr.

Gawtry come and testify.
Mr. Ransom: Is the objection overruled?
The Master: Yes. If you want me to find beyond any reasonable doubt that the coal prices are right, I am indicating to you now I may have some doubt about it unless you bring Mr. Gawtry.
Mr Ransom: Then I shall certainly do it.

A May I have the question read?
Q. (Repeated.)

Mr. Hyatt: Does your Honor note how indefinite that question is?
The Master: Yes, I am allowing it.
Mr. Hyatt: Since Mr. Gawtry did this, and prior to that time.
Mr. Neumann: When?
The Master: Since the first of the year.
Mr. Neumann: That does not say how far back this witness' familiarity goes.
The Master: Let us have the answer.

A. I can answer that definitely and affirmatively, except that I do not recall at this time how much I have been in touch with the coal market in general; but I have been in touch with those prices which were given for coal, which I received through Mr. Gawtry and which I discussed with him prior to taking them to the
305 executive committee, so as to give them all the information available.

Mr. Neumann: If the Court please, I renew my objection in view of the witness' answer.
The Master: Denied.
Mr. Neumann: Exception.
Mr. Hyatt: Exception.

Q. Does the New York & Queens Gas Company secure its coal through the inclusion of its requirements in the quantity purchased by the Consolidated?

Mr. Neumann: Same objection.
Mr. Hyatt: Same objection.
The Master: Overruled.
Mr. Neumann: Exception.

A. Judge, I would prefer to speak of that as anthracite coal rather than just coal, because there is another quality of coal known as standard white coal.
Q. Anthracite coal?
A. Yes.
Q. It does secure it in that way?
A. Yes, sir.

The Master: And did during the year 1919, and has since?
The Witness: Yes, sir.
Mr. Neumann: Same objection to the Master's question.
The Master: Yes.
Mr. Hyatt: Exception.

Q. Has the Consolidated Gas Company either on its own behalf or on behalf of the New York & Queens Company, or any other affiliated company, any contract now in force for the delivery of anthracite coal?

306 Mr. Neumann: Same objection.

Mr. Hyatt: It is irrelevant and immaterial, your Honor; I object.

The Master: I will limit the question to the New York & Queens Gas Company. I am not interested in other affiliated companies.

Q. Has it in its own behalf or in behalf of the New York & Queens Gas Company any contract for the delivery of anthracite coal?

Mr. Neumann: Same objection to that question.

The Master: I will limit it to the New York & Queens.

Mr. Ransom: Well, the contract is made in the name of the Consolidated.

The Master: That may be, but it is made for the New York & Queens.

Mr. Hyatt: I object to counsel testifying and putting that on the record.

Mr. Ransom: The Consolidated makes certain contracts for coal and includes in the quantity it buys the amount that the New York & Queens wants to purchase.

The Master: Your question is somewhat misleading, at any rate it is to me. Ask your question again and I will see.

Q. Have you any contracts for anthracite coal now outstanding?

Mr. Neumann: That is objected to.

The Master: Overruled.

Mr. Neumann: Exception.

A. No.

Q. For the New York & Queens Gas Company?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

307 A. No.

The Master: Or for yourself?

Q. Or for yourself?

A. Nor for ourselves.

Mr. Neumann: Same objection.

The Master: In other words, you are buying coal in the open market?

The Witness: No, not exactly that.

Mr. Hyatt: I object, your Honor.

Q. What is your present situation with respect to the purchase of coal, anthracite coal, by the Consolidated for the New York &

Queens Gas Company or for anybody else? How are you getting that coal?

Mr. Neumann: Same objection.
The Master: Overruled.
Mr. Neumann: Exception.

A. Our contractors are furnishing what coal they can and——

Mr. Hyatt: I object to the answer as not responsive, and move that it be stricken out, your Honor.
The Master: Overruled.
Mr. Hyatt: The contractors get what coal they can is not an answer to this question.
The Master: I think it is.
Mr. Hyatt: Exception.

A. (continued). And at a price. In connection with the New York & Queens the Lehigh & Wilkes-Barre Coal Company have been supplying the coal, as of March 25th, at an advance of 10 cents a ton over last year, that being a tentative figure and not one that could be used under contract for the ensuing year.
Mr. Neumann: Mr. Addicks, you read that figure from the paper you have before you, did you not?
308 The Witness: I read the date. Yes, I think I gave the date.
Mr. Neumann: And that paper has a figure on it also, has it not?
The Witness: Yes, 10 cents a ton.
Mr. Hyatt: Would you be able to give that date without the paper?
Q. That is a memorandum made by you?
A. Yes.
Q. You are buying, then, your coal currently now from time to time as you are able to get it?
A. Yes, sir.
Q. And paying the market price as of the present time?

Mr. Chambers: I object to that.
Mr. Hyatt: I object to that.
Mr. Chambers: He did not say he was buying at the market price.
The Master: Objection sustained.

Q. What price are you paying?

Mr. Chambers: I object to that. He has already testified to what he was doing about it.
The Master: Is there a market price for anthracite coal such as you require for gas making purposes?
Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial and not yet shown to be within the province of this witness to testify to that fact.
Mr. Hyatt: I object.
The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Chambers: Mr. Addicks is an oil man.

The Master: He is qualified now as a coal man.

309 Mr. Neumann: Why not qualify that by saying "trying to"?

The Master: Is there a market price for anthracite coal now, Mr. Addicks?

The Witness: Your Honor, it is almost impossible to get any anthracite coal. I made an effort to get some——

Mr. Hyatt: That is not responsive. I object and move that it be stricken out.

The Master: Tell us about the conditions.

The Witness: I endeavored to buy coal for immediate delivery last month and it was accepted by a concern at a definite price of $8.67 including war tax for not exceeding 5,000 tons, and after having accepted the order they returned it and said they could not supply the coal.

Q. What company was that?

Mr. Neumann: Were you reading that from a memorandum, Mr. Addicks?

The Master: Do not interrupt.

Mr. Neumann: I think the record ought to show whether the witness is reading.

Mr. Hyatt: What they said is incompetent, irrelevant and immaterial.

By the Master.

Q. What I want to get, Mr. Addicks, is in a brief form just what you have found in the last few months about the anthracite coal condition, how many companies you talked to.

Mr. Hyatt: What he did, your Honor—what he did personally.

The Master: Yes.

Mr. Hyatt: What he was told we do not want.

The Master: Tell us all you can about it.

310 A. This particular company was Thorne, Neil & Company. That was for not exceeding 5,000 tons.

Q. That is not the only company you dealt with, is it?

A. That is the only company I was able to get any price for coal from.

Q. That is not the only company you discussed the matter with?

A. We discussed the matter of coal with a great many companies.

Mr. Neumann: If the Court please, I move to strike out "we discussed." I thought this witness was going to testify to what he did.

The Master: Yes, he is speaking editorially now.

Mr. Hyatt: Then let it be expunged, if he is going to speak editorially or any way except from his personal knowledge.

A. (Continued.) Williams & Peters, Lehigh & Wilkes-Barre Coal Company, Thorne, Neil & Company, the St. George Coal Company. I personally communicated with those companies and in addition to that I had an assistant communicate with other companies which I will mention if the Master please. Thomas Stokes & Sons.

Mr. Neumann: We object if these are the other companies with which the assistant communicated.

The Master: Overruled.

Mr. Neumann: Exception.

A. (continued). Philadelphia & Reading, Meeker & Company, Lehigh Valley Coal Sales Company, Lehigh Coal & Navigation Company, Burns Brothers, Patterson & Baum, Delaware, Lackawanna & Western Coal Sales Company. We have had com-
311 munication with a concern known as Whitney & Kemerer.

Mr. Hyatt: Did you personally communicate with these companies, Mr. Addicks?

The Witness: I personally communicated with those I mentioned in the first place.

Q. What is the situation? You cannot get anthracite coal under contract at all just now?

A. No, sir; we cannot. They are not prepared on account of the situation in the mining region on wages; it has not been settled, and no one is prepared to make a price, a definite price for next year, with the exception, I think, of one where we have an offer of 10,000 tons of coal—well, even that is not definite, because that is subject to increase in miners' wages, so there is really no definite price.

Q. How long has that condition existed that you have not been able to get a contract?

A. We have not been able to get quotations prior to the 1st of April. The coal contract year is from April 1st.

Q. In other words, up to April 1st you had some coal contracts that were running out?

A. Yes, sir.

Q. But beginning April 1st you were not able to make any coal contracts at all?

A. No, sir. And in order to keep running we have been running into our stock of coal which we had on hand. During the month of April, for instance, we have received about 5,000 tons of anthracite coal, and during that period of time our stock of anthracite coal in our various plants has decreased about 30,000 tons.

Q. Where does the New York & Queens get its anthracite coal from?

312 A. The New York & Queens had some stock of coal on hand in the same way as the other plants, and we have a surplus stock of coal at Astoria which is available for the New York & Queens in case of necessity.

By Mr. Ransom:

Q. But your stock has been reduced to this extent which you have indicated?

A. Yes, sir.

Mr. Neumann: One moment. That is objected to on the ground it is incompetent, irrevelant and immaterial. We are not trying the Consolidated System here.

Q. With respect to the St. George Coal Company was any proposal for the delivery of anthracite coal received from them by you, or to your knowledge?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and it is not made to specifically apply to the New York & Queens Company at all. He may be talking about the entire Consolidated System here.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. A communication was received by the New York & Queens Company and forwarded to me, and I requested the writer of that communication to see me. He made an engagement to see me at a certain time, which he did not keep, and I am waiting to hear from him further.

Q. Have you that letter?

A. I don't think I have. Yes, I have (handing counsel).

313 Mr. Ransom: Referring to Complainant's Exhibit 69 for Identification.

I offer it in evidence. It was identified by Mr. Spear.

Mr. Hyatt: I would like to know, your Honor, what this tends to prove. I do not see what it tends to prove.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

Mr. Hyatt: Same objection.

By the Master:

Q. Why was it necessary to see the writer of this letter, Mr Addicks?

A. I wanted to discuss with him an additional supply of coal for 1920, as we have not in view now with our contractors of last year sufficient coal.

Mr. Hyatt: I object to that, that "we have not in view now." I object to that as not responsive and move that it be stricken out.

The Master: The motion is denied.

Q. What I am trying to get at is, this was apparently an offer of the St. George Company to deliver coal at a price. Was that price agreeable or did you think it was too high or too low?

A. That price, your Honor, if you allow me to look at it (taking paper) is $8.54 alongside——

Mr. Neumann: I do not think the witness ought to be permitted to read into the record that price, and thereby get its contents into evidence.

Mr. Chambers: He does not answer your question.

A. (continued). Based upon the price of coal that the New York & Queens paid last year, it is the same price they were paying currently from the same company.

Q. Why didn't they accept the offer?

A. This price is $8.54.

314 Mr. Neumann: I think this is very unfair to put this price in the record.

Mr. Hyatt: This ought to be off the record.

Mr. Neumann: I move that it be stricken out.

The Master: The objections to the paper are overruled. Mark it in evidence.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 69 in evidence.

Q. What I would like to know, Mr. Addicks, is why, if this price is not any higher than it was last year, it was not accepted?

A. That was subject to an increase in miners' wages.

Q. It is going to be increased anyway, if miners' wages are going to be increased.

A. This is furnishing coal for 10 cents over the price of last year, and that would make it $8.64.

Q. I see this is alongside.

A. There is that difference. We would like to get all the prices we can from all the coal companies, based on a definite amount as to what the increase in miners' wages would be.

By Mr. Ransom:

Q. So you asked him to come in to see you?

A. Yes, sir.

Q. Or call you up?

A. Yes, sir.

Q. And they have not done it?

A. They have not been in; no, sir.

Q. Have you produced here from your files the original contract or contracts for the delivery of anthracite coal for the year 1919?

315 A. I have.

Q. How many of them are there?

A. There is a contract dated April 17th, and an additional letter dated June 27th.

Q. That is April 17, 1919, and June 27, 1919?

A. Yes, sir.

Q. From the Lehigh and Wilkes-Barre Coal Company?

A. Yes, sir.

Q. And these are produced by you from your files?

A. Yes, sir; from the company's files.

Q. And are these the documents which you submitted to the executive committee of the board of trustees of the Consolidated Gas Company in connection with the matter of the purchase of anthracite coal?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving that contract. The present state of the record is that Mr. Addicks had nothing to do with the making of coal contracts prior to the first of this year.

Mr. Chambers: I object to it on the ground that it already appears—what is the date of that?

Mr. Ransom: April 17, 1919, and June 27, 1919.

Mr. Neumann: Mr. Gawtry was then in charge of the coal contracts.

Mr. Ransom: I am asking for an identification of the contracts from the secretary of the executive committee, to whom they were submitted.

316 Mr. Chambers: I object to it upon the ground that it is going into the Consolidated Company's affairs.

The Master: That is not important, but I think we better have Mr. Gawtry. We are going to have him anyhow.

Mr. Ransom: That is all.

Mr. Chambers: Is that all you are going to call him for?

Mr. Ransom: I think so.

Mr. Neumann: I think we ought to know whether he is through with the witness before we go into the cross-examination.

Mr. Ransom: I am so far as I know, and I am reasonably confident that I am.

Mr. Neumann: You never answered a question directly in your life.

The Master: If anybody wants to cross-examine Mr. Addicks now is the time.

Mr. Chambers: Do you insist that we cross-examine Mr. Addicks?

The Master: Yes.

Mr. Ransom: Before we proceed with the cross-examination, if your Honor is willing, I would like to offer in evidence Complainant's Exhibits 64 and 65 for Identification, for which the foundation has now been laid.

Mr. Neumann: I object to those—those are the——

The Master: The Teele Exhibits based on the books that are now in evidence.

Mr. Neumann: Are those of 1919?

Mr. Ransom: They are.

Mr. Neumann: Where are the other ones, in 1918?

Mr. Ransom: There are no other ones.

317 The Master: I held them up until the books were in. Now that the books are in I am going to let them in.

Mr. Hyatt: No proper foundation has been laid for the books, and there is no proper foundation for these exhibits.

Mr. Neumann: I object to them as incompetent, irrelevant and immaterial. On the further ground that they are not properly proven. On the further ground that the underlying data upon which they are based is not in evidence, and if the court pleases, on that point I would like to elaborate a little bit.

The Master: No, you need not; I know about it.

Mr. Neumann: I want to call your Honor's attention to this: The witness Foy has testified that the original underlying data does not find its way directly into the books; that instead of that he puts in the books what Mr. Spear directs him to put in by a written report. For instance, take the work sheets, station work sheets that I called your Honor's attention to, those work sheets contain both oil and coal. The entries in the books are not made directly from those work sheets, but instead of that the entries find their way into the books from the report that Mr. Spear makes to the bookkeeper. Now, these exhibits, of course, are based on the books.

Mr. Ransom: No, these are not tabulations of the books——

Mr. Neumann: I think the witness Teele testified that he
318 tabulated those from the books and the records will show. Please don't interrupt me until I get through.

Mr. Ransom: He tabulated them from the books—he tabulated them from the vouchers, and he checked the books to the vouchers and the report.

Mr. Neumann: Taking Judge Ransom at his own word, the underlying data upon which they are based is not in evidence, because the work sheets are not in evidence, one of the particular things I am calling attention to.

The Master: Objection overruled.

Mr. Neumann: Exception.

Statement of cost of production and distribution of the New York & Queens Gas Company for the year ending December 31, 1919, received in evidence and marked Complainant's Exhibit 64.

Statement of revenues and expenses of the New York & Queens Gas Company for the year ending December 31, 1919, received in evidence and marked Complainant's Exhibit 65.

Mr. Chambers: Did he offer those in evidence while I was out of the room?

The Master: Yes.

Mr. Chambers: I think he might have waited.

The Master: I will give you an opportunity, after you have examined the record, to add anything to the objection that you may wish to add.

319 Cross-examination.

By Mr. Chambers:

Q. Mr. Addicks, are you an officer of the New York & Queens Gas Company?

A. No, sir.
Q. You haven't any relation with them except that you buy oil?
A. No, I am a director.
Q. You are a director?
A. Yes, sir.
Q. You hold no other office in it?
A. None whatever.
Q. How long have *you* been a director?
A. I think as long as the Consolidated Gas Company has been interested in the New York & Queens Gas Company.
Q. This is one of the subsidiaries of the Consolidated?
A. One of the affiliated companies, yes, sir.
Q. From this Complainant's Exhibit 71, being a contract for 1918—how many gallons is the proportionate share of the New York & Queens Gas Company?
A. There are no definite gallons allocated to the New York & Queens.
Q. How much did you let them have under that contract?
A. All they wanted.
Q. How much was that, have you any idea?
A. I don't know whether I have that record here or not.

Mr. Ransom: It is shown by one of the exhibits in evidence?

A. (continued). Somewhere between a million and a million and a half gallons, I think.

320 Q. That is a comparatively small quantity?
A. Yes, sir.

Q. Did you ever try to buy for them that quantity of oil from any company except the Standard Oil Company?
A. I tried to buy any quantity of oil from any company at that time.
Q. No, I am asking you if you ever tried to buy that requirement of that company alone from any company, like the Texas Company or the Gulf Refining Company?

Mr. Ransom: I object to that as immaterial and incompetent, unless limited to this period. "Ever" is a long time.
The Master: Yes, I think I will sustain the objection as to an indefinite period.

Q. Well, at this time?
A. I got a price within this period from the Texas Company.
Q. For that number of gallons?
A. For a million to a million and a half gallons per month for six months, with the privilege of renewal for another six months.
Q. What was the price?
A. Eight cents.
Q. From the Texas Company?
A. Yes, sir.
Q. In writing?
A. Yes, sir, in writing.
Q. Where is the letter, have you got it?

A. I have.

The Master: When you said a million and a half gallons, did you mean a million and a half a month?

A. No, a million and a half gallons a year.

Q. What is this?

321 A. A million to a million and a half per month for a six months' period.

Q. I asked you if you tried to buy a million and a half gallons—not a million and a half gallons a month—but the requirements of this company, from any company?

A. I think I did.

Q. That letter you speak of is the letter you wrote for the entire Consolidated system, is it not?

A. Yes, but it included——

Q. No, I am asking you, did you ask any company if they could furnish a million and a half gallons a year?

A. I did not write any letter different from what I have already testified to in the other case, and a copy of that is here.

Q. We don't want that. That is to say, you made no effort, did you, in 1918, to buy the oil requirements of this New York & Queens Gas Company separately from the rest?

Mr. Ransom: I object to that as incompetent and contrary to the facts. The witness has testified that he asked for a bid for any quantity of oil, however small.

Mr. Chambers: He didn't say so.

A. The letter says that I would be glad to be informed if they have any gas oil of from 28 to 30 Baume for sale and the price per gallon.

Q. Don't read that, that is 1919. We are talking about 1918.

Mr. Ransom: We are talking about 1919.

Mr. Chambers: I am talking about 1918.

Mr. Ransom: The objection was sustained to 1918.

322 The Master: I understand the question to relate to the 1919 requirements.

The Witness: That is what I am testifying to.

Q. In that letter you say, "For your information would say that the quantity involved would be in the vicinity of 122,000,000 gallons."

Mr. Ransom: The companies understood that they could submit bids for any quantity, however small, as shown by the fact that they did.

Q. Mr. Addicks, I am going to ask you a plain, simple question. Did you try to buy oil for the New York & Queens Gas Company in the quantity needed by that company only, without including your system?

A. I tried to buy oil for the New York & Queens Gas Company collectively with our other companies——

Q. No, did you try to buy oil for that company alone without including it with the others?

The Master: Let us understand this. Mr. Addicks, Mr. Chambers intimates by his question that if you had tried to buy, as a separate proposition, a million and a half gallons of oil for the New York & Queens Gas Company that you could have done better than you did under the method that you pursued. He wants to know whether you made any effort to buy, as a separate proposition, a million and a half gallons of oil to cover the requirements of the New York & Queens Gas Company, and whether you made it clear to the people you were inquiring of that that was all you wanted?

The Witness: I did not.

323 Q. Do you know that the New York & Richmond Company was buying it for 5.75, from your own table in the Consolidated case?

A. I do know in the case of the New York & Richmond that they did buy for 5.75.

Q. And the Brooklyn Union—and the Bronx Gas & Electric were buying it——

Mr. Ransom: When are you referring to?

Mr. Chambers: 1919.

A. Yes, I inquired of that same company for oil and they said they were not able to furnish any.

Q. What company was it, do you know?

A. That was the Gulf Refining Company.

Q. That was because you were asking for that large quantity?

Mr. Ransom: Or any part of it.

Mr. Chambers: He said he didn't try to buy in this limited quantity.

Q. Was it not known that you were in the market to buy 122,000,000 gallons of gas oil?

A. They knew that was the maximum that I was in the market for.

Q. When anybody said "Addicks" they knew that it meant 122,000,000 gallons?

A. They knew we bought in large quantities.

Q. They knew that Mr. Addicks was not around trying to buy a million and a half gallons?

A. I was not trying to buy a million and a half gallons only.

Q. In the Bronx Gas & Electric case, it was 7.55?

A. Yes, 7.55 .

Q. And the Brooklyn Union 6.08?

Mr. Ransom: Yes, back in 1918.

324 Mr. Chambers: 1919, according to your own exhibit.

Q. 6.08, wasn't it, in March, 1919?

A. 6.08, and we were buying as low as 6.28 in 1919.

Q. Your contract is not as low as that that you put in evidence?
A. Not for the first part of it.
Q. That contract does not say six something, in 1919, it is over seven cents?
A. Yes.
Q. How do you explain this table here?

Mr. Ransom: I object to the question. Contracts made at different times——

Q. How do you explain the fact that this contract is over seven cents when you were actually paying six and something?
A. At this time, but this 6.08 is the same date exactly as our 6.08, the same date, March 26, 1919.
Q. Now, I can't understand how you can conform that with the price stated on the Exhibit 74.

The Master: This Exhibit 74 is dated December 4, 1919.
Mr. Ransom: But it covers the requirements for March, 1919.
The Master: How can it when it is dated December 4, 1919?
Mr. Chambers: That is the second exhibit. Where is the other one?
The Master: Exhibit 73 was dated March 28, 1919.
Mr. Chambers: I want the December, 1918, exhibit.

325 Q. Where is your contract that covers March 28, 1919, Mr. Addicks? Is this it?
A. March 28, 1919, is this contract.
Q. What price was it?
A. That was one and one-half cents less than the price that was involved on February 8, 1919, and that price, as a matter of fact—the New York & Queens Company, the first price was 7.7472, and at that date that I have just mentioned it became 7.7833, and then 1½ cents less than that figure which dated from April 1st. That is 6.2833.

Mr. Ransom: For the New York & Queens?
The Witness: For the New York & Queens.
Mr. Ransom: The Consolidated would be somewhat less.
Mr. Chambers: Just wait a minute.
Mr. Ransom: No, I won't let even you mix up the case.
Mr. Chambers: I ask that counsel keep from interrupting when I am cross examining.

Q. In other words, Mr. Addicks, gas oil dropped from December, 1918—it went down one and one-half cents when we get up to March, 1919?
A. Yes, they gave us a reduction of 1½ cents a gallon as of that date. The contract for that year enabled us to cancel the contract as of the first of July on a certain number of days' notice.

Mr. Ransom: That is why 1919 costs were so low.
Mr. Chambers: I move to strike that out.

Mr. Neumann: The Witness Ransom is again testifying.
326 The Master: No, he is not, and therefore I will not strike it out.

Q. Show me the last contract. The last contract, the present contract is this one dated December 4, 1919, is it?
A. Yes, sir.
Q. Exhibit 74?
A. Yes, sir.
Q. That extends for how long?
A. Six months with the privilege of renewal.
Q. Have they taken anything off of that yet?
A. Have they?
Q. Yes, like they did the one before?
A. That is a joke, Mr. Chambers.
Q. I know, but they took a cent and a half off the 1918 contract, didn't they?
A. Why, Mr. Chambers——
Q. Did they?
A. No, they have not taken anything off.
Q. You show here a contract for 7½ cents, and it dropped to six cents.

The Master: He means they have not taken anything off the last contract.

Q. I said the 1918 contract they took a cent and a half off after it was made, and while it was in force?
A. While it was in force and we had the right to cancel.
Q. Now, I ask you if that has been done on this as yet?
A. No.
Q. Not yet?
A. The one you referred to a few minutes ago, the New York & Richmond, we have had to supply them with the oil, because
327 the Gulf Refining Company has been unable to supply them, and they could not get any more.
Q. That contract ran to April 30, 1920, didn't it?
A. And they have not been able to get any oil since then, and we have been supplying them.

Mr. Chambers: I move to strike that out.
The Master: I don't usually strike out things. I will deny the motion. It won't make a bit of difference to me. The fact remains that a year ago the Richmond Company got some oil for 6.75, whatever it was, and this company paid 6.08, or 6.28, whatever it was.
Mr. Chambers: The Brooklyn Union, too.
The Master: The Brooklyn Union was about the same——
Mr. Ransom: About 7.75 last year, 7.50 or 7.75.
Mr. Chambers: They were less in 1918 than in 1919.
Mr. Ransom: You will have another guess on that.
The Master: Mr. Chambers, the point about it is this, isn't it, that we have got to get at the truth of the si-uation. Now, if the

truth of the situation is that the oil market is away up, let us have it. What is the use of fencing with these things?

Mr. Chambers: Well, I don't believe it is.

Mr. Hyatt: We want to get something authentic, we don't want to get any prophecies or hearsay evidence.

Q. There is no market price for oil, is there?

A. No.

328 The Master: I would like to say this: This is not an ordinary law suit between individuals standing at arm's length. It is a litigation in which the public is involved, and the defendants are public officers, and it is as much their duty as it is mine to get the facts right, and if this gas company is not getting enough for its gas it should be developed with the assistance of the defendants, and not by their throwing hurdles or obstacles in the way of finding out the facts.

Mr. Ransom: The complainant company now offers to put on this record the statements of the defendant Nixon as a Public Service Commissioner, presiding over hearings conducted by Mr. Farley, Solicitor for the defendant Nixon. I will take Mr. Nixon's statement on gas oil in those hearings, and will take the testimony on gas oil put in at those hearings right into this record.

Mr. Chambers: That is one of your usual bluffs.

Mr. Hyatt: Is this on the record?

The Master: Yes, it is on the record, and I am allowing it to stand on the record simply by way of argument. But, my point remains, and I reiterate what I have said before, that the attitude of the defendants in this case ought to be one of helpfulness rather than otherwise. If they have information leading them to believe that the price of gas oil is high they ought to help me find out just what it is.

Mr. Hyatt: The paucity of information is about the sources of supply and as to the quantities of stock on hand, and as to
329 the need of getting it to the market. From all that has appeared in this record about which Mr. Ransom speaks, there is no definite information on that point, it is something very general.

Hr. Neumann: If the Court pleases, I respectfully except to the remarks of the Court and to the remarks of complainant's counsel with reference to the conduct of the defendants' counsel in this case. I say that so far as the defendant Nixon is concerned, that we have used every effort to assist in this case, we have not been constructing, we have not been holding back any information, and the characterization was most unjust and unfair and unwarranted.

Mr. Ransom: Will the defendants accept my offer to take the statements of the defendant Nixon and the testimony brought out before the defendant Nixon by Solicitor Farley?

Mr. Neumann: The position of the defendant Nixon is that the case here should be proven by competent evidence. That is our position.

Mr. Ransom: Well, I will take his statement about it.

Q. See this right here, Mr. Addicks, Queensborough Gas & Electric. They are getting their oil for seven cents.

Mr. Ransom: When?

Mr. Chambers: 1918, December, 1918.

Mr. Ransom: I object to the question.

Mr. Chambers: This is your own exhibit.

330 The Master: Let us have the fact. What do you claim the average price of oil was during 1919, Judge Ransom, the average price of oil used?

Mr. Ransom: 6.7 cents per gallon.

The Master: I am going to ask counsel for the defendant this question: This complainant company contends that the proof so far offered shows that for the year 1919 the average cost of gas oil to this complainant company was 6.7 cents, and they will undoubtedly ask me to find that for the year 1920 it is not and cannot be any less, but will be and is a good deal more. Now, do counsel seriously contend that gas oil can be bought this year for less than 6.7 cents?

Mr. Ransom: May I complete the record? Exhibit 59 shows that the oil bought in 1919, the average price was 6.682. Thus far in 1920 it is 7.2833 cents.

The Master: I want counsel to tell me whether from their knowledge of this branch of the case their contention is that gas oil now or for this year at least can be purchased by this gas company, the New York & Queens Gas Company, standing by itself, for less than 6.7 cents?

Mr. Chambers: Yes, I do think so.

The Master: How much do you say it can be purchased for?

Mr. Chambers: I think it may drop to five cents or four cents.

The Master: Not what it may drop to, the sky may fall.

331 Mr. Chambers: That is my idea about it. It is subject to sharp and violent fluctuations.

The Master: Is there any proof that you have at your disposal to indicate that anybody now is buying oil at less than six cents or seven cents?

Mr. Chambers: Yes.

The Master: Where?

Mr. Chambers: The Municipal Gas Company of Albany.

The Master: What are they paying?

Mr. Chambers: Six flat, I think it is.

The Master: When did they make the contract?

Mr. Chambers: Last June.

The Master: I am talking about now.

Mr. Chambers: It extends to the 1st of July, that is now.

The Master: I don't know under what conditions they bought last June.

Mr. Chambers: I don't know whether they may have renewed it for another year. It covered from July 1, 1919, to July 1, 1920, six cents, away up in Albany.

The Master: What are they going to get it for after July 1st?

Mr. Chambers: I don't know, that is the last I saw.

The Master: Do you think they are going to, by any possibility, get it for less than 6.7 cents after July 1st.

Mr. Chambers: I would not be a bit surprised. I would not be a bit surprised two weeks from now to find that there is an
332 overproduction. It is running out of the ground very rapidly. I saw a moving picture the other day of so many thousands or millions of gallons of oil shooting up into the air and going to waste. Our contention is simple and plain, that the present prices are no indication of what they will be tomorrow, that it is subject to violent and sharp fluctuation.

The Witness: You asked me a question in regard to the Queensborough Gas & Electric Company at 7 cents. I claim that my contract made for 1919 was a more favorable contract than the 7 cent contract there shown.

Q. Although those figures are 7.57?

A. Very true, but as a result of the contract we bought gas oil cheaper than 7 cents.

Q. The truth of the matter is that you got a reduction—you did in that case?

A. Yes.

Q. Of one and one-half cents?

A. Yes.

Q. Right in the face of the contract?

A. I got a reduction of a cent and a half three months prior to the right we had to cancel that contract.

Q. There is no reason why that can't happen again, is there?

A. There would not be the same thing in this particular contract because it is a different form of contract. With the same form of contract that might possibly happen again, I suppose. I don't say now that it may possibly happen at this particular juncture,
333 because I think it will happen the other way. Our existing contract is with the absolute right of renewal for an additional six months, and I don't know of any contract today that is as favorable, any contract with any company that I am familiar with.

Q. Why didn't you make the same contract as you did in 1919?

A. Because I could not make a contract except for six months, and I finally got the right to renew for another six months.

Q. You are buying—I think you testified in the Consolidated case that you bought in such large quantities that there was only one company that could supply the demand?

A. There was no one prepared to bid on any quantity.

Q. If that is true, buying in such large quantities that you are at the mercy of one company, then this little company, the New York & Queens Gas Company, is penalized because it is tied up with this 122,000,000 gallons—isn't that so?

Mr. Ransom: I object to that as a false, misleading and inaccurate statement of the testimony of the witness in the Consolidated case. The witness should be confronted with his testimony. The witness did not testify in the manner stated by the Deputy Assistant Attorney General.

The Master: Well, the witness is over 21 years of age and he will answer the question.

A. I don't believe this company is penalized. On the contrary, I think the result of what I have done in connection with the New York & Queens Gas Company has been very much to the advantage of the New York & Queens Gas Company, and I have had several instances of it. The original dealings I had with the New York & Queens Gas Company was prior to this, and I presume I am not permitted to refer to that, but I succeeded in saving them a great deal of money at that time when they were dealing with other companies.

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Q. They have got to take the Standard oil whether they want to or not, because they are tied up with you?

A. They take the oil which I contract for, which I think is to their advantage.

Q. I say they have got to take the Standard oil, haven't they?

Mr. Ransom: I object to that, there is no such testimony.

Q. There is no other company that can supply it?

A. There was no other company to supply it.

Q. But there were other companies that could supply a million and a half gallons?

A. I don't know of any other company than those of whom I inquired, that could supply it.

Q. You said you didn't inquire?

A. I inquired of all these companies as to 1920. That letter is in evidence.

Q. You inquired for the large quantity. You haven't any doubt but what the little Prudential Company could supply a million and a half gallons, have you?

Mr. Ransom: I object to that. Under the contract of 1920 they had a right to get a small quantity from any other company than the Standard Oil Company of New Jersey, and they could not get any other bid.

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The Master: The question before us now is whether Mr. Addicks in asking for bids for 1920 asked for large quantities or small quantities. What did you ask for?

The Witness: I asked very much in the same terms as with respect to the prior contract, the paragraph which I read for 1919 to supply oil, although I did add some additional information.

Mr. Chambers: I want to observe one thing right here. If there wasn't something for which we are contending here about gas oil why are they so afraid every time we get up here to cross examine about oil. Mr. Ransom runs around here like a wild man and interrupts. If what they say is true why are they afraid of the cross examination?

Mr. Ransom: Why are you afraid to cross examine?

Mr. Chambers: I am not afraid to cross examine. I am cross examining and you are interrupting.

The Master: Mr. Ransom, let us see if we cannot let Mr. Chambers proceed for a few questions without interrupting.

Q. You haven't any doubt, Mr. Addicks, but that the Prudential Oil Company could supply a million and a half gallons?
A. Yes, I have a great deal of doubt.
Q. Do you know the Prudential Oil Company?
A. Yes, I know the Prudential Oil Company.
Q. Do you know that the Bradys are in that?
A. I understand Mr. Brady was interested. Whether he is now or not I do not know.
336 Q. The two Bradys?
A. I only know that from general information.
Q. You haven't any doubt but what the Texas Company could supply a million and half gallons, have you?
A. The letter of the Texas Company is on file.
Q. But that was for a large quantity. We are now speaking of a little million and a half gallons?
A. Let us see what the Texas Company says.

Mr. Ransom: I object to that. They offered to let them bid on any quantity they would, and they did bid on a small quantity of the total, and they bid a higher price. They bid on the quantity they wanted and bid a higher price.
Mr. Hyatt: I move to strike out the statement of counsel.
The Witness: The Texas Company did not bid on any gas oil, but said that they had an oil that they thought could be substituted for gas oil, and they finally—they offered to see me about it, but they did not see me about it, and finally the last word I got was that they were not in a position at the moment to supply any gas oil.
Mr. Ransom: May the record show that Mr. Chambers is now looking at these letters?
The Master: Yes.
Mr. Chambers: The witness is showing them to me.
Mr. Ransom: I am going to offer them in evidence in a few moments.
Mr. Neumann: You don't mean that.
Mr. Ransom: I do.
337 Mr. Chambers: Well, I won't look at them. I don't know what is in them.

Q. Were you referring to a letter from the Texas Company?
A. Yes.
Q. In answer to that one you showed me a minute ago?
A. In answer to the request for bids for the supply of 1920.
Q. That is a very large company?
A. Yes, I don't recall what its capacity is.
Q. You knew that the Gulf Refining Company was furnishing oil at about four cents to the Public Service Commission of New Jersey?
A. No.
Q. Don't you remember those contracts that were offered in evidence?

Mr. Ransom: You are referring to 1900 or 1772.

The Master: Don't interrupt. If you interrupt you must do it by way of objection.

Q. I am referring to June, 1919. Didn't you see that contract that was offered in evidence, the Public Service Commission of New Jersey?

Mr. Ransom: I object to that as incompetent and improper in form. It is an attempt to get something into this record that he cannot possibly prove.

Mr. Chambers: I am going to offer that contract in evidence.

Mr. Ransom: Then you don't need to do this insinuating sort of thing.

Mr. Chambers: I will do it now.

A. There was no such price in any such contract at such a time, and further than that, on my inquiry from the same com-
338 pany they said they had no gas oil to offer at the present time.

Q. I meant five cents. Did I say four cents?

A. You said four cents.

Mr. Chambers: I meant five cents.

The Master: I will adjourn now until next Tuesday morning at 9:30, and I will try to spend the day.

Mr. Neumann: Before we adjourn, and for the record—at the conclusion of the last hearing Judge Ransom announced, in his usual manner, for the record, that in a few days he would supply us with the information that Judge Mayer directed by his order. I think the Court and all counsel believed that that information would be in our hands prior to this hearing. I want it noted on the record that that information has not been supplied to us yet.

Mr. Ransom: I thought it would be in your hands before this meeting, but Mr. Miller left the room last Friday and went to Baltimore, and he did not get back in time so that I could go over some things with him in that connection. I shall hope to get it to you by tomorrow or next day.

Mr. Neumann: I want this situation cleared up, if the Master please. We have been given Teele's exhibits for 1918 and 1919. This was prior to their introduction into evidence. Counsel up to the present time has offered only the 1919 exhibits. We have had available the 1918 books, but the 1919 books we have not had available. We have not had an opportunity to check them. In fact, the situation that we are in is this: We are being given
339 a stuffed man to wrestle with while the books are in court here, and there will come a time when we may have to prepare for cross examination, and for our exhibits, and we have not the available data in order to prepare ourselves. I think, to say the least, that it is manifestly unfair. The situation was this, that at the conclusion of the hearing last Friday they told me that they wanted the books, and they would arrange with me to have the books at the 15th Street office on Monday. We spent all day Monday trying to get those books, and late in the afternoon Mr. Davidson telephoned

and told us that there was a mistake, that we could have the books Tuesday morning. We have not been able to work except for a little while, and here they are in court again today. The result has been that we could not get our data ready. It is manifestly unfair to us.

Mr. Ransom: The revenues and expense statement, and the statement of the cost of production and distribution for the year 1918 were furnished to the defendant because his solicitor Farley demanded it. It was not furnished to any of the other defendants because the solicitors for the other defendants did not ask for it or demand it. The only reason it was furnished to the defendant Nixon was that solicitor Farley asked for it.

The 1919 books were at the office of the Consolidated Gas Company, I am informed, about 1:30 on Monday. As far as I know they have been available ever since, except when they were brought here today.

340 Mr. Neumann: That is a most strange interpretation of that order of Judge Mayer.

Mr. Ransom: Not the order, your demand.

Mr. Neumann: Well, the demand. We did that in order that the order might not contain it. You gave it to us and not to the other defendants.

Mr. Ransom: The other defendants did not ask for it.

Mr. Neumann: You knew that was a demand on behalf of all the other defendants.

Mr. Ransom: No, the other defendants made their separate demands.

The Master: Who on behalf of the Public Service Commission is working on these books?

Mr. Neumann: Mr. Frank. If you want to talk to him he is right here.

Mr. Frank: The vouchers have been handed to me and taken back again so many times that I can't remember when they were taken and when they were brought back without reference to a memorandum.

The Master: We will not need those vouchers next Tuesday, will we?

Mr. Ransom: On next Tuesday I do not expect to take up in direct examination more than an hour or two. I think the defendants ought to be prepared to cross examine.

The Master: Are you not going to bring the operating officials over here?

Mr. Ransom: I shall expect to bring Mr. Morrison here on Tuesday.

The Master: I will tell you what I am going to do. I am going to take all of your direct proof on Tuesday, and finish with Mr. Addicks, and with any other witness such as Mr. Halleran whose

341 cross examination can be finished. I am not going to require the defendants to proceed with the cross examination of Mr. Teele, or with the cross examination of Mr. Morrison, or with the cross examination of any witness which depends upon analysis of vouchers or books, or the items in them. I am going to give Mr.

Frank a chance to examine them. They are not very voluminous are they, Mr. Frank?

Mr. Frank: No, sir.

The Master: How many days do you think you need to make up the various exhibits and statements that the Commission will want to offer in this case?

Mr. Frank: Two weeks from now.

The Master: You think you will need two solid weeks?

Mr. Frank: I do.

Mr. Neumann: That is, if he has the books and vouchers constantly and without interruption.

Mr. Frank: Yes, and also a prompt compliance with a request for certain papers on the part of Mr. Davidson.

The Master: I am going to rely on Mr. Frank doing this as rapidly as possible, and I am going to give him time to do it.

Mr. Neumann: May I now ask that the Master direct when Mr. Morrison is called as a witness that the complainant produce the daily works record for the year 1919?

The Master: Yes, have it in court, and for 1920.

Mr. Ransom: I shall have Mr. Aldrich here on Tuesday to prove up the dimensions on that map, and I think they should cross examine him.

342 The Master: Yes, I shall expect the cross examination to go forward.

Mr. Chambers: And Mr. O'Connor, we can dispose of him.

The Master: Yes, bring him here. I will adjourn to Tuesday morning at 9:30, and will go forward with everything that we can do that day. I shall then probably adjourn for another week, to give Mr. Frank an opportunity to examine these records.

Adjourned to Tuesday, May 11, 1920, at 9:30 A. M.

Last Complainant's Exhibit 74.

343 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 11, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Van Steenburgh and Mr. Hyatt, of Counsel for Defendant Dennis O'Leary.

WALTER R. ADDICKS resumed.

Cross-examination continued.

By Mr. Chambers:

Q. Mr. Addicks, when we left off last week, a week ago today, we were talking about oil purchased by the Boston Consolidated and the Public Service of New Jersey. You said you had not heard of those contracts at four cents, the five-year contract?

A. You did not say anything about Boston, you mentioned——

Q. You knew about the contract, didn't you, of the Public Service of New Jersey, and the Gulf Refining Company, whereby the Public Service purchased from the Gulf Refining Company 252,-
344 000,000 gallons of oil covering the period from August 1, 1914 to July 31, 1919, at a price which runs from 3.05 to 3.55.

Mr. Ransom: I object to that as incompetent and not within the issues here, no proof of any such state of facts before this Court in this case. It is an effort on the part of the Attorney General to interject and misrepresent facts as to which he is charged with knowledge.

Mr. Chambers: How am I misrepresenting any facts?

Mr. Ransom: You have not offered any proof of the contract.

Mr. Chambers: I am asking him what he knows about oil. He is called here as an expert on oil.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. Did you, Mr. Addicks?

A. I don't recall any figures except as you mention them. I do recall a figure of a certain contract which was not entirely fulfilled on the part of the Gulf Refining Company at somewhere in the vicinity of five cents, four to five cents.

Q. Didn't you hear the representative of the Gulf Refining Company testify at the last trial that that contract was lived up to?

Mr. Ransom: I object to that as incompetent and not the proper method of proof. They cannot bind this complainant by asking this man on the stand whether he heard somebody else testify in another case to something which Mr. Chambers is willing, despite his oath as a member of the bar, to state.

345 The Master: Objection overruled.

Mr. Ransom: Exception.

A. The contract was not fulfilled. I heard him state that. He said they considered it fulfilled, but it was not delivered under the contract, all the oil was not delivered. I think it was about twenty per cent, according to my memory.

Q. That is your recollection of his testimony?

A. My recollection is that he said that they considered the contract was fulfilled, and that the United Gas Improvement so accepted it, but as a matter of fact they did not deliver within twenty per cent of the oil that was contracted for.

Q. That is your recollection of his testimony?

A. That is my recollection of the testimony, not only of himself, but of the other witnesses.

Q. Will you look at that and see if that is not just as I stated it (showing paper to witness)?

Mr. Ransom: I object to it as incompetent and not the proper method of proof. No contract is produced. He cannot ask this man in this case something about a copy of a document which was in another case; and no foundation has been laid.

The Master: I think counsel ought to stipulate that all contracts and exhibits in the case can be offered here without formal proof.

Mr. Ransom: I am willing to stipulate that all the testimony in the other case on the subject of gas oil and gas oil contracts shall be put in evidence in this case. In the absence of such a stipulation I shall continue to object to what seems to me a very improper and objectionable method of attempted proof.

The Master: Objection overruled.

346 Mr. Ransom: Exception. He is asking him to construe a copy of something that he produced. The witness doesn't know anything about it. This document was not proved by the witness even in the other case. There is no proof as to the identity of this document which is shown to the witness.

The Master: The witness having read that paper, Mr. Chambers, what is your inquiry?

Mr. Chambers: I am asking if that is not as I represented it to be in the question, as to the quantity and price.

Mr. Ransom: I object to it as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Ransom: I offer to stipulate into this record all the testimony of all the witnesses who testified on the subject of gas oil for either the defendants or the complainant in the case of Consolidated Gas Company vs. Newton, before A. S. Gilbert as Special Master.

Q. What were you paying for oil at the time this paper was dated here, Mr. Addicks, August 5, 1914?

Mr. Ransom: I object to that as not the proper method of proving any such contract.

The Master: Objection sustained, upon the ground that the 1914 prices are not in question here.

Mr. Chambers: Exception.

Q. Did you say you knew of the contract between the Boston Consolidated and the Gulf Refining Company?

The Master: As of what period, Mr. Chambers?
347 Mr. Chambers: Five year period, 1914 to 1919.

Q. Were you acquainted with that?

Mr. Ransom: I object to that as incompetent and not the proper method of proof.
The Master: I will let Mr. Addicks answer that.

A. I heard some testimony in regard to it, that is all.

The Master: I am not going to have any more of what you heard. Do you know anything about that contract of your own knowledge?
The Witness: Nothing, except what developed in the other case.

Q. Did you know what the Municipal Gas Company of Albany was paying for gas oil in 1919?
A. I don't recall now that I did.
Q. Do you know what the Troy Company was paying for gas oil in 1919?
A. I don't recall that.
Q. And the Utica Gas Light Company?
A. I don't recollect that.
Q. Did you make any investigation as to what those companies were paying?
A. I don't remember any investigation of what those companies were paying. I presume you mean in 1919.
Q. Yes, in 1919?
A. No.
Q. How about the Kingston Gas Light Company?
A. I don't recall knowing what the Kingston Gas Light Company paid.
Q. You are certain in your own mind, are you that it cost more at Albany, or ought to cost more, with transportation charges
348 than it does here?
A. I don't know as to that.
Q. Well, what would you say?
A. I would say a freight rate might have some effect on it, and the freight rate from the oil fields in Pennsylvania might have a favorable impression, depending on where the oil came from.
Q. You don't know of any oil fields nearer to Albany than to New York, do you?
A. No, but they may have a freight rate from Albany to the Pennsylvania fields—I am not familiar with that.
Q. But Albany is further away from any source of oil supply that you know of than New York?

Mr. Ransom: I object. Even the Attorney General ought not to misrepresent the map in a question. When he comes from Albany he ought to know that the Pennsylvania oil fields are nearer Albany than New York.

The Master: Objection overruled.

A. The New York Central connection to Pennsylvania by way of Albany, I should think, is not very different than from New York to the similar region.

Q. That is your idea about it?

A. That is my impression, yes.

Q. I notice here by this table that was offered in evidence in the other case that the New York & Queens, before you took hold of the situation, was buying gas oil for 3 cents, and after you took hold it jumped to 6.10 and 6.30?

The Master: What does that prove?

Q. How do you explain that because you were buying in such large quantities——

349 Mr. Ransom: I object to the statement. I offered to prove that it dropped from 8 cents to 3 cents when they took it over, and the defendants objected. I had Mr. Spear on the stand.

The Master: That cross examination is not at all helpful, I believe, to the determination of this issue. I have got to know what gas oil, in the quantities required by the New York & Queens, could have been bought for in 1919, and what happened in 1912 or 1914, or some other year does not help us.

Mr. Chambers: We don't agree with you at all about that, and we want to have you take the proof as to other times.

The Master: That does not interest me at all, whether you agree with me or not.

Mr. Chambers: It does the defendants and it may the other court.

The Master: I am going to direct this trial. I am simply indicating to counsel now what I think is useful to the Master in determining the issues in this case. I am going to sustain objections to any line of inquiry that does not bear upon that situation.

Mr. Ransom: I have no objection to his stating what the change in price was between——

The Master: Well, I have. I am not going to lumber up this record——

Mr. Chambers: The claim in the bill of complaint that they have not enjoyed a fair return since 1906.

The Master: I don't care what they say.

Mr. Chambers: The same issue is raised in the Consoli-

350 dated——

The Master: I don't care what they say in their bill. The question is what, by actual experience, beginning January 1, 1919, is the result to this company at a price limited, as I understand it, to one dollar. I have got to know what it cost to make gas in 1919 and 1920, and as one of the elements I have to know what oil should have cost the New York & Queens during that period. I don't care what happened years ago.

Mr. Deegan: You are going to limit your inquiry to the period subsequent to January 1, 1919?

The Master: Yes.

Mr. Chambers: We except on the ground that the issues framed by the bill of complaint relate to the year 1906, and from then on down to date, or down to 1918.

The Master: Well, I didn't draw the complaint, but I am directing this trial.

Mr. Chambers: The present prices are abnormal and unusual and no fair tests of what the prices will be in the future, and no guide for the court to go by in making a decision in this case.

The Master: Do I understand you to concede that the price of oil in 1919 and 1920 was somewhere over 6 cents?

Mr. Chambers: You won't get any concession about it——

The Master: I didn't expect to get any concession, I thought I would make it clear that I could not get one.

Mr. Chambers: In 1919? I think they ought to have bought it for less than 6 cents. I am not conceding anything about
351 the price of oil. It may go down tomorrow.

The Master: You would not concede that oil was necessary to make water gas, would you?

Mr. Chambers: Oh, yes, I conceded that in the other case, but I won't concede how many gallons it takes to make a thousand cubic feet.

The Master: I didn't ask you to do that.

Mr. Chambers: Because it depends upon the quality of the oil and the skill of the operator and the efficiency of the machines.

Q. How long does your present contract extend, Mr. Addicks?

A. 30th of June, with the right to renew for a second period of six months.

Q. Then this contract that was offered in evidence here the other day extends to the 30th of June——

The Master: Do I understand that the contract is in evidence that you are asking him about?

Mr. Chambers: Yes.

The Master: Objection sustained.

Mr. Chambers: He didn't make any.

The Master: I am making it.

Mr. Chambers: Exception.

Q. What are you doing about the next period, from June on?

A. What am I doing?

Q. Yes, anything at all?

A. I am asking for prices on oil from various companies at the moment.

Q. In what quantity? the same kind of endeavor you made
352 before. You testified in the Consolidated case that you wrote some letters to the Texas and other companies?

A. Yes.

The Master: He testified to it in this case.

A. My letters at that time were for any quantity.

Q. What are you saying in your letters, what quantities of oil are you asking for?

A. I am asking if they have any gas oil for sale.

Q. Any quanti-y at all?

A. Any gas oil.

Q. Have you received your replies yet?

A. No.

Q. How long ago did you write?

A. Yesterday.

Q. Oh, you have written since you testified here last Tuesday?

A. Yes; the option expires on the 1st day of June to renew that contract.

Q. Well, you can renew this contract for another six months if you let them know by the 1st day of June?

A. I think you will find stated there 30 days' notice prior to the expiration of the contract.

The Master: Before the 1st of July?

The Witness: Yes, sir; it is only a few days now.

Q. Is that the date that you refer to, in this Exhibit 74 (showing paper to witness)?

A. Yes, sir.

Q. How long will that 67,000,000—if you exercise the option, how long will that 67,000,000 last you, another six months?

A. That is the estimate.

Q. For all the companies?

A. Yes, all that are included in the——

353 Q. For which you buy?

A. Yes, sir.

Q. That will carry you to when?

A. 31st day of December, 1920, is the estimate.

Q. You are hoping, are you, to get oil at less than called for in this exhibit.

A. I am not.

Q. Then why are you writing?

A. I am going to find out just what the quotations are.

Q. What for, if you don't expect to get oil cheaper, why are you writing them? Why not exercise the option?

A. I am prepared to exercise the option, but I thought it wise to ask for prices.

Q. You have some object in view, haven't you?

A. Yes, for the information.

Q. Is that all?

A. Yes.

Q. Suppose they tell you they will let you have it for less than the price set forth in this Exhibit 74?

A. Then I should expect to get it for less.

Q. Will you take it or will you exercise the option?

A. Will I take it or will I exercise the option? The Standard Oil Company would be very glad, I think, to——

Q. No, I am asking you what you will do. Now, Mr. Addicks, you have a chance to get oil to December 31st for the price set forth

in Exhibit 74. Now, before you exercise the option you are writing to what companies?

A. All the companies I wrote to when I made that contract.

354 Q. That is the Texas, for one?

A. Yes.

Q. And what other companies?

A. The Texas——

Q. The Gulf Refining?

A. Gulf Refining, Sun, Sinclair, Tidewater, Atlantic Refining Company, Standard Oil of New York. I think that is all.

Q. Are you saying in your letter what quantities, or do you limit it?

The Master: He has already covered that.

Mr. Ransom: He said any quantity.

By the Master:

Q. Are you as familiar at all with the market conditions on oil crude oil gasolene, and all the rest of it?

A. I am familiar with gas oil prices from tenders being made to us repeatedly in the last 30 to 60 days, and also the prices that are being paid by other companies.

Q. Do you know anything about the production of crude oil?

A. The production of crude oil according to the——

Q. I ask you, do you know anything about it?

A. I have some very late information in regard to a report made by the United States Geological Survey for March.

Q. Have you been keeping in touch with that?

A. I have.

Q. Have you been keeping in touch with the price of crude oil?

A. Yes, but I do not know the price at the moment.

Q. Are you keeping in touch with the price of gas oil as it is being quoted?

355 A. Yes.

Q. And kerosene?

A. I have not been keeping in particular touch with kerosene.

Q. These matters of information you are keeping in touch with right along, aren't you?

A. Yes, sir.

The Master: Go ahead.

Mr. Hyatt: I would like him to define what he means by keeping in touch with it. I would like to know what he does to keep in touch with it?

The Master: I will ask him about that if you want me to.

Mr. Hyatt: I would like to have you ask him to tell us.

Q. Just tell us how you keep in touch with the market conditions on crude oil and gasoline, and gas oil, what you are doing right along?

A. I have clippings from the public press coming to me daily. I am also having periodicals——

Q. Trade periodicals, you mean?

A. Trade periodicals, and I am keeping up the system I had of the prices of Lima crude and Pennsylvania crude, and Standard white, on the curve which I had in the other case; and I am also noting the statements and papers which have been issued by Mr. Smith, the assistant to the Chief of the Geographical Survey, with whom I have had some correspondence, keeping in touch with the production as well as the price.

Mr. Neumann: I would ask the Court to ask the witness to explain what he means by "the system" he had. That does not mean anything to us.

356 The Master: I will let you ask him about that on cross examination.

Mr. Neumann: I thought it might be relevant here.

The Master: No, one question will lead to another, and we will never get through.

By Mr. Chambers:

Q. Mr. Addicks, you say you wrote yesterday and sent out all these letters to these companies you have mentioned?

A. Yes, sir.

Q. Yesterday?

A. Yes.

Q. Did you ask them to reply promptly, or what?

A. No.

Q. You left that to them?

A. Absolutely.

Q. You don't care then when they reply, whether they reply promptly or not, or you would have asked them?

A. I want a reply before the 31st of May, and if I don't get a reply——

Q. Why didn't you say so in your letter?

A. Because I asked for any quantity of oil, whether they had any for sale.

Q. But you didn't tell them whether your needs were urgent or not?

A. If I don't get a prompt reply I will follow it up.

Q. You could have said so in your letter.

By the Master:

Q. Isn't it understood that when you ask a concern for a quotation you expect you will get a quotation pretty promptly?

A. If they have anything for sale.

357 Q. You don't have to say, "Give me a prompt reply"?

A. No, sir, I would not expect it.

Q. That is not the usual custom in business?

A. I would not expect it.

By Mr. Chambers:

Q. Where isn't it the usual custom, Mr. Addicks?

The Master: Of course it is not.
Mr. Chambers: I disagree with the Master and take an exception.
The Master: The trouble with your disagreement with the Master is that the Master has handled probably a hundred times as many business matters as you have.
Mr. Chambers: I think it quite essential to ask for a prompt reply in the situation.
The Master: If I ring a man up and ask him for a quotation, I expect to get it right away if he has anything to sell. Let us have some ordinary common business sense in some of these matters.
Mr. Chambers: Exception.
Mr. Neumann: I take an exception also.

Q. If you don't receive a reply in how many days will you follow it up with another letter?

Mr. Ransom: I object to that as immaterial and having no bearing on the issues here.
The Master: I will allow it.

A. I should say if I do not receive a reply by the end of the week I would follow it up.
Q. By the end of this week?
A. Yes.
Q. You will write them again?
358 A. I would probably telephone them if they had a telephone in the city; otherwise I would wire them or write them, probably wire them.

The Master: Oh, this doesn't get us anywhere.

Q. If you receive a favorable reply from any of these companies will you enter into a contract with them?
A. I am very much inclined to do so.
Q. Would you? Suppose the price is less than that set forth in this contract, Exhibit 74, will you or will you not enter into a contract?

Mr. Ransom: I object to that.

A. If the price is more favorable than the price we have at the present time, and the party I am satisfied is responsible at this present time I would be very apt to buy some oil at this time from them.

By the Master:

Q. Let me ask you about that, Mr. Addicks. I do not recall at the moment what your price is for your renewal option. What is it?
A. It is the same price as at the present time.
Q. What is that?
A. I think that is seven cents at the refinery.

By Mr. Chambers:

Q. What comes off of that?

A. Nothing comes off, something goes on. It is seven cents plus transportation.

Mr. Ransom: I object to all this as academic. The price is more likely to be fourteen cents or sixteen cents than seven cents.

By the Master:

Q. Following up what Mr. Addicks has just said, the price
359 is now seven cents under your contract with the Standard Oil Company of New Jersey?

A. Yes, sir.

Q. You buy from the Standard Oil Company of New Jersey a quantity sufficient to supply the requirements of your companies?

A. We endeavor to do that.

Q. You have done that for years?

A. Yes, sir.

Q. You rely on the Standard Oil Company of New Jersey to give you your requirements?

A. Absolutely.

Q. Suppose the Gulf Refining Company comes along and offers you a quantity for 6.7 cents for the next six months, instead of the 7 cents, where will you be—enough to supply the requirements of the New York & Queens—where will you be?

A. I would give the Standard Oil Company an option to take that oil at that price.

Q. Suppose the Standard Oil would say that you have got to take the whole option or none where will you be, if you only get enough for the New York & Queens at 6.7 cents?

A. The Standard Oil Company told me last year if I could buy any oil from any other company that they would take the difference.

By Mr. Chambers:

Q. In other words, you are going to use these prices as a club over the Standard Oil, isn't that it, man to man?

Mr. Ransom: I object to that.

The Master: I am going to allow that. It is good business if he does.

Mr. Chambers: These companies know that if they give a quotation he is not going to buy any oil, he is going to the Standard Oil.

360 The Master: He has said just now that the Standard Oil Company of New Jersey gave him oral permission that if he could get any part of his requirements anywhere else for less than they are charging him they will permit him to exercise his option for the balance that he needs. That is why I asked the question, because I could see where, if he could buy a couple of million gallons

for the requirements of the New York & Queens, he would have to turn down the option, or be in a hole as to the other companies.

Mr. Chambers: It is self-evident to me that they are going to buy from the Standard Oil anyway.

Q. Will you answer my last question?

The Master: What was your last question?

(Question read.)

A. The Standard Oil Company has an option to supply this oil for the second six months.

By the Master:

Q. No, the question is, are you going to use it as a club?

A. Well, I think I would use it as a persuader.

Q. Well, if the Standard Oil were not persuaded, and you could get the grade of oil that you wanted at a less price, in view of the permission given to you by the Standard Oil, is there anything in the way of getting this oil at a lower price, as much as you could?

A. Nothing except the certainty of delivery of the party you are dealing with, and the responsibility of that party, their ability to deliver.

Q. So that in addition to the price you have the element of certainty of delivery?

A. That is an essential thing, certainty of delivery.

361 Q. So that when you have a price lower than the price of the Standard Oil the next thing you would inquire is, whether they had the supply and how sure it is going to be?

A. Yes.

By Mr. Chambers:

Q. You didn't write to any irresponsible companies, did you?

A. I didn't intend to.

Q. All those companies that you wrote to are responsible, are they not?

A. I so consider them.

Q. So that question does not enter into it, the question that the Master interjected into it, that you first had to find whether they were responsible. You picked out responsible companies?

A. They may be responsible for the New York & Queens supply. I have no doubt every one of them is.

Q. And when you wrote these companies you believed they could deliver the oil if they said they could?

A. For the New York & Queens—I have no doubt they could.

Q. If the Sun Company or the Gulf Refining Company offered you a sufficient quantity of oil to take care of the New York & Queens at say six cents for the next six months, would you take it?

A. I will tell the Standard Oil Company——

Q. Would you take it?

The Master: The question, Mr. Addicks is, if you get a price on any one of these companies to whom you have written for a grade of oil equal to the grade of the Standard Oil Company at six
362 cents, in the light of the requirement of seven cents in your contract, and the Standard Oil does not reduce its price for that quantity——

Mr. Chambers: I didn't say that.

The Master: I am saying it.

Mr. Chambers: I don't think that is quite fair.

Q. Will you buy it from the other companies?

A. I will have to buy it from the Standard Oil Company if I take it under the option.

Q. But if they won't reduce it to six cents?

A. I do not see why I should not take it.

By Mr. Chambers:

Q. You have not said whether you would take it or not?

Mr. Ransom: Objected to.

The Master: Yes, he did. He said if the Standard Oil does not give it to him at the price quoted, which may be less than the others, he will take it from somewhere else, under the right he has.

Mr. Neumann: The witness' answer, as I understood it, was qualified. If you will have it read, you will see it has a qualification.

Mr. Ransom: The witness is not bound now to decide as between two questions of policy.

The Master: The witness has said that, assuming he gets a bid from one of these other companies for the quantity of oil required by the New York & Queens for the balance of this year, at a price less than that under the Standard Oil contract, and the Standard Oil Company will not give him the quantity at that price, he sees
363 no reason why he should not take it from the other company, because the Standard Oil Company has given him permission ta take the quantity if he can get it elsewhere.

Q. Suppose the Standard Oil would not give you permission, would you take it?

A. Well, the Standard Oil Company in December clearly stated to me——

Q. No, can't you answer that, Mr. Addicks?

Mr. Ransom: Let him answer once before this case finishes.

Mr. Chambers: No, I move to strike out what he has said.

Q. If they would not give you permission, would you take it?

Mr. Ransom: Objected to.

The Master: I will sustain the objection, on the ground that the witness has already stated they have given him permission.

Mr. Chambers: Exception.

The Master: I am not interested in what he would do if they did not, because he says they did.

Q. They gave you permission to take any you could get?
A. The time I made the last contract.
Q. In writing?
A. No, by interview with Mr. T. J. Williams.
Q. Well, would you take it——

Mr. Ransom: Objected to; the whole thing is academic, anyway, with the price at 14 or 16 cents——

Mr. Chambers: I read that article in The Times, 12 cents, inspired by the great writer.

364 By the Master:

Q. What was the situation, was it oral or in writing, Mr. Addicks?
A. The arrangement was oral, at an interview I had with Mr. T. J. Williams prior to the making of the formal contract.
Q. Why did you not put it in the contract, then?
A. In the contract with respect to——
Q. Yes, the right to purchase smaller quantities elsewhere.
A. They simply told me that if I made contracts elsewhere they would take the balance, and I inquired from everybody, all these companies this gentleman, the counsel, has mentioned—I inquired of all those, and none of them this year quoted any price whatever, and last year two of them quoted prices and both of them were higher prices, one at 8 and the other at 9½ cents, as against the price I got from the Standard Oil Company. I cleared up the whole situation from beginning to end.
Q. Based upon your knowledge and experience in the purchasing of oil and your knowledge of present conditions, do you believe it is possible to get any quantity of oil necessary for the use of the New York & Queens Company at less than 7 cents for the balance of this year?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, because he is writing now to see if he can get any.
The Master: Yes, and I am asking him now. What is your answer?
Mr. Chambers: Exception. I take an exception to the question.

A. I do not believe you can get it for twice that.

365 By Mr. Chambers:

Q. Now I show you a contract bearing date the 29th of September, 1916, between the Gulf Refining Company and the Boston Consolidated, for the purchase of 14,000,000 gallons of oil, for five years commencing April 1st, 1917.

Mr. Ransom: Objected to as incompetent and deliberately misrepresenting statements, on the part of the Attorney General. There is no such document.
Mr. Chambers: Wait, I have not finished my question.
Mr. Ransom: You have simply got something which you say is a contract.

Q. (continued). At a price specified in the contract as——

Mr. Ransom: I object to the statement. I object to that as an improper and vicious method of proof. He is just getting those things into the records.

The Master: I cannot stop an attorney from asking a question, no matter how vicious it may be. You have got to permit the question to be asked.

Mr. Ransom: I object to it on the grounds already stated. It is improper and an objectionable method of proof. It is a deliberate misrepresentation on the part of the Attorney General as to what that situation is, because he knows better by this time; if he did not know better in the Consolidated Case, he does know better now.

The Master: I sustain the objection on the ground that I am not interested in contracts made in 1916.

Mr. Chambers: This covers 1919.

366 The Master: I know it.

Mr. Chambers: Five years.

The Master: I know it.

Mr. Chambers: I take an exception.

Q. Were you familiar with the price paid by the Boston Consolidated?

Mr. Ransom: Objected to as already asked.

The Master: The question is not finished.

Mr. Chambers: I ask to have counsel cease until I complete the question.

The Master: I will ask counsel to let you finish the question, but I apparently cannot control him.

Q. Were you familiar with the price paid by the Boston Consolidated Gas Company in 1919 for oil?

Mr. Ransom: Objected to as already asked and answered, and also incompetent method of proof, moreover.

The Master: I will allow it. It is competent in cross examination. I will let Mr. Addicks say whether he knows or is familiar with the prices paid in 1919 by the Boston Consolidated.

A. From the testimony in the other case, your Honor.

Q. That is all?

A. Yes, and statements made by the Vice President of the company at that time on the stand, and personally.

Mr. Ransom: I offer to have those statements placed in evidence along with the other testimony in the Consolidated Case, by the other witnesses.

Q. Mr. Addicks, you did not make any five-year contract for the Consolidated Gas Company in 1916 or 1917 or 1918, did you?

367 Mr. Ransom: Objected to as not within the period in the case.

The Master: No, I will allow that as bearing upon the possibility that this company could have had cheaper oil in 1919.

A. I did not make any five year contract, no. I made a contract for a period of, I think, three years.

Q. That was back when?

A. I cannot recall the exact date now. Somewhere around 1916 or 1917 it expired, but I do not recall.

Q. You did not make any such contract in 1916 or 1917, did you?

The Master: Mr. Chambers, I am not going to allow any more cross examination on that line, because I do not believe it is at all helpful or useful in this case. Judgment is what a man sees at the time he exercises it; that is his best judgment.

If I had used my best judgment last year I should have renewed the lease of my office for five years instead of three, and would save money, probably, the last two years. As I saw it then there would be ample office facilities downtown here in three years, and the price would not be any higher than I had agreed to pay, and I used my best judgment. Now, apparently, from conditions downtown, that judgment was all wrong, I was crazy not to have made a five year lease when the landlord tried to make me make a five year lease. Where do you get with this kind of testimony? There is nothing to it.

Mr. Chambers: I think so. I think we get somewhere.

368 The Master: Objection sustained.

Mr. Chambers: Exception. Other companies did.

The Master: Yes, one company guesses right and another man guesses wrong, and if the situation turned the other way and Mr. Addicks made a contract in 1916 for 6 cents or 5 cents, and the market had dropped, the bottom had dropped out of it, you would criticise him for paying too much. Now, that does not get us anywhere.

Mr. Chambers: No, not at all.

The Master: As I said in the Consolidated Gas case, there is too much theory——

Mr. Chambers: Yes, and you took the judgment of the directors in the Consolidated Gas case on everything.

The Master: Yes.

Mr. Chambers: Except where it was objectionable, and then you substituted your judgment.

The Master: I have had enough experience in business affairs to know that business men are not always right, any more than I am always right in reaching a conclusion on a legal problem presented to me. Business men have got to use their judgment, their best judgment; they are there to make money, and if courts and judges would have a little more respect for the judgment of business men, and assume they are honestly exercising their judgment and trying to make money for their companies, we would have less of these foolish practices.

Mr. Chambers: The chief object of the directors has been
369 to get a raise of rate here, and has been since 1917, and I have a right to inquire and see whether they had that in mind or not.

The Master: I am not going to assume that the officers of the company are going to gamble on getting a better rate and thus lose money for themselves and their stockholders. I am not going to do it.

Mr. Chambers: In their pleading they say that they have not had a fair return since 1906.

The Master: I told you I did not care anything about what they said.

Q. Have you studied the Mexican situation in the last few days or the last week?

A. In the last few days? Well, I have some information.

Q. You know what is going on in Mexico now from the newspapers, do you not?

A. Why, yes, I know there is a revolution on, from the newspapers. I also know——

Q. And you also know that the President of Mexico was unfriendly to the United States?

A. I do not know about the exact political situation with respect to the attitude of the former President of Mexico. The general impression I had was that he was unfriendly to the United States; whether he was or not I do not know.

The Master: Did you not talk it over with him?

The Witness: I did not communicate with him, your Honor.

Mr. Chambers: I take an exception to that, your Honor.

Q. Have you talked with any oil men about the outlook in regard to the Mexican oil supply?

370 A. Yes, I have had a talk with them—talked with them for a number of years.

Q. Do you agree with Mr. Little in what he says, as voicing the sentiment of others, that as soon as that situation clears up there will be a release of great quantities of oil?

Mr. Ransom: Objected to as incompetent and otherwise objectionable.

The Master: I am going to allow it.

Mr. Ransom: Who is Mr. Little, so far as this case is concerned?

The Master: Well, we will have Mr. Little in the case. Mr. Little was an expert, as I recall it, Mr. Addicks, produced by the defendants in the Consolidated Gas Case, and an employee or representative of the Public Service Commission of Illinois.

Mr. Chambers: I withdraw the question.

The Master: Just to indicate to you how useless this examination is, is there anybody in this room who will undertake to say how soon the situation in Mexico is going to be cleared up, or that it will be cleared up in the next six months, or by the time it is cleared up somebody has not blown the oil wells in Tampico to pieces?

Mr. Ransom: Oil went up yesterday, gas oil went up yesterday.

Mr. Chambers: It might be cleared up in a week and this oil released.

The Master: And the price of oil may be raised.

Mr. Neumann: I suggest that Mr. Ransom be sworn as a witness.

Mr. Chambers: That is just what I was trying to get you
371 to find in the Consolidated case, that the oil market was subject to violent fluctuation.

Mr. Ransom: Upward.

Mr. Chambers: It is not necessarily upward.

The Master: My conclusion in the Consolidated case was that the testimony justified a finding that the trend was upward and was continuing upward.

Mr. Chambers: If you will let me show the situation——

The Master: I will let you show facts, but I do not want you to waste time. I do not think that counsel for the State is under any obligation to confuse the issues. I think the obligation upon counsel for the State in this case is the same obligation that rests on counsel in every case, to clear up the issues.

Mr. Chambers: That is what I am trying to do.

The Master: To enable the Court to determine fairly as between the parties.

Mr. Chambers: That is what I am trying to do, but you do not want me to do it in these cases. Certainly if the truth is with the complainant, healthy cross examination cannot hurt them. But in the Consolidated case you stopped cross examination entirely, to which I took exception; and you are doing it substantially here, to which I take exception.

The Master: I am not only doing it substantially, but I am going to do it actually if you do not ask some useful questions.

Mr. Chambers: When you come to that point, then I sit down and take exception.

372 The Master: I am inclined to think you will.

Mr. Chambers: You can stop it now and save time, but I am going to stand up here and ask questions so long as I am able to.

The Master: I want to see if there is anything you have in mind to ask this witness bearing upon the price that is being paid by the New York & Queens Company for oil in the past year and a half, or what the probability is as to the price of oil going up or down in the next year or two, or three.

Mr. Chambers: You have a preconceived notion that the prices are going up; you have so found. If we can show you you are mistaken about it——

The Master: Then go on and show me.

Mr. Chambers: It may be like a voice crying in the wilderness, I don't know. You have never been in the wilderness, you said, but if I can shake out of your mind that preconceived notion that prices are going up—you see, you are now fixed on the idea that the prices tend upward and you say they will not go down.

The Master: Yes, so far as I could forecast in the Consolidated Case, they do.

Mr. Chambers: Before these cases reach the United States Supreme Court, which they probably will—because if we lose we will take them there—I will probably be around and say to you your guess was wrong.

The Master: I did not guess.

Mr. Chambers: Well, you said the trend was sharply upward, and you left it there.

373 The Master: Yes, from the evidence before me.

Mr. Chambers: I have a right here, representing half a million consumers in one case and a number of them in this, to cross examine a hostile witness here.

The Master: That is where you entirely misconceive your duty in this case. You represent this gas company just as much as you do the consumers.

Mr. Chambers: Notwithstanding how badly the Attorney General is represented, I am in the case.

The Master: You represent the company as well as the consumers, and this company is part of the People of the State, and pays taxes to the State.

Mr. Chambers: Yes, and I think the company is in here to make the people pay more for gas when they ought not to. The company made a return of over six per cent on twenty-five million, and I believe it.

The Master: Go on. We are not trying the Consolidated case.

Mr. Chambers: It is just taking advantage of the situation, these companies are.

The Master: All right, have you anything else to ask Mr. Addicks?

Mr. Chambers: Yes, I have.

The Master: Proceed.

Q. A good deal of the oil comes from Mexico nowadays, does it not, Mr. Addicks?

A. A great deal of the oil?

Q. That we have here in the United States.

A. No, I would not say a great deal came from Mexico.

374 Q. But it is a great source of supply, is it not?

A. It is a great potential source of supply.

Q. What do you mean by "potential?"

A. And an uncertain source of supply, to my best information. Wells that produced very liberally at one time will turn to salt water and not produce, and then the situation in Mexico also makes it uncertain for the delivery of oil to this country.

Q. And if that situation was cleared up, why, perhaps there would be planty of oil coming over the Mexican Border?

A. They would hope for more oil from Mexico. Of course, all that oil is not satisfactory for our uses, on account of its asphaltic and heavy characteristics. I had a sample of that, you will recall, in the last case; I produced a sample for examination.

By the Master:

Q. Is what you have just said applicable generally to the oil fields of Mexico, so far as they have been developed?

A. To the best of my knowledge, your Honor, that is the situation.

Q. That it is not a grade that you can use?

A. It is, a great deal of it, a grade that we cannot use. There is a field a distance from that which I hope we will be able to use.

Q. What is the trend of the oil prices, the oil market now, up or down?

Mr. Chambers: I object to that because there is not any market.

Q. So far as there have been any sales or indications of supply or sources of supply, or demand for it, what in your judgment is the trend, up or down?

375 Mr. Neumann: One moment, if the Court pleases. I object to that on the ground that the testimony thus far is that there are no spot deliveries, that they are all made by contract, long-term contracts.

Mr. Cummings: Do you think it has changed since the Consolidated Case. You found it sharply upward there.

The Master: I am going to find out what this record will show. I cannot decide this case on my record in the Consolidated Case.

Mr. Chambers: I object to it on the ground that all the evidence as it stands now is to the contrary, and they cannot contradict it—it is downward.

Mr. Ransom: There is no such testimony in this case.

The Master: The objections are overruled.

Mr. Neumann: Exception.

Mr. Chambers: Exception.

Q. Mr. Addicks, answer my question, if you can.

Mr. Chambers: Just a minute, I want to add more to that, because it is important. I object on the ground it is speculative, a surmise, a guess.

The Master: Yes, it is an opinion.

Mr. Chambers: And contrary to their own evidence which is in this case.

The Master: I am calling for the witness' opinion on the subject.

Q. What in your opinion is the trend, up or down?

A. I think in the last sixty days or thereabouts it has been fairly stationary, from 14½ to 15½ cents a gallon.

376 Q. Well, what is the trend?

Mr. Neumann: I move to strike that answer out on the ground it was not responsive to the Master's question.

The Master: Yes, I will do that.

Mr. Ransom: I object to that.

The Master: It was not responsive. I asked him whether the trend was up or down.

Mr. Ransom: It does not have to be either, it may be stationary at a certain time.

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The Master: Then that is his answer.
Mr. Neumann: He can say so.
Mr. Ransom: He has so answered.
The Master: No, he answered more than that.
Mr. Ransom: Exception.

Q. You can give me so much of the answer as I have stricken out, which said for the last two months it has been stationary, Mr. Addicks?
A. I should say that quotations were within—were similar within narrow limits; I will put it that way.
Q. For the last sixty days?
A. Yes, and not increasing as rapidly as during a period of, say, four or five months ago.
Q. How does that level of the last sixty days compare with the level of 1919, the high level of 1919?
A. I should say that——

Mr. Chambers: I make the same objection.
The Master: Overruled.
Mr. Chambers: Exception.

A. I would say the price of oil today was double what it was in 1919.
Q. I get the impression from what you have said that you do not expect it to go much higher?

377 Mr. Chambers: I think that answer ought to be stricken out; it was not responsive.
The Master: Yes, I am going to let it stand. I think it was.
Mr. Chambers: Exception.

Q. What is your opinion or judgment as to the future price; do you think it is going further up, or will it remain stationary where it was for the last sixty days?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and speculative.
The Master: All opinion evidence is speculative.
Mr. Chambers: The witness is not competent to guess as to the future, and it is not a subject for opinion testimony.
Mr. Hyatt: There is a very extraordinary thing about this testimony, your Honor, in my humble opinion, and that is that there is no foundation given. In as much as there is no market price for oil, how can this witness determine whether there is an upward trend or downward trend, or what the situation is? It seems to me he is testifying, giving his opinion, on something that does not exist in the case and does not exist in fact anywhere.
The Master: He knows more about it than I do, and I am going to get his opinion about it.
Mr. Hyatt: It is just a dignified guess, that is the only way I can characterize it.

Q. What is your dignified guess which I term an opinion, Mr. Addicks?

Mr. Chambers: Same objection.

378 A. I think the tendency of the price of gas oil will be upward.

Mr. Hyatt: Of course, that is objected to, your Honor.

Q. Still up?

A. Upward to a point where the gas companies will no longer purchase it for the manufacture of gas, and they will have to seek a source other than gas oil.

Q. Seek a source other than what?

A. Other than gas oil. In other words, a quality of oil, a lower grade of oil than has been used heretofore as a gas oil. In other words, it will require a lower B. T. U. standard in order to use some other quality of oil, and not make the candle power.

Mr. Neumann: I move to strike it out, in reference to that part of it that states there is a lower grade of oil furnished.

The Master: Yes, motion denied.

Mr. Neumann: And also the part that the gas companies will have to use a different kind of oil.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. What makes you reach that conclusion; on what do you base that judgment?

A. The great increase in the number of automobiles requiring more gasoline. The natural source of gasoline, that is the natural distillation of oil does not supply enough gasoline. The high pressure distillation method which has been introduced in the last four or five years takes up the gas oil, a certain portion of the process has taken up that source for gasoline, and the use of petroleum 379 is going ahead faster than the production at the present time.

Mr. Hyatt: I move to strike out the latter part of that, "and the use of petroleum is going ahead faster than the production at the present time."

The Master: Motion denied.

Mr. Hyatt: Exception.

Mr. Chambers: I move to strike it all out as being Mr. Addicks' guess.

The Master: Motion denied.

Mr. Chambers: Exception.

By Mr. Chambers:

Q. Where are you going to get the lower grade oil?

A. We will have to get the lower grade oil from the same sources that we have obtained the gas oil.

By Mr. Hyatt:

Q. Mr. Addicks, do you know anything personally about the distillation of petroleum into gas oil and gasoline and these various distellates called hydrocarbons?

A. I have never been a refiner, if that is what you mean.

Q. How do you know, then, that this process which you call an improved process of distillation tends to bring out a greater quantity of gasoline and a less quantity of gas oil?

A. Only from reading and what the oil people tell me.

Q. Only hearsay, then?

A. Well, if that is hearsay, yes.

By Mr. Chambers:

Q. You started in the first of the year to buy coal, did you, Mr. Addicks?

380 A. Yes, some time in March.

Q. You had not had any previous experience in buying coal for the company, had you?

A. I had had previous experience buying coal, but not for this company.

Q. How long ago was your other experience?

A. I bought coal for the Boston Gas Company before I came to New York.

Q. Back when?

A. 1902 and prior to that date, and 1903.

Q. And from that time down to the first of this year you had not purchased any coal?

A. Mr. Gawtry purchased all the coal for the Consolidated Company during all that period.

Q. And you do not know anything about the sources of supply of coal, do you; you have not made any study of that?

A. Yes, I have been down in the mines.

Q. You do not want this Court to understand that that is running out, too, do you?

A. The coal is not running out, but the ability to get it is very difficult at the present time.

Q. We are in unusual times, then, I take it?

A. Yes, so far as the strikes are concerned; as they occur they are unusual at the moment.

Q. So far as everything is concerned, isn't that so?

A. Well, it is very difficult to get any delivery of first class—we are speaking of anthracite coal, I assume?

Q. Yes.

A. In the first place the labor situation in the mines is not settled; in the next place the strike on the railroad is retarding the delivery of the coal, and in the next place the strike of the harbor tugs of the railroad is making it so that they do not deliver any coal.

381 I believe they delivered one boat yesterday, the first one in, I guess, thirty or forty days. We are compelled to get out-

side tugs to go down and bring coal up from the terminals, which ordinarily would be delivered by the railroad.

Q. Labor is on the warpath, would you say?

A. Well, I think labor is unsettled. I do not know that it is on the warpath.

Q. You would say that the times are abnormal now?

A. The labor situation is very much disturbed, there is no question about that.

Q. You do not want to use the word "abnormal?"

A. Well, I went through a similar experience in 1902 and 1903 with respect to coal, which was practically identical in that time, and other companies had to—I did not in my case, because I got frightened in time to fill up all my coal sheds with coal, and I got through that time without going abroad for coal, but other companies had to go abroad for coal.

Q. You looked ahead a little bit at that time?

A. Looked ahead at that time? Yes, I looked ahead at that time.

Q. And you bridged over the gap?

A. In that particular case of the Boston Company I succeeded in bridging that over.

Q. Now would you not say that conditions were abnormal all around?

Mr. Ransom: I object to that as vague in meaning and indefinite. What does he mean by abnormal, the attitude of the Attorney General, or what?

The Master: I will let Mr. Addicks say.

Mr. Chambers: No, I refer to the Consolidated Company.

The Master: I did not ask you to refer to anything; I have ruled on it.

Mr. Chambers: Well, I have the attorney in mind, for one thing.

A. I do not know of any time in my experience where it was so difficult to get coal, either hard or soft, and either coal or gas oil, and that situation being more acute than I have ever seen it, I would call that abnormal. As to when it is going to straighten out, why, everything is very uncertain.

Mr. Hyatt: You are only testifying for yourself, are you not, Mr. Addicks; you do not mean to testify for others?

Mr. Ransom: I object to the interruption by this self-constituted representative of the District Attorney.

The Master: Objection sustained.

Mr. Hyatt: Exception.

Q. You would not say that was so only as to coal, you do not have in mind; that condition prevails generally, does it not?

A. I think the same thing applies to oil.

Q. Does it apply to labor and materials that you use?

A. Labor is very, very uncertain.

Q. It applies to everything, does it not—food and everything

Mr. Ransom: What applies?
Mr. Chambers: This abnormal and uncertain period.
Mr. Ransom: There is nothing abnormal about it.

383 A. I think there is a great deal of unrest with labor, a great deal of uncertainty. No one knows what the rate of pay of a man is going to be from one day to another.

Q. If you were writing some friend of yours, and if you were discussing the times, would you not say that the times were abnormal all around?

Mr. Ransom: Objected to as an effort to make the case ridiculous.
Mr. Chambers: Leaving out counsel for the complainant.
Mr. Ransom: It is not a form of question that will look intelligible on any record.
The Master: I will allow it, anyhow.

A. I shall have to ask you to repeat it.
Q. (Repeated by the stenographer.)

Mr. Ransom: I object on the further ground that it is calculated to bring the constitutional law officer of the State into contempt.
The Master: Objection overruled.

A. I think I should be very apt to express myself as I have just expressed myself. I do not know how I could do it more completely.

Q. Do you buy the bituminous coal for the company?

A. Yes.

Q. And you do not try to buy either the anthracite or the bituminous coal for the New York & Queens separate from the other, do you?

A. The New York & Queens does not buy gas coal, because they do not make any coal gas. They buy a certain amount of—they use their water gas tar for their boilers, and if they need additional boiler coal they have been heretofore getting that from the New York Edison Company.

384 Q. Would that be bituminous?

A. No, it would be ordinarily some grade of anthracite screenings, like No. 1 or 2 Buck, or possibly Pea coal.

Q. Then their coal requirements are of no consequence?

A. Their coal requirements for anthracite coal for generators are of consequence, but I do not think the coal for the boilers is very large.

Q. Do you buy that anthracite coal for them separate from the other companies, or do they help themselves out of the supply purchased for all the companies?

A. No, the custom has been, and I am going to follow that custom, of making contracts with several contractors for large tonnage, and the New York & Queens will have their requirements from that tonnage.

Q. You never tried to buy for them separately?

A. I have not intended buying for the New York & Queens separately.

Q. You have not intended?
A. No.
The Master: Could you buy cheaper if you bought in small quantities for the New York & Queens.
The Witness: I do not think so, your Honor.
Q. Did you ever try it?
A. I am trying now every source of coal supply at the present time. I am going to everybody who sells coal, to find out what I can get coal for. The difficulty is to get enough.
Q. Have you bought any coal for the New York & Queens in the last couple of months?
385 A. I do not think any coal has gone to the New York & Queens since the 1st of April, from any contractor.
Q. How much of a supply of coal did you have on hand for all the companies—a reserve supply?

Mr. Ransom: When? Objected to as vague and indefinite.
The Master: When?
Mr. Chambers: Well, I would like to know when. Any time—when he took hold. He does not know anything about it before that.

A. Well, the 1st day of April we had 104,000 tons of anthracite coal, and on the 1st day of May—I am giving that from memory, I think it is correct—and on the 1st day of May we had 30,000 tons less than that, and we had received from our contractors a total of 5,000 tons of coal during the month; not under contract, but as much coal as they could deliver to us.
Q. You have drawn on your supply some, you said?
A. We have drawn on our supply very seriously.
Q. Well, that is what it is there for, is it not?
A. It is there, but it is dwindling very rapidly and we are not getting coal except in small quantities.
Q. I mean it is there for emergencies, is it not?
A. Yes, but it is not what it has been in the past and, frankly, I am very nervous about it.
Q. You do not appear to be.
A. I try not to appear to be.
Q. How long have you been building up this reserve supply of coal?
A. We carry habitually a very large reserve supply of anthracite coal as well as bituminous, and of bituminous we had 240,-
386 000 tons and the 1st of April we had twenty.
The Master: 20,000?
The Witness: Yes, and we were entirely out of coal Thursday week at Astoria.
Mr. Ransom: That is why we have to have more working capital than Mr. Maltbie allowed.
Mr. Neumann: I move to strike that out as a gratuitous piece of testimony by the witness Ransom.
Mr. Chambers: Judge Hough did not think so. He only allowed

1,600,000, and then they did not have the 400,000. Judge Hough allowed what Mr. Maltbie allowed.

Q. Were you getting something out, Mr. Addicks, or putting something in?

A. I was simply arranging my papers.

Q. Has the New York & Queens any coal stored around its plant?

A. They have some coal on hand, yes, sir.

Q. How much of a supply, it will last them until when?

A. On the 1st day of May they had on hand 464 tons.

The Master: Of what?

The Witness: Of generator coal, gas generator coal.

Q. Any other kind?

A. They had also 135 tons of boiler coal.

By the Master:

Q. How many tons of anthracite did you say?

A. 464.

Q. How long would that last them?

A. I have a memorandum of what they used last year——

387 Q. Well, comparatively speaking, it would not last very long, would it?

A. It is a very small amount.

Q. 464 tons couldn't last very long.

A. Well, they have gotten some coal I think from that time from our Astoria stock of coal.

Q. Since May 1st?

A. Yes.

Q. But taking the May 1st balance of coal on hand at Queens, that wouldn't represent much of an output of gas, would it?

A. No—I'll tell you in a moment just what it is.

Mr. Chambers: I think that is all.

The Master: Mr. Neumann, have you anything?

Mr. Neumann: Yes, please.

The Master: Go ahead.

Cross-examination.

By Mr. Neumann:

Q. Mr. Addicks, you testified as to the date when you began to purchase a supply of oil for the New York & Queens in connection with the Consolidated Gas Company system; can you fix definitely the date when that practice began?

A. As I recall it, it was very shortly after the time that the Public Service Commission gave permission to the company to purchase the New York & Queens stock. At that time the New York & Queens were notified by the company that they had been receiving oil from that they could not furnish additional supply. They made a contract with the Sun Oil Company for a certain number of hundred thousands of gallons of oil.

Q. One moment.

388 Mr. Neumann: If the Court pleases, I don't think that that is responsive to my question.

The Master: I don't either.

Mr. Neumann: I move to strike it out.

The Master: The motion is granted. Can you more definitely fix the date when you began to purchase oil for the Queens Gas company, is the question.

The Witness: I think that will fix the date, but I don't recall the year.

The Master: Shortly after your company purchased stock in the New York & Queens?

The Witness: Yes.

Mr. Ransom: The order of the Public Service Commission is dated May the 20th, 1913.

The Witness: Well, it probably was 1913, then.

Q. Now, prior to that, the New York & Queens had been purchasing its gas oil separately from the Consolidated Gas Company requirements, had it not?

Mr. Ransom: Objected to as immaterial.

The Master: Objection overruled.

The Witness: I know nothing about the New York & Queens prior to that time; I didn't purchase any oil for it, if that is the answer you want.

Q. You didn't purchase any oil for them prior to 1913?

A. No, had nothing to do with it.

Q. And you were purchasing all of the oil for the Consolidated Gas Company prior to 1913?

A. Yes, as far back as I testified.

Q. And as far back as when?

389 The Master: We have got that.

Q. What are the requirements of the New York & Queens yearly?

A. I can't recall that offhand; not very large—a million and a half gallons is my memory.

Q. Does the contract show it?

A. No.

Q. Who would know what the requirements are for the New York & Queens?

A. Mr. Spear I think would know accurately exactly how much they are using.

Q. When you figure on the requirements for the entire system, you require to know what each company needs, do you not?

A. Yes.

Q. And you must have had that information before you when you made the contract for the entire system, including the New York & Queens?

A. I probably did, yes.

Q. Have you any papers with you that will refresh your recollection as to what the requirements of the New York & Queens is yearly?

A. No.

Q. Could you get such data and be prepared to testify on it?

Mr. Ransom: Objected to as already shown by Exhibit No. 59, which shows the requirements year by year since 1911.

The Master: Objection sustained on the ground that I am not going to allow the witness to go over the accounts, get information and come back again.

Mr. Ransom: The requirements for every year that the Consolidated purchased this oil for them is shown in Exhibit 59 in evidence.

390 Mr. Neumann: Exception. May I see the exhibit? (same handed to Mr. Neumann by Mr. Ransom).

Q. According to this exhibit, Mr. Addicks, the requirement in 1919 was 1,640,330 gallons?

A. That is very close to what I thought it was.

Q. Who arranges with reference to deliveries, do you do that?

A. Yes.

Q. Sir?

A. You mean as to the New York & Queens?

Q. The New York & Queens.

A. I don't quite understand what you mean by that question.

Q. Are the deliveries arranged for specifically in the contract?

A. The deliveries are arranged so that the quantity shall be in barges of a certain capacity.

Q. And who makes the designation as to when the barges shall deliver at the New York & Queens dock?

A. That is handled by the New York & Queens company; it doesn't go through me.

Q. You have no control at all as to what time and in what amounts the deliveries should be made to the New York & Queens?

A. That is a local matter with the company; they make a requisition for what they want and get it when they want it.

Q. And Mr. Spear would have that in charge?

A. Mr. Spear would have full knowledge in regard to it.

Q. You testified here with regard to making contracts for the Consolidated system, the Consolidated and its subsidiary com-

391 panies; is the New York Mutual Gas Company one of the system or subsidiary companies?

A. I don't purchase oil for the New York Mutual.

Mr. Neumann: I move to strike that answer out on the ground it is not responsive.

The Master: I will let the answer stand.

Mr. Neumann: Then I renew the question.

The Master: All right, renew it.

Mr. Neumann: Will the stenographer please read the question.

Q. (Read.)

Mr. Ransom: I object to the question as not being an accurate statement of the witness's testimony.

The Master: Read it again.

Q. (Read.)

The Master: Objection overruled.

Now, read the question again to the witness slowly, Mr. Stenographer.

Q. (Read.)

A. The New York Mutual is a company in which we hold the majority stock, and in the other company we hold practically all of the stock.

The Master: Well, is the New York Mutual one of the subsidiary companies for whom you purchase oil?

The Witness: No.

Q. There is a separate contract made on behalf of the New York Mutual company for their oil, isn't there?

A. Yes.

Q. That is, independent of the contract that is made for the Consolidated Gas Company and the system?

A. Yes.

392 Q. And in the year 1919, do you know what the price in the contract for the New York Mutual Gas Company was for its oil, March 26, 1919?

The Master: A contract made on that date?

Mr. Neumann: Yes.

The Witness: I don't recall the exhibit——

Q. Well, here is Exhibit No. 487 in the Consolidated Gas Company case; look at that and see if that refreshes your recollection?

A. What date are you asking for?

Q. March 26, 1919.

A. Yes, I see March 26, 1919.

Q. And what is the figure that that contract indicates was entered into?

Mr. Ransom: Objected to as incompetent and not the proper method of proving the contract.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: 6.0821.

Q. Now, the Consolidated Gas Company and their allied companies made a contract upon the same day—and what was the figure in that?

A. The contract stated here is March the 28th, not on the same day.

Q. Well, two days later.

A. 6.0824.

The Master: What is that figure for the Mutual?

The Witness: 6.0821.

The Master: And for the Consolidated 6.0824?

393 The Witness: Yes. The New York Mutual has but one plant, whereas the Consolidated have a number of plants and and the contract provides for harbor delivery.

The Master: But the New York & Queens only have one plant?

The Witness: The New York & Queens only have one plant.

Mr. Ransom: The price here given is for the Consolidated 21st Street plant, as I recall it.

Mr. Neumann: I ask that that be stricken out. I ought to be allowed to cross examine.

The Master: I want to get the facts, now, what is the fact about it.

Mr. Neumann: The point I have in mind here is this, that here are these people claiming that by reason of the fact that they buy in large quantities, they get it cheaper.

The Master: There never was any such claim.

Mr. Neumann: It was all through the Consolidated Gas Company case.

The Master: Oh, not at all, there was never any claim that they got it cheaper.

Mr. Neumann: I think the record in that case will speak for itself.

The Master: What I want to know, Mr. Addicks, is this: The price that the New York Mutual paid in March, 1919, was 6.0821?

The Witness: Yes.

The Master: Now, what is this figure of 6.0824, isn't that the contract price for the Consolidated?

394 The Witness: At one of their plants, yes, sir.

The Master: What was it as to other plants?

The Witness: I'll have to refer to the contract, your Honor.

The Master: Let me see that exhibit.

Mr. Neumann: Here is the exhibit; they introduced that in evidence themselves (handing same to the Master).

The Witness: That is delivery at 21st Street.

The Master: I cannot quite understand that. What was it at 99th Street?

The Witness: At 99th Street it was 6.1082.

By the Master:

Q. In other words, the 21st Street was the lowest price of all?

A. Yes, 21st Street was the lowest price of all—6.1082 for 99th Street and 6.0824 for 21st Street.

Q. Well, now, the prices on this exhibit in the Consolidated Gas case, where it speaks of 6.0824 for the Consolidated, means including lighterage to 21st Street, does it not?

A. Yes, sir.

Q. And the price of 6.0821 for the New York & Queens, according to this exhibit, includes lighterage to Queens, does it?

A. No, sir, that is the Mutual.

Q. Means including lighterage to the Mutual plant?

A. That is the Standard Oil Company of New York.

395 Q. Well, I don't care who it is, the fact is that taking the New York Mutual plant in March, 1919, they were able to purchase oil delivered to the Mutual plant for 6.0821?

A. Yes.

Q. Under the contract that you made, you managed to get oil for the 21st Street plant of the Consolidated for 6.0824?

A. Right.

Q. And that included lighterage?

A. Yes, sir.

Q. What was the basic price?

A. The basic price was 7½ and then reduced.

Q. Well, the basic price was 6, then, after the cent and a half reduction?

A. Yes.

Q. So the oil delivered at 21st Street was 6 cents plus lighterage, making it 6.0824?

A. Yes.

Q. Do you know what the basic price of the Mutual was?

A. I think the same price.

Q. Six?

A. I think so.

Q. How would that be 6.0821, is that a variance in the lighterage?

A. Yes, a difference in the lighterage.

Q. You think it is the same?

A. I think it is the same.

By Mr. Neumann:

Q. You testified that you didn't make that contract for the New York Mutual Gas Company, didn't you?

A. I did.

Q. And your information on that point, of course, is based on what some one told you?

396 A. Yes.

Q. And who was it that told you that the price was the same?

A. I was in contact with the Mutual contract at that time, discussing the matter with Mr. Parkhurst, the Vice President of the company.

Q. Now, independent of any contracts that you made for the Consolidated and affiliated companies, what efforts did you make, solely and wholly on behalf of the New York & Queens Company, to make a contract for them?

Mr. Ransom: I object to what efforts he made, as having already been fully covered.

The Master: Read the question.

Q. (Read.)

The Master: Objection sustained.

Mr. Neumann: I will put it in the year 1919.

The Master: Objection sustained. I found the price—1918 at these plants at 6.05, didn't I?

Mr. Ransom: About that, yes.

Mr. Neumann: May I ask the Master upon what ground that objection was sustained?

The Master: I think it is sufficiently covered.

Q. I now show you Complainant's Exhibit No. 72, Mr. Addicks, and I direct your attention to the writing on the bottom, in lead pencil (showing witness)?

A. Yes.

Q. When that letter was received by you from the Standard Oil Company, that lead pencil writing was not contained thereon, was it?

A. No, I should say it was not.

397 Mr. Neumann: I move that the lead pencil writing on the bottom of this exhibit be stricken from the record.

The Master: Is it in the record?

Mr. Neumann: Well, the whole exhibit is in.

The Master: Well, that isn't part of the exhibit; the letter ends at the signature.

Mr. Ransom: It is really a notation in the regular course to the effect that the lighterage figures there given were to be kept up.

Mr. Neumann: I object to the witness Ransom testifying to what it contains; I didn't put it on the record.

Mr. Chambers: You found that the oil price was in excess of 6.9.

Mr. Ramson: The present price.

The Master: The present price, yes. The average price for 1918 and for the first eight months of 1919 I think made about 6½.

Mr. Chambers: 6.9 for the first eight months of 1919.

The Master: Yes. Then I said that over in the Astoria plant, it would indicate from their records that it was something lower than the average for the first eight months.

Mr. Chambers: 6.08. Then you found that the price of oil was in excess of 6.9—that is really your finding.

The Master: But that is 1919, the first eight months.

Mr. Chambers: I can't yet see how you can do it in the face of this exhibit.

Mr. Ransom: Well, the price of oil was about 10 when he found 6.9. It shows how conservative the Master was when he found

398 the price 6.9 when it was about 10.

The Master: Go ahead. Is there anything else, Mr. Neumann?

Mr. Neumann: Yes, if the Court please.

By Mr. Neumann:

Q. Mr. Addicks, this contract, Complainant's Exhibit 71 contains lighterage rates, does it not?

A. Yes.

Q. When you determine upon the lighterage rate, what do you

take into consideration with reference to confining yourself solely to the New York & Queens Company?

A. I don't understand your question.

Q. Well, you take into consideration the quantity they require, do you, for delivery there?

Mr. Ransom: Objected to as vague and meaningless. The lighterage rate is something that this company does not fix and the oil company does not fix.

Mr. Neumann: Well, I can't jump right into the question, you know that yourself.

The Master: Go ahead, Mr. Addicks says he doesn't understand that one, now what is the next.

Q. You have to know, at that time, what the requirements are of the New York & Queens Company, do you not?

A. For what?

Q. For gas oil for the entire period.

Mr. Ransom: Objected to as vague and meaningless.

The Master: I don't get it; what is the point?

Mr. Neumann: What I am trying to bring out here is this— of course, if I tell it, it is useless to bring it out.

399 The Master: Well, I don't get your point, I don't understand your question, I don't know what you are driving at.

Mr. Neumann: I am trying to show that the witness who is making a contract for oil for companies connected with his main company must have in mind the requirement of each company.

The Master: Yes, he testified to that.

Mr. Neumann: He must figure on the lighterage; he must figure on conditions, because the lighterage figures are all in the contract; how does he arrive at what is a reasonable figure for lighterage?

The Master: But quantity has nothing to do with it necessarily.

Mr. Neumann: Doesn't it depend on deliveries and times?

Mr. Ransom: The contract fixes the lighterage rate and says that if the lighterage rate goes up or down, the price goes up or down.

Mr. Neumann: That might indicate as to whether he had this particular company in mind, or whether he just had the entire system in mind, that is what I am trying to get at.

The Master: Well, it doesn't make any difference.

Mr. Neumann: In this case, if the Court pleases, a few cents out of the way on any particular thing will change the whole thing. We are in a close case here.

By the Master:

Q. Mr. Addicks, I don't know as I get Mr. Neumann's point precisely, but on the question of lighterage, you buy at a basic
400 rate plus lighterage, do you not?

A. Yes, sir.

Q. That lighterage is charged by the lighter, by the cargo, is it?

A. That is charged at a certain fraction of a cent.

Q. Per what unit?

A. Per gallon, depending on its location in the city, and also depending upon the capacity of the barge that the contractor may deliver at a certain point. You couldn't get 10,000 gallons in the barge at a point for lighterage as expressed in that contract.

Q. As I understand it, there is a certain price for a certain lighterage limit in the harbor?

A. Yes, sir.

Q. That runs up to about 99th Street on the East River?

A. I think it is 99th Street; I think 99th Street is within the lighterage limit; Ravenswood is within the lighterage limits, but in this oil area there are different prices for each particular point.

Q. Within lighterage limits?

A. Yes, within lighterage limits. When it comes to the question of delivery of the coal by the railroads, they deliver to a certain point within lighterage limits and after that you have to have your boats towed and pay an additional amount for that.

Q. In these contracts, so far as lighterage contracts are concerned, is that a matter of negotiation between the oil company and the lighterage company, or is it a scheduled price?

401 A. It is the amount that the Standard Oil Company of New Jersey have to pay themselves for lighterage, and that is given to me in a list of lighterage charges, and you will note that in a letter of January 8th, 1919, they make a statement that the price, for instance, has been advanced and they can't give it to me definitely until a later date—then they give it to me definitely.

Q. In other words, your contract is subject to variation in the cost of lighterage?

A. Yes, sir.

Q. And is always subject to that?

Q. Yes, sir, and has been for a number of years.

The Master: Now, what is your point, Mr. Neumann?

By Mr. Neumann:

Q. And those lighterage rates are set forth in the contract, are they not?

A. Yes, sir.

Q. Now, in order to transport oil down to the New York & Queens, you use Flushing Bay, do you not?

A. Yes, sir.

Q. You say you don't know anything about deliveries to the New York & Queens; you say you haven't control of that?

The Master: He said he did not order out the stuff; that the New York & Queens ordered out the goods when they needed it, isn't that your testimony, Mr. Addicks?

The Witness: Yes. The only thing that is regulated, as far as the contract is concerned, it is stated the amount that must be—for instance here in Exhibit No. 71, it states here that the

402 minimum cargo for the New York & Queens shall be 2,000 barrels.

Q. And 2,000 barrels would contain how many gallons?
The Master: About fifty tons?
The Witness: 100,000 gallons.

Q. Have you Exhibit 69, Mr. Addicks?
A. I haven't any exhibits here.
Q. Well, Mr. Vilas said you had it?
A. Oh, have I?
The Master: Isn't that the St. George coal letter?
The Witness: Oh, yes, I have that.
Mr. Neumann: I just want to call attention to this exhibit that these lead pencil marks are not to be taken as part of the exhibit.
The Master: Of course not; I don't think it is necessary to make any reference to them.
Mr. Neumann: Well, right here I would like to say to the Court that the position I am in is this: I have not been given any of these exhibits and I have been at a distinct disadvantage. Now I suggest that hereafter, if there are any exhibits introduced, that they be not introduced until we be given copies of them.
The Master: I won't make any such rule.
Mr. Neumann: Well, it is unfair to introduce an exhibit here and not give us a copy.
The Master: Is there any rule that you are to have copies of exhibits?
Mr. Neumann: Yes, I think so; that is a courtesy that I think has been universal in any law suit.
The Master: When did that rule come in?
403 Mr. Neumann: It is a universal custom.
The Master: Well I never heard of it and I have been practicing law for pretty nearly thirty years.
Mr. Neumann: And I have been practicing for twenty-four years and I have never put in any exhibit without furnishing a copy.
The Master: Well you must have been practicing over in Suffolk somewhere.
Mr. Neumann: Perhaps I was practicing among gentlemen.
The Master: Well I never saw it done, Mr. Neumann, never heard of it before, until I got into this case.
Mr. Ransom: We have done it and shall do it in this case.
The Master: Anything else?
Mr. Neumann: There was just one question. This is rather disconnected because I wanted to take it up at the time.

Q. Mr. Addicks, you testified in answer to a long question there about oil, your familiarity with oil, the system you had; will you please tell us what that system is?

The Master: Which system are you talking about?
Mr. Neumann: I wanted the Court to bring it out at that time. It was in answer to one of your questions; he went into a long talk about how he kept himself advised as to the market, and he said "the system we had."

The Master: I think he was talking about that curve on crude prices—is that what you meant?

The Witness: That is what I was referring to.

404 Mr. Neumann: That doesn't mean anything in this case.

The Master: Well it happens to mean something to me—however, I will bring it out.

By the Master:

Q. You have been keeping a sort of chart diagram indicating the rise and fall of crude oil prices, have you?

A. Yes.

Q. And as the price rises or falls, you carry it on a line which curves in accordance with the rise and fall on this chart?

A. Yes.

Mr. Hyatt: Is that chart in evidence?

The Master: No.

Mr. Hyatt: Then I object to this line of questioning.

The Master: I was only asking because Mr. Neumann wanted to know what the witness meant.

Mr. Hyatt: You led the witness anyway.

The Master: Well, that is a habit that I have, to lead a witness and get a fact that is not in dispute.

Q. Do you or do you not keep a chart in the manner I have described?

A. I do.

The Master: Now, is there anything else, Mr. Neumann?

Mr. Neumann: That is all.

The Master: Now, Mr. Hyatt.

Mr. Hyatt: I have but one or two questions.

405 Cross-examination.

By Mr. Hyatt:

Q. Mr. Addicks, do you in the course of your experience know of any gas company that has prepared specifications and invited bids for either oil or coal, covering certain details, such as time of delivery, quantity, specific gravity, as in the case of gas oil or anything of that sort? Is my question clear, Mr. Addicks?

A. Well, I would rather have it read; perhaps it may be clear.

Q. (Read.)

A. I know from seeing contracts that they have a certain form from time to time in regard to oil, but nothing of late years.

Q. Why not, of late years, Mr. Addicks?

A. Because, as some gas people have said, they have to take what they can get.

Q. In other words, the gas company has to go as a petitioner to the coal company or to the refining company to get their prices and to get their quantities, and so on, adjusted, is that it?

A. Well, as far as the oil today is concerned, they can't specify very particularly in regard to the oil, I think, much more than I do. I specify a certain gravity of oil; I specify a certain maximum quantity, and I specify it must be by harbor delivery, not by rail, except in certain plants, where there are rail deliveries I would specify both, but my contract requirements have been equivalent to a prior year's use, and results equivalent to that.

Q. Well, do you prepare blank forms and specifications and leave them, for instance in the gas oil purchase, leave them with the companies, who sell gas oil and invite them to make prices, in-
406 vite them all to make prices at one and the same time, or do you take up the matter separately with each of the companies?

A. I have been writing letters to all companies and they are all in the same phraseology.

The Master: And written at the same time?

The Witness: And written at the same time.

The Master: What are you asking for now, what gravity?

Mr. Hyatt: I am not after the gravity so much, your Honor, as I am after the question of practice. He said a moment ago that they pursued a system here and I want to see what the nature of the system is.

The Witness: My last letter said, "Will you kindly inform me if you have any gas oil for sale; if so, state gravity and price for harbor barge delivery in New York City. We would be glad to know the capacity of your barges."

The Master: That is the letter you sent out yesterday?

The Witness: Yes, sir.

Q. Then you assume that there is a shortage in the gas oil, do you not; that is, that letter assumes, from the character of its language, that there is a shortage in gas oil?

A. I don't know whether you would assume that from that letter or not—there is no question about there being a shortage of gas oil at the present time.

Q. How do you use this information that you collate from the press or from the United States Geological Survey and Reports, Mr. Addicks, in connection with your purchases of gas oil for in-
407 stance?

A. Why, I use it with the idea of seeing what the trend of petroleum is as to average production.

Q. You mean the trend of price?

A. The trend of price of petroleum at the wells and as to the quantity of petroleums being produced by the country, as to whether it is in excess, or otherwise; it gives you some idea of what may be expected.

Q. What do you mean when you say as to whether it is in excess, in excess of the demand?

A. It may be in excess of the demand—at the present time the demand is in excess of the production in this country.

Q. Now, Mr. Addicks, do you make your purchases of oil dependent upon the amount of the supply of gas oil that you have on hand,

or do you make your purchases based upon the apparent quantity of supply?

The Master: You mean based on the requirements?

Mr. Hyatt: No, based on what he has on hand, or does he defer it until such time—that is, does he defer it until the supply is about out——

Q. Or do you watch the amount of supply available and attempt to purchase at that time?

The Master: I thought Mr. Addicks testified that he makes his oil contracts at stated periods every year without regard to how much is on hand.

Mr. Hyatt: Just pardon me. I want to get from Mr. Addicks this fact, as to whether, when he purchases, he marks the time
408 of his purchase by the amount of oil that he has on hand or whether he marks the time of his purchase by the quantity of gas oil available in the market.

The Master: Well how about that, Mr. Addicks?

The Witness: We mark it as at the expiration of our contract, and at the expiration of our contract we would endeavor to have, if the market was falling, we would endeavor to have as little oil on hand as possible; if the market of oil is rising, we would endeavor, at the end of that period, to have as much oil as possible.

The Master: But the answer to Mr. Hyatt's question I think is, when your contracts expire, you have to make contracts for additional oil based on what probable requirements for the following period of time you would need irrespective of the amount you have on hand or what the market condition is.

The Witness: Yes, that is true. Our amount on hand is insignificant as compared with our requirements, although you couldn't have much knowledge on the situation.

The Master: I suppose you make contracts whenever you can, depending on the rise or fall of the market?

The Witness: Yes. When we were getting oil at a low price, I made the contract for as long a period as the company would make the contract. On the other hand, in these last two years, with
409 the higher prices of oil, I may only have made a six months' contract in order to take advantage of any fall in prices if it should develop during that period of time.

Q. I suppose, Mr. Addicks, that you heard that the Gulf Refining Company had a large amount of gas oil on hand and desired to dispose of it immediately, would you, notwithstanding the supply of gas oil you have on hand at the present time, endeavor to make a contract for the gas oil that the Gulf Refining Company had, would you do that now?

The Master: For the spot oil, you mean?

A. We would not be in position to take spot oil ordinarily——

Q. Would you now?

Mr. Ransom: Let him finish his answer.

Q. I want to know what you would do now, at this time, at the present moment.

A. That would depend upon conditions——

Q. Just state what you would do now.

The Master: As I understand Mr. Hyatt's question, it is this: Suppose I came along to you now for the Gulf Refining Company and said that I had 10,000,000 gallons of oil of the kind that you want, at a price less than you are paying, could you take it off my hands right away?

The Witness: No, because my contract would not permit me to do that today.

Q. Wouldn't it be a matter of provident business management on your part to take that oil and store it at the present time, considering what you testified before as the state of the market in respect to quantities?

410 A. If we had storage, yes, it might be a wise thing to do.

Q. Would you do it? I want to get a direct answer to that question, under all the circumstances that you have testified to here this morning?

The Master: I understood the witness to say he could not do it.

Mr. Hyatt: The mere fact that he has a contract would not prevent him from buying elsewhere.

Mr. Ransom: The City of New York would not let him have the storage facilities.

The Master: Does your contract prevent you from buying oil elsewhere, Mr. Addicks?

The Witness: The contracts heretofore have provided that the supply should be all the oil used for enriching purposes.

Q. Don't you think that is a very extraordinary contract under the market conditions to make?

The Master: Just a moment. How about the existing contract?

The Witness: I will have to look at that; I will have to refresh my mind on it.

(Witness examines contract.)

The Master: Is it your argument, Mr. Hyatt, that this complainant company ought not to consider all its requirements for a period of time, but ought to take its chances to buy spot oil in the market from time to time?

Mr. Hyatt: I am trying to develop the facts. You see this contract here about which he has testified obviously puts him out of the market.

411 The Master: That is why I am asking you whether you believe they ought to be in the market continuously for spot oil.

Mr. Hyatt: He is trying to support the wisdom of the system. Let him go ahead and support it.

The Master: I am asking you a question.

Mr. Hyatt: It is not up to me, the burden is not on me.

The Master: I am not putting any burden on you, I am asking you whether it is your judgment or your contention that this company ought not to contract for its requirements for a period, but should stay open in the market to get spot oil from time to time as it can.

Mr. Hyatt: Your Honor, I would rather make the answer off the record, and say simply——

The Master: No, I want the answer on the record.

Mr. Hyatt: I am not testifying as an expert, I am not qualified.

The Master: I am asking you a question.

Mr. Hyatt: I will have to decline to answer the question.

The Master: You are asking this witness a line of questions which would indicate that that is your point. I am trying to get in my mind whether that is your point.

Mr. Hyatt: Yes, sir, that is my point.

The Master: All right, that is all I want to know.

Mr. Hyatt: I am not dealing alone with spot oil in that question.

412 The Master: What are you dealing with?

Mr. Hyatt: I am dealing with this system that he has testified to.

The Master: We are now dealing with spot oil.

Mr. Hyatt: I object to the characterization. I do not want to characterize anything as spot oil.

The Master: Your question, Mr. Hyatt, as I understand it, was this: Suppose the Gulf Refining Company came along and said that they had some oil at prices less than they are paying under the contract, would he take it? That to my mind carries the inference that you think they should be in the market at all times to take spot oil at whatever they can grab it at.

Mr. Hyatt: I want to eliminate this characterization of spot oil, that is a small quantity, whatever it is possible for a man to obtain under the circumstances. This term spot oil may have a peculiar meaning in your mind.

The Master: It has this meaning, so we will have no misunderstanding about it: The Gulf Refining Company today has a million gallons of oil on hand that I can buy if I take it off their hands at a price now. They will not contract to deliver it to me 100,000 gallons a month for ten months at the same price, but will give it to me at that price now. That is what I mean by spot oil, immediate delivery, now on hand, as distinguished from contracts for future requirements and future deliveries. That is what I under-

413 stand when I am talking about spot oil.

Mr. Ransom: The company could not make a contract with the Standard whereby they could get it from the Standard at a given price if the market price is higher, or they could buy it elsewhere if the price is lower.

The Master: The question before us now is whether you are at liberty to go out and get all the oil you can get from other places, taking all you need from the Standard Oil.

The Witness: No, we cannot do that, because it is expressly provided there that if we do not use the quantity specified in the contract that the option remains with the Standard Oil Company whether we shall take the rest of that oil at a *further* period, or whether that quantity shall be cancelled at the end of the period. That does not take care of the shortage situation——

The Master: So your answer to Mr. Hyatt is that if you were offered a quantity of oil by the Gulf Refining Company now you would not be in position to take it?

Mr. Ransom: Your Honor did not allow him to finish his answer.

Mr. Hyatt: I object to that. I don't want the witness's answer characterized in any way. Let him answer for himself.

The Witness: If we used more than that stipulated quantity there is nothing in the contract that I see that would prevent us from buying the oil from any oil company during this six-months period, but I think it would prevent us from buying during
414 the second six-months period if the Standard Oil Company exercises their option.

Q. What is the wisdom of taking yourself out of the market with respect to this second six months' period?

A. We don't take ourselves out of the market. They have the option to supply it at whatever I can buy it for, the lowest price.

Q. Whatever you can buy from them, not from other companies?

A. No, indeed. I am not bound to the Standard Oil Company for the second six months if I can buy elsewhere, but they have the right to have that contract if they will supply the oil at that lower price.

Q. You are interpreting a contract that you have with them, are you not?

A. I am giving you the contract.

Q. Let the contract speak for itself.

A. There is the contract, it speaks for itself. The contract expires at the end of six months, and it remains with me, representing the company, to say that within a certain period of the expiration of the contract whether I want to renew it with them for the second six months.

Mr. Hyatt: I did not ask all this. I move that it be stricken out as not responsive.

The Master: I am going to look at the contract myself.

The Witness: If we don't use the amount of oil specified in the contract——

Mr. Hyatt: I move that it be stricken out.

The Master: Yes.

415 Redirect examination.

By Mr. Ransom:

Q. Have you within the last few days received any offer from any oil company to supply any quantity of gas oil?

A. Yes.
Q. Will you produce it?

(Witness produces letter.)

Q. You produce a letter under date of May 7, 1920, from the Warren Pennsylvania Oil Company?
A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial. It is not one of the companies that Mr. Addicks wrote to, and this is just a little scheme here to get before the Court some insignificant company's price on some small quantity, and try to make you believe that the price is way up in the air, when it is not. This would impeach their own testimony. They have brought out the fact that they can buy oil to December 31, 1920, at the price set forth in Exhibit 74.

Mr. Ransom: Fortunately the company has the benefit of such a contract. If it had not it would be paying 14 to 16 cents if it got any gas oil at all.

Mr. Neumann: I object to that on the ground that there is nothing there to indicate that it may not be a spot-oil price instead of a term price. I think the letter itself indicates that it is a spot price. And, upon the further ground that to say the least it is not compe-
416 tent evidence to introduce a letter dated a day or two prior to the testimony here where the witness has testified on direct with reference to these matters contrary to what is contained in that letter.

The Master: I think I had better sustain the objection.

Mr. Ransom: Exception. May I have it marked for identification?

Letter marked Complainant's Exhibit 75 for Id.

Mr. Ransom: I do not see on just what theory your Honor is warranted in excluding it.

Q. This was received by you in the regular course?
A. Yes, sir.
Q. It was not in any way solicited by you, was it?
A. No, sir.
Q. You didn't know it was coming?
A. No, sir, I knew nothing about it.
Q. Mr. Chambers interrogated you regarding the situation of the New York & Richmond Gas Company. Will you tell what you personally know as to that situation?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Chambers: Exception.

The Master: What you personally know about it.

Mr. Neumann: What he personally knows of the situation does not mean anything at all.

417 Mr. Ransom: It ought to, to the representative of the defendant Nixon.

The Master: I have ruled. What do you personally know about it?

A. I know that we are supplying oil to the New York & Richmond company at the present time.

Q. Is that at the request of the defendant Nixon?

A. It was at the request of the defendant Nixon, and with the knowledge from the president of that company that they could not buy any oil anywhere.

Mr. Neumann: I move to strike the answer out.

The Master: I will strike out so much as stated that the president of the Richmond company said they could not buy it anywhere else. I shall allow the statement to remain that it has been supplied at the request of the Public Service Commissioner, Nixon.

Mr. Neumann: I take an exception.

The Master: Was there any reason assigned to you by the defendant Nixon for asking you to supply oil to the New York & Richmond company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Witness: The defendant Nixon requested oil companies that appeared before him to supply oil, and none of them could supply the oil——

The Master: Were you there?

The Witness: I was at those hearings.

418 By Mr. Neumann:

Q. Were you there on that day?

A. I was there on one day.

Q. Were you there on the day that this statement that you are alleging or purporting to give was made?

A. I heard Commissioner Nixon ask for that from the rostrum personally.

Q. Were you there that day?

A. I was not there the day which we finally agreed to do it.

Q. Were you there the day that statement was made?

A. I heard Mr. Nixon make such a statement.

Q. You still don't answer my question. I asked you whether you were there that day?

The Master: What day?

Q. The day you say the defendant Nixon made that statement?

The Master: Made what statement?

Mr. Neumann: Whatever statement he is alleged to have made.

The Master: Do you not know what statement you are talking about?

By the Master:

Q. You were there at some hearing before Commissioner Nixon?
A. Yes.
Q. You said something before to the effect that Commissioner Nixon had asked various oil companies to deliver oil to the various gas companies, and they said they couldn't do it.
A. I heard Mr. Nixon ask whether there was not some one who could deliver oil to this company, and on the final day——
419 Q. Was this at a public hearing before Commissioner Nixon when he asked that?
A. Yes.
Q. What answer was made to that?

Mr. Neumann: I object to this on the ground it is incompetent, irrelevant and immaterial, that if admissible in evidence at all the record itself is the best evidence, and not what this witness states; and since there was no final order on that hearing there cannot be that record introduced here.

Mr. Chambers: On the further ground that it does not appear that there were any oil companies there.

The Master: That is what I am trying to find out.

Mr. Chambers: I can go out here on the street and call for oil, and I won't get it, because there aren't any oil companies there.

The Witness: The Gulf Refining Company was represented there at the time, because I had a conversation with him.

By Mr. Ransom:

Q. Was the Standard Oil Company of New York there?

The Master: We will let the record stand. Your company is delivering oil to the Richmond company at the request of the defendant Nixon, is it?

The Witness: Yes, sir.

Q. And pursuant to that request of the defendant Nixon, did Mr. Welsh, the President of the New York & Richmond Company, come to see you?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not the proper method of proving it.
420 The Master: Objection sustained.

Q. Have you here the form of letter which you sent in 1919 to various oil companies for the 1920 oil?
A. I have.

The Master: He read in the one for 1920.

Q. Let us see the one for 1920.

The Master: I think that is already in the record.

Mr. Ransom: No, I think not. He said it was similar to the one for 1919——

The Master: He read a letter into the record, the one he sent out yesterday.

The Witness: This is last December he is referring to.

Q. This is a copy of a letter which you sent to the Texas Oil Company and the other companies which you mentioned?
A. Yes, sir, they are all there.

Mr. Neumann: May I ask the court when that letter was read into the record? I objected to its introduction here. It was objected to and ruled out.

The Master: Nothing of the sort. A question was asked of Mr. Addicks which called for an answer, and his answer included the reading of the letter.

Mr. Chambers: When, today?

The Master: Yes.

Mr. Neumann: In answer to whose question?

The Master: The substance of the letter was, "Will you please let us know how much oil you have, the grade of it, and your price?"

Mr. Chambers: I don't remember it.

421 Mr. Ransom: I offer in evidence copy of a letter of November 25, 1919, sent by Mr. Addicks to the Texas Oil Company and the other companies.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial and a self serving declaration. This is ancient history, and these inquiries were not made in good faith, because Mr. Addicks says he could not take the oil if they offered it to him.

Mr. Ransom: He didn't say anything of the sort.

The Master: The question now before me is as to an offer of oil to which reference was made on the cross examination of this witness, as to what he would do. Now, he produces a copy of a letter which is referred to on his cross examination, and Mr. Ransom offers it in evidence.

Mr. Neumann: I object to the introduction of this letter upon the ground that no foundation has been laid for it; it has not been properly proven; nothing to show or indicate that it was sent or received; and upon the ground that it is a self-serving declaration; upon the further ground that it is immaterial so far as this particular case is concerned, because the letter on its face clearly indicates that it is for the entire system and not for this company.

Mr. Hyatt: I join in that objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

Letter received in evidence and marked Complainant's Exhibit 76.

422 Mr. Chambers: I move to strike out all of Mr. Addicks' testimony which related to what he overheard at the hearings before Public Service Commissioner Nixon, with the exception of

that part in which he said he was furnishing gas oil to the New York & Richmond Gas Company.

Mr. Cummings: We might have to cross examine him on that entire examination.

Mr. Ransom: I now offer the entire record in case No. 2475, the hearing conducted by the defendant Nixon with respect to the supply and price of gas oil.

Mr. Cummings: You don't claim that what he overheard is competent, do you?

Mr. Neumann: No one knows better than the former counsel for the Public Service Commission, that it is incompetent.

The Master: Motion denied.

Mr. Chambers: Exception.

By Mr. Ransom:

Q. Mr. Addicks, referring to the situation at the present time, if through the use of more gas oil than expected, or through the supply by you of gas oil for the New York & Richmond Company, you need more gas oil than is specified in your present contract with the Standard Oil Company of New Jersey for the present six months' period, do you understand that you have a right to purchase from any other company?

Mr. Hyatt: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection sustained.

Mr. Ransom: They have brought out and created a misapprehension as to this situation, and your Honor did not permit
423 the witness to finish his answer. He described the situation as to what it would be if instead of taking the contract quantity from the Standard Oil of New Jersey they went out and bought oil in substitution from another company, but this situation where they need more gas oil during this present contract period, the present six months period——

Mr. Hyatt: I object to the characterization that they need more gas oil.

Mr. Ransom: Need more gas oil before the 1st of July. The record as it stands leaves the impression that they have not a right to buy it wherever they could get it.

The Master: The record contains the original contract and that speaks for itself.

Mr. Ransom: Your Honor has allowed a lot of cross examination on its provisions.

The Master: Yes, because you did not object to it.

Mr. Ransom: I did object to it repeatedly.

The Master: The record shows what happened.

Mr. Ransom: Exception.

Q. Mr. Addicks, do you know the number of increases, or approximate number of increases in the prices of crude oil, Lima and Pennsylvania crude, that have taken place during the past year?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.
The Master: I will take it.
Mr. Chambers: Exception.

A. No, I cannot tell you that. I know they are continuous, I see the clippings come along of continuous increases, but I
424 don't know the number.

Mr. Hyatt: I move to strike out the answer as not responsive.
The Master: Motion denied.
Mr. Hyatt: Exception.
Mr. Ransom: That is all.
The Master: Is there anything else?
Mr. Neumann: Yes, I would like to ask him a few questions.

Recross-examination.

By Mr. Neumann:

Q. Mr. Addicks, take Complainant's Exhibit No. 76, the letter just introduced in evidence, what is the total quantity that you ask for there?

The Master: Objection sustained.
Mr. Neumann: I didn't hear any, if the Court please.
The Master: I made it.
Mr. Chambers: Exception.
Mr. Hyatt: Exception.
The Master: You are asking the witness to state the contents of the letter in evidence.
Mr. Neumann: I am asking him the quantities.
The Master: You see that, and the court that reviews my report may see it by looking at the letter.

Q. Outside of this exhibit, Complainant's Exhibit 76, did you send any letter with reference to the requirements of the New York & Queens Gas Company, only so far as its supply of oil is concerned?

Mr. Ransom: I object to that as fully covered.
425 The Master: I will allow it. It is perfectly clear, I think.

A. No.

Mr. Neumann: That is all.

(Witness excused.)

Mr. Hyatt: I notice a mistake here on page 355 of the record. It says there are now new dwellings being erected in this locality for residential purposes. That should be changed to read, "there are no new dwellings being erected in this locality."
The Master: Yes.

GEORGE E. WOODS, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Woods, where do you live?
A. Long Island City.
Q. What is your connection with the New York & Queens Gas Company?
A. Consulting engineer.
Q. Are you now connected with the Consolidated Gas Company?
A. I am.
Q. In what capacity?
A. Assistant chief engineer and engineer of manufacture.
Q. How long have you been connected with or employed by the Consolidated Company?
A. With the Consolidated since March, 1901.
Q. In what capacity were you first employed by the Consolidated?
426 A. Engineer of manufacture.
Q. Do you hold at the present time any relation to any other gas company? If so, what?
A. I am chief engineer of the Standard Gas Light Company; Assistant chief engineer and engineer of manufacture of the Astoria Light, Heat & Power Company.
Q. How old are you?
A. Fifty.
Q. Prior to your connection with the Consolidated Gas Company were you connected in any other capacity with the New York & Queens Gas Company or with its predecessor company?
A. I was at a time Vice-President of the New York & Queens Gas Company.
Q. That was before your connection with the Consolidated?
A. No, it was before the Consolidated had anything to do with the Queens Company.

Mr. Neumann: Why not fix the time?

Q. Can you tell about when that was?
A. I would not like to state. My first connection with the Queens Company I think was along about 1901.
Q. What has been your experience and training in connection with the gas business from the time you started in in that field up to the present time?
A. I started in the gas business in March, 1884, in the coal gas plant at Evansville, Indiana. I was at that plant for five years. In 1889 I went to the Detroit Gas Company——
Q. What did you do at Evansville, what were your duties?
A. I went there as a boy. In five years I did practically everything around the gas works.

427 Q. Made gas?

A. Made gas, shoveled coal, filled purifiers, made drawings and plans for a new gas works to be built at Paducah, Kentucky, I went down there and started it up and put it in operation.

Q. In Evansville did you lay mains and services and the like?

A. I did.

Q. And from Evansville where did you go?

A. To Detroit, Michigan, as assistant superintendent of the Detroit Gas Company, where I had charge of the manufacture and construction around the plant.

Q. That is, you had charge of both operation and construction?

A. I did.

Q. During your period of employment with that company did you also install water gas apparatus?

A. We did.

Q. You then had charge of both coal and water gas manufacture and operation there?

A. I did.

By the Master:

Q. How many years have you been with the Consolidated?

A. The Consolidated itself, since 1901.

Q. That is over nineteen years?

A. Yes.

Q. What have been your duties there during those nineteen years?

A. For the Consolidated I have been engineer of manufacture in charge of all their operations in manufacturing primarily——

428 Q. Tell us everything you have been doing for the last nineteen years, so far as your connection with the gas industry is concerned?

A. During the nineteen years, at the same time I have been chief engineer of the Standard Gas Light Company and have had charge of the operation and construction of that company. My duties with the Consolidated Gas Company primarily have been in charge of the operation of their plants.

Q. The making of the gas.

A. The making of the gas, and except in the absence of the Chief Engineer I would perform the duties of an engineer.

Q. What would that be?

A. In charge of the mechanical department of the company.

Q. Give us that a little more in detail, just what you would have to do when acting as chief engineer?

A. Such duties as would devolve upon a chief engineer in so far as the construction of work had to go on, the approving of bills, the recommendations of things which ou-t to be done in the mechanical line in the operation and construction of the plants.

Q. Use judgment as to the cost of construction?

A. That is right.

Q. And as to the necessity of construction?

A. Yes, sir.

Q. And the time required to construct?

A. Yes, sir.
Q. In addition to which you had to do with the actual making of the gas?
A. Yes.
429 Q. And looking at the material?
A. Yes.
Q. And handling the material?
A. Yes, sir.

Mr. Hyatt: Did he ever draw up any estimates of cost of construction?
The Witness: I have.
Mr. Hyatt: How many times?
The Witness: I cannot recall the number of times.

Q. A number you mean?
A. Yes.

By Mr. Ransom:

Q. For example, in connection with the Standard Gas Light Company, as chief engineer, you had charge of the construction of additions to the plant, the laying of mains and the like?
A. During my connection with the Standard Gas Light Company I laid forty per cent of their mains that were laid, and increased the capacity of their plant probably sixty or seventy per cent in that time.

The Master: I take it, Judge Ransom, that you are calling Mr. Woods as an expert?
Mr. Ransom: Yes.
The Master: With reference to what particular branch of the case?
Mr. Ransom: Well, principally with respect to the cost of manufacture.
The Master: Anything else?
Mr. Ransom: I think not.
Mr. Hyatt: I shall object to him so far as he has gone, from testifying in that field, your Honor. I do not think he is qualified.
The Master: I think the objection is perfectly ridiculous.
430 Mr. Hyatt: Cost of operation now is a technical matter.
The Master: Any man who has been employed for twenty years or more in the actual production of gas is qualified to tell us about it.
Mr Hyatt: There is a technical side to that. I do not want to be captious at all, but I don't think he is shown to be qualified on the cost of operation.
The Master: I will rule out that any man who has been actually making and producing gas——
Mr. Hyatt: He does not show that he has any knowledge of the cost of material and labor or anything of the kind.
Mr. Ransom: I will ask him a few more questions, if your Honor please.

Q. Were you for some time general manager of the company in Little Rock, Arkansas?
A. I was.
Q. There did you personally manage the enterprise and keep its books?
A. I did.

Mr. Neumann: Why not fix the time?
The Master: Well, it was prior to 1901?
The Witness: Yes.

Q. During the time that you have been with the Standard Gas Light Company, and with the Consolidated, and the Astoria Company, are the gas records of those companies under your continuous observation?
A. They are.
Q. Is it part of your duties to make analysis of those?
A. That is part of my duty.
431 Q. To observe the actual result of operations in the plants?
A. That is so.
Q. You take experimental tests from time to time?
A. Yes, sir.
Q. Of methods of operation?
A. Many of them.

The Master: Do you have to do with the employment of labor?
The Witness: Yes, sir.
The Master: Do you know what you have to pay them?
The Witness: I do, and generally have to fixe the rate.

Q. That is, in general you are in charge of the rates of pay, and the general oversight of the labor forces of the Consolidated Company and the Astoria Company?
A. That is so.
Q. And are you consulted about these things with respect to the New York & Queens Company?
A. I am.
Q. You have been familiar with their plant for how many years?
A. Since 1901.
Q. Do you from time to time observe at the plant their operating conditions and results?
A. Yes, sir.

The Master: How often do you visit that plant, Mr. Woods?
The Witness: Recently I have been so busy that I have not been there as often, but every month or six weeks.

432 Q. And their operating figures are under your constant analysis?
A. They are.

By Mr. Hyatt:

Q. The cost of labor, Mr. Woods, is that about uniform with respect to certain kinds of labor in all gas works?

Mr. Ransom: I object to the question. It has nothing to do with his qualifications.

Mr. Hyatt: I want to test his knowledge.

The Master: The question will not be allowed.

Mr. Hyatt: Exception.

The Master: The Master is satisfied from what the witness has said that he is a competent expert.

Mr. Hyatt: He is partially qualified. I will concede that——

The Master: On the general gas making industry, and I am going to accept him as such without further waste of time.

Mr. Hyatt: Exception.

Mr. Neumann: That inures to the benefit of all defendants?

The Master: Certainly. There must be somewhere or sometime in this case when counsel will concede that day is day and night is night.

Mr. Hyatt: I object to that. I do not want to be captious at all, but this is technical information we are after, and I think the witness should qualify thoroughly.

The Master: I say it is perfectly ridiculous to even suggest that a man who has been in actual charge of the operation of the plant of the Consolidated Gas Company, and of the Astoria Light,
433 Heat & Power Company, and this company and the Standard Company for over twenty years, with the responsibility that this man has had, according to his sworn testimony here, is not competent—I say that is a ridiculous position to take.

Mr. Chambers: Do you think that a lawyer engaged in practice for twenty years makes him a lawyer? I don't.

Mr. Ransom: With some it does not.

The Master: A man who has practised law for twenty years is competent to testify as an expert on matters of law, I don't care how good or bad he is.

Mr. Neumann: He may be on certain branches of the law, but he may have specialized, and that may be true of this witness.

The Master: Yes, but he has conducted both coal and water gas plants.

I suppose you have handled both coal and water gas plants?

The Witness: Yes, sir.

The Master: The Astoria plant has both coal and water gas?

The Witness: It has.

The Master: And prior to your connection wtih the Consolidated you handled both coal and water gas?

The Witness: I did.

The Master: And you have watched the development of the industry for the last twenty or thirty years?

The Witness: I have, and visited most of the large plants abroad.

The Master: Go ahead and ask him.

434 By Mr. Ransom:

Q. This plant of the New York & Queens Gas Company manufactures about how many million cubic feet of water gas on the daily average?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not the proper method of proving it.

Mr. Ransom: It appears from other documents.

Mr. Hyatt: It is not connected up, and the foundation has not been laid for it.

Mr. Ransom: I will withdraw the question, because it appears from exhibits already in evidence that it is about a million cubic feet of water gas on the daily average.

Mr. Neumann: The difficulty with that is that we have not the exhibits.

Mr. Ransom: Of course you have. You have had them for weeks, showing both 1918 and 1919.

The Master: Proceed.

Q. Mr. Woods, have you at my request prepared a statement giving the details of the quantity of materials and the quantity of labor, and the like, required for the manufacture of a million cubic feet of carbureted water gas on the daily average, of the quality to meet the statutory requirements within the City of New York?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The question presupposes no particular plan, it is hypothetical and not based on anything proven in this case.

The Master: That objection will be overruled. Is there a statutory requirement for this company?

435 Mr. Ransom: Yes, sir.

The Master: What is that, 22 candle power?

Mr. Ransom: 22 candle power, contained in the same statute.

(Question read.)

Mr. Neumann: You mean that is an estimate of the cost of furnishing gas of 22 candle power—that is a technical question. The witness is not qualified in that particular field to give an answer to that question.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

A. I have.

Q. Is this such statement?

A. It is.

Q. In the first column of this statement you have shown the various items of materials, such as coal and oil and the like.

Mr. Neumann: I object to it on the ground that it is incompetent, irrelevant and immaterial, and not the proper way of proving that statement, by reading from it.

Mr. Ransom: I haven't read anything from it, I am simply identifying the title.

Mr. Neumann: The statement will probably speak for itself when it gets into evidence, if it ever does.

Mr. Chambers: I object to that on the ground that he is going into a paper which is not offered in evidence. I am waiting to object to that paper if he seeks to offer it. He has not attempted, in my judgment, to ask any questions about that that are objectionable. When he does I am going to plant my objection in
436 the record, with the usual exception, I suppose.

Mr. Hyatt: The question in my mind is whether this witness is qualified to draw up such a statement.

The Master: Well, the question now is, in the first column you have shown the material. I will allow that question.

Mr. Neumann: That is all right as long as he does not specify them.

A. Yes, sir.

Q. And in the second column you have shown the quantities of the different kinds of materials?

A. That is right.

Q. And in the case of labor you have shown the rate of pay per day?

A. That is right.

Q. In the first column under the category of labor you have shown the number of men of the different kinds of employees under gas-making labor, and repair labor.

A. That is right.

Q. In the third column with respect to materials, you have shown certain prices per unit of material?

A. That is so.

Q. From what source did you obtain those prices?

A. From vouchers of the New York & Queens company.

Q. And in the next column you have shown what you describe as the total cost per thousand cubic feet of each of the different classes of materials and of labor?

A. If that is the column.

437 Q. And in the next column you have expressed that in terms of quantity of materials per thousand cubic feet.

A. The column that you speak of now, as I recall, represents the amount of money expended to make a million feet of gas. Is that right?

Q. Yes, that column. Then the next is the material per thousand cubic feet, and the last column is the cost in cents per thousand cubic feet?

A. That is so.

Q. For each of the different classes of materials and of labor?

A. That is right.

Q. And you state that cost first in terms of cents per thousand cubic feet of gas made?

A. That is right.

Q. And then in terms of cents per thousand cubic feet of gas sold?
A. That is right.
Q. Upon the basis of what percentage of gas unaccounted for?

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial.
The Master: I will let him state.
Mr. Neumann: Exception.

A. 10 per cent.
Q. Does the New York & Queens company use a high pressure transmission system in supplying any portion of its territory?
A. They do.
Q. That is the so-called Douglaston Extension area?
A. That is right.
Q. Is that necessary?
438 A. It is necessary, yes, sir. You have got to have high pressure distribution for small mains to get it there, or a large expenditure of money to deliver it under low pressure.
Q. The Douglaston district of this Company's territory is a remote district?
A. That is right.
Mr. Neumann: I move to strike out the word "remote." He can indicate how far it is from the works. "Remote" does not mean anything.
The Master: I will let it stand, and then have him say how far it is.

Q. Do you know about how far it is from the works?
A. Well, about how far; I should say four miles.
Q. And about how far is it from the so-called Flushing district?
A. Well, you run from the Flushing district into the Bayside district, and then beyond that going out Broadway into the Little Neck and Douglaston section to the City Line.
Q. It goes across a meadows?
A. That is right.
The Master: Is this based upon the New York & Queens plant, or some other plant?
The Witness: This is based upon a plant of about the capacity and location of the Queens plant, operating as under the conditions as they would operate at the Queens plant.
The Master: It is practically your testimony as to what the Queens plant ought to do, is it?
439 The Witness: I would say that the Queens plant, in my judgment, under good operating conditions, would produce a result about like that.

Mr. Hyatt: Is this gentleman a bookkeeper or accountant at all.

Q. This use of the high pressure transmission system requires the use of more or less boiler coal?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and on proper foundation laid for it at this particular time.

The Master: Objection overruled.
Mr. Neumann: Exception.

Q. What is the answer?
A. It requires more boiler fuel.
Q. That is, a greater quantity of boiler fuel is required for sending gas out under a high pressure transmission system than would be required under the ordinary pressure condition?

Mr. Neumann: Objected to on the ground it is repetition, already covered by the witness' last question and answer.
Mr. Hyatt: I do not like the form of the question; it is leading.
The Master: That is overruled.
Mr. Neumann: Exception.
Mr. Hyatt: Exception.

A. Yes, it requires a greater amount of boiler fuel, in that the gas that is delivered under high pressure must be put through pressure pumps for the purpose of making delivery, and that requires power, which in turn takes steam.
Q. What are the factors which go to make up and produce what is called unaccounted-for gas?

440 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, no foundation laid for it at the present time.
The Master: Overruled.
Mr. Neumann: Nothing shown that there is any unaccounted-for gas.
The Master: Overruled.
Mr. Neumann: Exception.

A. By slow-consumers' meters, condensation in mains, leaks in mains and services, differences in temperature at which the gas is registered at the consumers'——
Mr. Neumann: What is that last, Mr. Woods?
The Witness: The difference in temperature at which the gas is registered at the consumers' meters, below 60 degrees.
Q. That is, the gas is registered at the company's works as of what temperature?
A. It is corrected as of 60 degrees.
Q. And in the consumers' meters it may be of differing temperatures?

Mr. Neumann: That is objected to, on the ground it is incompetent, irrelevant, immaterial, and a conclusion of examining counsel. The witness's answer speaks for itself.
The Master: Overruled.
Mr. Hyatt: Your Honor, that does not mean anything, because the consumers' premises may be above 60 degrees or below 60 degrees. Until we can find out what the consumers' premises were, we have no basis for making any determination of that kind.

A. It may be and is.

Q. Have you stated all the factors which now occur to you?

A. Just for the moment I think I have.

441 Q. Is it your experience that there always is a margin of difference between the quantity of gas made and sent out and the quantity of gas which goes through the consumers' meters as sold?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes, there always is a difference.

Mr. Cummings: He does not know how to account for it.

Mr. Ransom: He has accounted for it.

Q. Is it your experience that this loss of gas or gas unaccounted for is a higher or a lesser percentage in the case of a company serving a territory which may be described as suburban, than it is in a company supplying a more closely-built-up area?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, no foundation laid for it, nothing here indicating whether this company serves in a suburban or a closely-congested district, or not.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. It would be more.

The Master: Is this a closely-built-up section or is it a suburban section?

The Witness: It is a suburban section, your Honor.

Q. That is, the percentage of unaccounted-for gas is greater as the number of services per mile of mains is smaller?

Mr. Chambers: Objected to.

The Master: Overruled.

Mr. Chambers: Exception.

442 A. Services and sales per mile of main. All those things would affect any percentage, because whether it is a leak in a service or a leak in a main, the leakage would be no greater if you were putting ten million through a year or three million, that is so far as the particular leaks are concerned. In that way the actual leakage would be more in a section where the sales per service and per mile of main were less than in another section served.

Q. And the unaccounted-for gas would be greater expressed in terms of percentage because figured on a smaller base?

A. That is right.

Q. And in the case of what might be called a scattered area with smaller mains, does the gas move through the mains or tend to move through the mains more slowly and thereby produce greater condensation?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, nothing shown with reference to that as far as this particular company is concerned.

The Master: Overruled.

Mr. Neumann: Exception.

A. That is so, and that to some extent has an effect upon the candlepower. It has a little more oil on that account.

Mr. Hyatt: I move to strike it out.

Mr. Neumann: I move to strike out the witness' reference to candlepower; it is not in response to the question and is uncalled for.

Mr. Hyatt: The only thing called for was the question of
443 condensation, and candlepower was not included in the question. I move to strike that out.

The Master: I will not strike it out because it simply comes out with another question, and it is a waste of time to strike it out now.

Mr. Hyatt: This man does not know anything about candlepower as far as this record is concerned, or anything to indicate the candlepower has been raised.

Mr. Cummings: They can assign some reason, perhaps, but he simply knows it is not there, that is all.

The Master: I disagree with you.

Q. Mr. Woods, taking into account all of the factors known to you and appearing with reference to the New York & Queens Gas Company, do you consider 10 per cent of gas made as the percentage of gas unaccounted for a reasonable or an unreasonable condition?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

Mr. Hyatt: And nothing shown here as to his experience with other companies.

Mr. Neumann: It is not shown as within this witness' qualifications, not the subject of opinion testimony, and highly speculative.

Mr. Hyatt: In this particular field he has not qualified, your Honor, as I remember it, as to the unaccounted for gas of other companies.

The Master: Objections overruled.

Mr. Neumann: Exception.

The Master: Any man who has run a gas plant for twenty years knows something about other gas plants.

444 Mr. Hyatt. He has been with the company for twenty years, but I do not know that he had anything to do with unaccounted for gas of other companies.

Mr. Chambers: We should try this case on the facts in it.

Mr. Neumann: He may know something about congested districts, but he does not know——

The Master: He has been connected with this company since 1901.

Mr. Chambers: Well, as to the unaccounted for, what is the use judging from his experience in other companies? You are going to judge this case on the experience with this company.

The Master: I think so, but I will take this witness' opinion.

Mr. Chambers: What does it show from 1906 down to date as an average?

The Master: I do not know yet.

Mr. Hyatt: It is a very easy way to prove a case, your Honor, in the absence of any particular records.

Mr. Neumann: We have not a large case here, we have a case where they can prove the facts, and the law requires they must prove them beyond a reasonable doubt. This is an important issue in the case, the unaccounted for gas.

The Master: I know it. I understand how important it is, and that is why I welcome the testimony of a sworn witness, who swears that 10 per cent is or is not reasonable, so that you can cross-
445 examine him and show that he is wrong about it. I would rather rely on that than on the books.

Mr. Hyatt: I would rather find out the extent of his knowledge.

The Master: You will have plenty of time for that.

Mr. Chambers: Exception.

By the Master:

Q. Is it or is it not a reasonable loss?
A. A reasonable unaccounted for, your Honor.
Q. You think it is?
A. I do.

Mr. Hyatt: The witness in the Consolidated case said it was otherwise.

By Mr. Ransom:

Q. Mr. Woods, in connection with the making up of this statement have you also prepared as to each of these items——

The Master: Let me interrupt you. I have looked at that supplemental memorandum that he has got there, and I think the best way to bring it out is by question and answer. It is not long; ask the questions to bring it out. I have taken a short cut where there has been a long complicated statement, and this is so short I think we better get it on the record.

Q. Mr. Woods, in the operation of a water gas plant such as that of the New York & Queens Gas Company, producing on an average approximately a million cubic feet per day——

Mr. Neumann: One moment. I move to strike out from that question the words "approximately a million cubic feet." There is nothing here shown in the present state of the record to indicate that.

446 The Master: May be he will get it in a future state of the record.

Q. (Continued.) How many pounds of anthracite generator fuel would be required to produce a thousand cubic feet of gas?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial; it is based on an hypothesis. We can prove the facts here by competent evidence directly showing what the experience of this particular company was.

The Master: Yes, we will get that, too; but I want Mr. Woods' testimony on it.

Mr. Neumann: I except to your Honor's ruling.

Mr. Hyatt: Exception.

Mr. Chambers: Exception.

The Master: We are talking about this particular plant.

The Witness: I understand.

The Master: How many pounds of generator fuel would it take to produce a thousand cubic feet of gas?

A. About 37 pounds of generator fuel would be required, of which about 34 pounds would be used in the generator and 3 pounds would be fine screenings which could be used for boiler purposes.

Q. That is small and unsuitable for generator purposes?

A. That is right.

Q. As a result of handling and other facts?

A. That is right.

Q. How much anthracite boiler coal or its fuel equivalent would be required?

Mr. Chambers: Same objection.

447 A. About 22 pounds, 3 pounds of generator fuel and 19 pounds of buckwheat or boiler fuel, or its equivalent in tar or something else.

Q. That is based on the transmission of a portion of the gas under high pressure to the Douglaston District?

A. That is right.

Q. In the matter of cost of fuel, generator and boiler fuel, there is the matter of labor, handling and carting. How does this company at the present time, or as of December 31st, 1919, get its generator and boiler fuel to storage in the plant?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. It may not be within the province of this witness to testify to that.

The Master: Overruled.

Mr. Neumann: The station superintendent would probably be the best witness.

The Master: Overruled.

Mr. Neumann: Exception.

A. It is handled by stevedores from the boat, into automobile trucks, and delivered into the plant yard where it is put into storage.

Q. And have you computed a cost per ton of such labor, handling and cartage?

A. $1.25.

Mr. Neumann: One moment. I move that that answer be stricken out. We ought to be given an opportunity to object in time. That

is objected to on the ground it is incompetent, irrelevant and immaterial, based upon an hypothesis where we may be able to prove the exact price.

The Master: Overruled.

Mr. Neumann: Exception.

448 The Master: Have you figured that cost of handling?

The Witness: I have, at $1.25.

Mr. Neumann: I move to strike out the witness' answer, $1.25. His answer that he has figured it is all right, but his figure should be stricken out.

Mr. Hyatt: I object to the witness testifying to the figure.

The Master: I will let it stand as it is, I am not going to have two questions on it.

Mr. Neumann: I take an exception.

Q. Assuming that a new railroad siding and appurtenant coal-handling facilities are installed at this plant, as has been indicated, would this expense of labor, handling, carting, and so forth be increased or decreased?

Mr. Neumann: I object as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. It would be reduced.

Q. About how much; have you figured it?

A. It would be reduced to about 50 cents a ton, I should say.

Q. But that would involve an increase in the investment in land and apparatus?

Mr. Neumann: One moment.

A. It would.

Q. Now with respect to oil, is the fuel efficiency as great in a plant of this size and capacity, making gas under the conditions prevailing at that plant, as in a larger plant operating continuously during the 24 hours?

Mr. Neumann: Objected to on the ground it is incompe-
449 tent, irrelevant and immaterial, and assumes a state of facts that have not as yet been proven.

The Master: Overruled.

Mr. Neumann: Exception.

A. No, I would not expect to get the same results at Flushing, operating as they do, as we would in our plants here.

By the Master:

Q. Well, how do they operate over there; I don't know yet.

A. Well, at some periods of the year they may operate for 24 hours of the day; at other periods they will only operate 16 hours of the day.

Q. What periods will they operate 24 hours of the day, during the cold winter months?

A. During the winter months.

Q. At the peak demand?

A. At the peak demand.

Q. And when do they get down to 16 hours?

A. Well, they will get down there in the spring, possibly, or in the summer or the fall. Their summer consumption there is about as much as in the spring and fall, because—I have not seen the figures lately, but as I recall, April or September are probably their lowest months, and they are just about where they are leaving off furnaces and going into the other, and there the load is just a little bit more.

There are two things that affect both coal and oil average in respect to a plant like Flushing, where it is partly shut down, the radiation losses from the machines affect your coal average, because you have that loss going on while the machines are down. The making up period in the morning requires a little more time in order to get a good fire condition for your oil, and another
450 thing that always operates against a plant of that kind is where you get a cargo of coal that may be bad, of 600 or 700 tons, you have a period of time when you have to operate under a poor fire condition.

So I think you would find in the operation of the Flushing plant or any plant operating in that way, that the coal will run anywhere from 32 to 40 pounds, depending on the character of coal they get, which they must use up in a larger plant, and you would not have that, the coal would last you only a few days, or you would mix it up with other coal. As soon as you have a bad fire condition, your oil efficiency is affected.

Mr. Neumann: I move to strike his answer out. Are you finished, Mr. Woods?

The Witness: Yes.

Mr. Neumann: I move to strike the witness' answer out on the ground it is based on assumptions and presumptions.

The Master: Objection overruled.

Mr. Neumann: Exception.

By Mr. Ransom:

Q. That is, a poor quality of coal increases the——

Mr. Hyatt: I object to that.

Mr. Neumann: I object.

A. A poor fire condition will always affect the oil results.

Mr. Chambers: I move to strike that out as argumentative.

The Master: I do not think you need go over that again.

Q. Has the coal during recent years oftentimes been of inferior grade?

451 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Chambers: The witness has not any knowledge on the subject.

The Master: I am going to find out.

By the Master:

Q. Have you kept in touch with the quality of coal delivered at Flushing?

A. Yes, I have, your Honor.

Q. To what extent?

A. Why, we have an analysis of their cargoes and a knowledge of the results from the operations of their various cargoes.

Q. You are watching that all the time, are you?

A. All the while. I get reports from Flushing the same as I do from the other companies.

Mr. Ransom: And some parts of their coal at least are taken to Flushing from the Astoria?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it, not by what this witness——

Q. Do you know?

A. Yes.

Q. Have you seen it?

A. We have shipped them coal.

Q. Have you seen that done?

A. I have.

Mr. Neumann: Exception.

By Mr. Ransom:

Q. In the operation of this Flushing plant——

452 The Master: When you speak of the Flushing plant you mean the plant of the complainant company.

Mr. Ransom: The New York & Queens.

The Master: Let us have that clear on the record. When we talk about the Flushing plant, Mr. Woods, we mean the plant of this particular company.

Q. There is no other plant in Flushing, is there?

A. There is not.

Q. Is it true that during portions of the year the second machine is run only part of the time?

Mr. Hyatt: I object to that. I do not know how many machines this company has.

Mr. Neumann: There may be a dozen.

By the Master:

Q. How many machines are there?
A. There are three machines, your Honor.

Mr. Neumann: That is better.

Q. When you are running it sixteen hours, how many machines do you run?
A. It would depend on whether they have two seven foot six machines and one eight foot six. In some periods of the year they would probably run sixteen hours on the one machine.
Q. Which one?
A. On the larger machine. It would require two machines to be operated, two of the smaller machines, at least sixteen hours to supply that business, and possibly sometimes during the winter they might require one of the large ones and a small one to take care of the load.

By Mr. Ransom:

Q. During part of the day?
A. During part of the day.
453 Q. And does the running of a machine during only part of the day tend to increase somewhat the quantity of oil used?

Mr. Neumann: I object to it on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.
Mr. Ransom: Quantity used per thousand?
The Master: Overruled.
Mr. Neumann: Exception.

A. It has an effect upon it in getting it in condition in the morning, or whatever time they start up. There is some slight loss in efficiency in that result. It is not very great.

Mr. Neumann: I move to strike the witness' answer out.
Mr. Hyatt: There is nothing very definite or specific about this.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. What, in your judgment, to produce a 22 candle power gas on the district of such a plant, is the required quantity of gas oil, on the average?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.
The Master: Overruled.
Mr. Neumann: Exception.

A. I would say 4.2 gallons.

The Master: Making what candle power at the works?
The Witness: That would vary, your Honor.

Mr. Neumann: I object to the Master's question upon the ground that the statute provides how the test should be made. How
454 it is made at the works is not the criterion; it is what it tests at least a mile from the holder.

The Master: I understand that. Overruled.

The Witness: Well, that would very at times. I think from 23½ to 26 candle power at the works.

By the Master:

Q. Of course, the only way that you can gauge the candle power test a mile from the holder is by making it a certain candle power at the works, is it not?

A. That is right.

Mr. Chambers: I object to that.

Q. That is the only way you could possibly figure on what it would do a mile from the holder?

A. That is right.

Q. As a result of your many years' experience have you figured what it should do at least at the works, to produce a required candle power a mile from the holder?

Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial, because the statute provides where the test should be made.

The Master: Yes, I understand that.

Mr. Neumann: And the moment we get away from the statutory requirement, your Honor, we wander very far afield.

The Master: Yes. Well, you know what I think of the statutory requirement.

Mr. Neumann: That still does not prevent me from making the objection—making the record.

455 Mr. Hyatt: May I ask the witness whether he has ever made a photometric test of the candle power since he has been a gas engineer?

The Master? Yes, I will let you do some questioning when I get through.

Mr. Neumann: May I have an exception to your ruling?

The Master: Yes.

Q. As a result of your experience, have you any figure as to what should be the candle power of the gas at the works in order to supply the statutory requirement a mile from the holder?

Mr. Neumann: Same objection.

The Master: Yes, overruled.

Mr. Neumann: Exception.

A. I have.

Q. What is it?

A. Depending on the conditions, it would be anywhere from 23 to 26 candle power.

By Mr. Ransom:

Q. For a plant of this kind?
A. Yes.
Q. And in this kind of a district?
A. That is right.
Q. Does the fact that the mains are smaller and the distances greater tend to have any effect?
A. It would. In extremely cold weather you might get the candle power at the plant, and not on the district, without having the required candle power. There are other times that your drop would be comparatively small.
Q. In a suburban district such as the New York & Queens Gas Company covers, is there any considerable consumption of gas at night?

456 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving it.
The Master: Overruled.
Mr. Neumann: Exception.

A. Well, my judgment is—I do not recall now just what the send-out has been for each hour, Judge. Of course, they have the lighting of some of the homes, and for the cooking. They have that. Of course it does not extend greatly into the night, to any extent.

Mr. Chambers: They have that everywhere.
Mr. Neumann: In view of the witness' answer I move to strike it out. It indicates quite clearly that the books themselves, if properly kept, would be the best evidence of that fact, not this witness' guess.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. Mr. Woods, in the making of gas by the carburetted water gas method, are there any residuals produced in the nature of tar and drip oil?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial; the words "nature of tar and drip oil" should be left out.
The Master: Overruled.
Mr. Neumann: The witness should testify, not the examining counsel.
The Master: Overruled.
Mr. Neumann: Exception.

A. There are.
Q. What would be from your experience the approximate quantity of tar?

The Master: What should be.

457 Q. What should be the quantity of tar produced with the quality of oil now obtainable and being used?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on an hypothesis. The very facts themselves can be proven in a direct way.

The Master: Overruled.

Mr. Neumann: Exception.

A. About sixteen per cent would be a fair average.

Q. That is the tar produced to the oil used would be in the ratio of about sixteen per cent?

A. Sixteen, yes.

Q. How about the drip oil?

A. One and a half per cent.

Mr. Chambers: Just a minute. I want to get an objection in to that drip oil question.

Mr. Neumann: Same objection.

Mr. Chambers: We object on the ground it is incompetent, irrelevant and immaterial, and it is an hypothetical question, without stating what the hypothesis is based upon, and I take an exception.

The Master: Overruled.

Mr. Hyatt: Or what the hypothesis apply to.

Mr. Chambers: I never heard of an hypothetical question without stating the hypothesis. What kind of a machine is it, or who are the operators, and so on. Exception to the ruling.

The Master: Overruled.

Mr. Neumann: The vice of this line of testimony, if the Master please, consists in this—that they may by their own books,
458 if properly proven, show these very facts, and yet a witness is allowed to testify to it based on an hypothesis.

The Master: Overruled.

Mr. Ransom: We have already shown it by the books, now we are confirming it by expert testimony.

Q. In the manufacture of water gas at a plant such as that, of this complainant, is there also necessary the use of iron oxide, water and sundry small materials?

A. That is right.

Mr. Neumann: One moment. That is objected to on the ground it is incompetent, irrelevant and immaterial, and sundry small materials is vague, incomprehensive and indefinite, and it should be stricken from the question.

The Master: Overruled.

Mr. Neumann: Exception.

Q. For what purpose is the iron oxide used?

A. Purification, extracting the sulphur, sulphuretted hydrogen, from the gas.

Q. That is, the gas is passed through receptacles containing iron oxide?

A. That is right.

Q. For what purpose is the water used?

A. The water is used for condensing purposes and for boiler purposes.

Q. Have you computed what the cost of this item should be per thousand cubic feet of gas made in a plant of this capacity and kind?

Mr. Hyatt: Objected to.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on an hypothesis. The
459 actual facts are susceptible of proof.

The Master: Overruled.

Mr. Hyatt: We do not know whether the plant runs efficiently, either, as a matter of fact.

A. I have.

Q. What is that cost?

Mr. Neumann: Same objection to that.

The Master: Overruled.

Mr. Neumann: Exception.

A. One and a quarter cents.

Mr. Chambers: How much?

The Witness: One and a quarter cents per thousand.

Mr. Chambers: Is that for water?

The Master: Iron oxide, water and sundries.

The Witness: Iron oxide, water and sundry supplies.

Q. In the matter of gas making labor, have you made up a statement of the number of men required to operate such a plant so as to produce on an average a million cubic feet of gas per day?

Mr. Neumann: If the Court please, that is objected to on the ground it is incompetent, irrelevant and immaterial; the subject is apparently covered by an exhibit heretofore put in evidence by the complainant, Exhibit No. 58, Sheets 1 and 2, and if anything, this may tend to impeach his own exhibit.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Hyatt: I object to it, your Honor, upon the ground that the number of men required to run a plant of this character—
460 what does the question mean? Does it mean to run a plant of this character in an efficient way, or some particular kind of company that operates at a very great disadvantage?

The Master: Objections overruled.

Mr. Hyatt: Therefore I object to it, and take an exception.

Q. Have you made up such a statement?

A. I have.

The Master: When a man says that you require a certain number of men, I assume in order to run it efficiently and economically; am I correct?

The Witness: Yes.

Mr. Hyatt: As a matter of fact, this plant might be very inefficient and they may take twice the number of men.

The Master: That is why I am letting Mr. Woods swear that to run it efficiently and economically it will take the number of men that he testified to.

Mr. Hyatt: There is nothing on the record to show that the plant is running efficiently.

Mr. Neumann: That may be the very reason for them introducing this evidence on the basis of an hypothesis rather than from the actual experience of this company.

The Master: We will get the actual experience, too.

Q. Mr. Woods, in your judgment is this plant run efficiently and economically?

A. It is.

Mr. Hyatt: I object to that.

Mr. Chambers: I object to that.

Mr. Hyatt: It calls for a conclusion.

461 Mr. Neumann: He may state the facts to show it is run efficiently.

The Master: I will take the opinion.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

Mr. Chambers: Exception.

Q. Are you familiar with the rates of pay or compensation of the various grades of gas-making labor of the complainant?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and already covered by Exhibit No. 58 introduced in evidence.

The Master: Overruled.

Mr. Neumann: Exception.

A. I am. I think I fixed that.

Q. And the same as to repair labor?

A. Yes.

Mr. Neumann: Same objection.

Q. What employees in your judgment are necessary for the efficient and proper operation of the plant that we have been describing?

The Master: Of this Flushing plant, what kind of repair labor do you need?

Mr. Ransom: I am speaking of gas-making labor first.

The Master: Well, gas-making labor.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, already covered by Exhibits 58 and 59—or Exhibit 58 only.

The Master: Overruled.

By the Master:

Q. You have set out on this statement you have prepared the various kinds of gas-making labor and the number of men needed, have you not?

462 A. Yes, sir.

Mr. Ransom: And the rates of pay.

Q. And the rates of pay?
A. Yes, sir.
Q. As to repair labor, what kind of repair labor do you need?
A. I have set it out here, your Honor.
Q. I know what you have set out, that is why I am asking you. Tell us.

By Mr. Ransom:

Q. What repair labor do you need in a gas works like this?
A. Masons, carpenters, laborers, ironworkers—all kinds of work that you would need around an establishment where mechanical operation of that kind is going on, making repairs of all sorts. Now, a plant such as the Flushing Plant could not afford to keep any such staff of mechanics on hand.
Q. All the time?
A. All the time, because they would not have the work for them. The result is that they have got to bring in at times certain masons to do certain work, certain carpenters to do other work, blacksmiths to do other things, machinists to come in. So that in the ordinary operation in my judgment it would require about two mechanics steadily employed——

The Master: One helper?
The Witness: One helper and two laborers, doing the work around, in the way of repair work.

Q. That is, on the average that would be the number of men steadily employed?
A. About four men steadily employed on repair work.

463 The Master: Or, putting it another way, you believe the cost of repair labor should show as a matter of actual operation about $23 a thousand?
The Witness: $23 a day, or 2.3 cents a thousand.
Mr. Chambers: Just a minute, Mr. Woods. I object to that as incompetent, irrelevant and immaterial, not a subject for opinion testimony.
The Master: Overruled. Now get down to repair material.

Q. With respect to repair material, is the cost of repair material for a plant of this size greater or less per thousand than for a plant of 10,000 or larger capacity?
A. It would be greater.

Mr. Neumann: One moment, I object to that on the ground it is incompetent, irrelevant and immaterial.

Mr. Chambers: Not the subject of opinion testimony.

The Master: Overruled.

Mr. Chambers: Exception.

Q. Why?

A. Well, in the first place much of the work, on account of the lack of mechanics around the plant, some work that ordinarily would be done around the plant by the mechanics, is brought in and the cost is more.

Q. That is machine and boiler work?

A. Machine and boiler work. In other words, the units are smaller, and while they wear out in the same length of time, yet the production per unit has been less, so that the unit cost per thousand as a result of that is more.

464 Q. That is, the wearing parts give way?

A. The wearing down of the pumps, the door frames, the lining, the firebrick lining of the generator, carburetter and superheater requires not quite as much repair as in a larger machine, but the unit production has been so much less than in a larger machine that the cost of repairs and materials will be more.

Q. First as to repair materials, have you figured what in your judgment the repair material required for such a plant would cost per thousand?

A. Yes, 3 cents per thousand.

Q. What does the item Miscellaneous Works Expense cover?

A. That covers the watchman, janitor, messenger, telephone, gas, electric light, stationery, repairs to the holders, or whatever miscellaneous expense would apply to operation of that kind.

Q. What do you figure should be the cost of that item?

A. About one cent a thousand.

By the Master:

Q. In this column here, Mr. Woods, this ought to be per million, should it not (indicating)?

A. Yes, cost per million.

Q. In stead of per annum?

A. That is right.

Mr. Ransom: I offer in evidence this statement entitled: "Cost to manufacture 1,000,000 cubic feet of carburetted water gas (daily average) of a quality to meet the statutory requirements of the City of New York.

Mr. Neumann: May we have copies of that before it is offered?

The Master: Only that first sheet.

465 Mr. Chambers: Is this it here (indicating)?

The Master: Yes, just the first sheet of it.

Mr. Hyatt: The District Attorney of Queens objects to it as incompetent, irrelevant and immaterial, not binding on this defendant and not within the facts of this case.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

Mr. Ransom: All of these self-constituted representatives cannot talk at the same time.

Mr. Chambers: Well, when the rest of them get through I will start. I object to it as irrelevant, incompetent and immaterial, improper; it is not the subject of opinion testimony. The witness has not shown he is qualified to give any such testimony in regard to this particular plant, and he has not shown he is qualified on prices. It is hearsay, secondary evidence, and based on some hypothetical plant and not an actual plant.

The Master: He is talking about this plant now.

Mr. Neumann: No.

Mr. Chambers: No, this is his own creation now.

Mr. Neumann: Quite the contrary.

By the Master:

Q. All this testimony that you have given has direct relation to this Flushing plant, Mr. Woods?

A. It has, your Honor.

Mr. Chambers: Then we will take it from the books.

Q. All your estimates have relation to the actual operation of the plant?

A. That is so.

466 Q. Or what it ought to do?

A. That is so.

Mr. Cummings: Or one like it.

Mr. Chambers: I do not think those answers are correct to your questions, with all due respect to Mr. Woods. It does not relate to this plant at all.

Mr. Hyatt: It is his idea of what this plant is.

Mr. Ransom: I suggest that we ought to have some formal order on the part of the defendants.

Mr. Chambers: So do I, on the part of complainant's counsel.

Mr. Ransom: They all talk at once like a pack of wolves.

Mr. Chambers: Also he is cumbering up the record with duplication. I thought you directed him to ask these questions, and which he attempted to do. Now he wants to put it in wholesale.

Mr. Hyatt: It is a very short and very ready way of proving a case.

The Master: That is not so at all, Mr. Chambers. There were three pages of notes brought out by these questions, which were explanatory of the figures. Now I am going to take the figures after hearing the objections.

Mr. Neumann: Before making my objection I want to ask the witness one or two questions.

The Master: No.

Mr. Neumann: May I not in order to formulate the objection?

The Master: No.

467 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, shown by the witness' testimony to be based on pure hypothesis, not on this particular plant, and the facts themselves can be proven directly from the books if the books are properly kept; and upon the further ground that these same facts are presumably contained in Exhibit 58 heretofore introduced by the counsel for the complainant.

The Master: The objections are overruled, the paper will be marked in evidence.

Mr. Chambers: I think you ought to exclude the prices. He does not know anything about gas oil.

The Master: He said he knew the prices and saw the vouchers.

Mr. Cummings: Your Honor, have you any idea that these are taken from the books of the company?

The Master: No, I have taken them on the same theory that I took them in the Consolidated Gas case. I do not want to rely entirely on the books as indicating a result, nor do I want to rely entirely on the sworn testimony of the witness' opinion; but when I find, assuming that I am satisfied in this case that the books have been properly and correctly kept, and in due course of business, that those operating records actually show substantially what Mr. Woods says the plant will do, and when there is no other witness to take issue with Mr. Woods as to what a plant like this, or this plant, will do, I am quite satisfied that the figures shown to me, checked up by operating results, are correct.

468 To illustrate what I did in the Consolidated Gas case, I took Mr. Woods' statement of what he thought it ought to do, I checked it up by operating results as per the books. In some instance I found that the books show slightly less coal or fuel used than the quantity Mr. Woods said ought to be used, and I therefore felt that the operating results appearing from the books, in the light of the sworn testimony given by Mr. Woods, could be relied on, and I did rely on them, and I based my decision on the books themselves and the operating results.

That is what I am going to do here. If when I get the books before me, and Mr. Teele's exhibits, I find that the operating results tally with what Mr. Wood says it will do and should do, and I do not hear any other witness come on the stand and take issue with Mr. Woods on the quantity of coal and oil used——

Mr. Cummings: Why didn't they do that first?

The Master: The books are in evidence; Mr. Teele put the books in evidence. I want his testimony confirmative and corroborative of the books' actual operating results. That to my mind is one way of getting a good result.

Mr. Chambers: I want to say on the record that if we do not challenge Mr. Woods' hypothetical figures and you draw the inference we cannot challenge them—I want to say you will be mistaken, because we rely on the fact that you cannot do this, as Mr. O'Brien says, in capsule form.

469 The Master: All right, you take your chances on that.

Mr. Chambers: We consider it incompetent.

The Master: The record before me is the testimony of Mr. Woods' that certain quantities are necessarily used in the efficient operation of this plant, and if there is not any sworn proof to the contrary, I am going to assume that there cannot be any.

Mr. Chambers: You will be in error if you do that.

Mr. Cummings: Then you shift the burden on to us.

The Master: The burden is on you when Mr. Woods comes in and says that it takes a certain quantity of coal and oil and labor to produce a thousand cubic feet of gas.

Mr. Cummings: Not in a plant of his own creation.

The Master: In any plant—and the books show that it does substantially that very thing, the burden shifts to you to show that it is wrong.

Mr. Cummings: But the minute you let him create a plant in his own mind, that is different.

The Master: The record shows what it is.

Mr. Ransom: This may be marked?

The Master: Yes.

Mr. Hyatt: The District Attorney of Queens County wants to file an objection to this exhibit, on the ground there is nothing shown in the witness' testimony that he is qualified to draw up an exhibit of this kind, or make the necessary computations. He is not
470 a bookkeeper or accountant so far as I have been able to determine from his testimony, and therefore I think it is highly objectionable. Also there is nothing on the record to show, except his bare statement, that this hypothetical plant conforms to this actual plant that the complainant has. I take exception if the Master overrules the objection.

Mr. Neumann: If your Honor please, I want to call your attention to this exhibit. The last line reads "Douglaston Extension under order of Public Service Commission for the First District." I think that is manifestly unfair; there is no order here at the present time.

Mr. Ransom: I will offer the order in evidence.

Mr. Neumann: Counsel for the complainant stuck his head in the door the other day, and then dropped it like a hot coal. Here we have something in the form of a joker. Counsel may claim he has proved that order by that exhibit.

The Master: I do not care whether he does or not.

The paper offered was marked Complainant's Exhibit No. 77, and is as follows:

(Here follows reproduction of statement of cost to manufacture one million cubic feet of carbureted water gas, etc., marked page 470*a*.)

	Quantity.		
Generator Coal (Anthracite) ..	15.18 Gr. Ton	at	$8
Boiler Coal (Anthracite)	1.34 "	"	
Boiler Coal*	8.48 "	"	
Labor, Handling, Carting, etc..	1.25 "	"	
Total Cost of Generator and Boiler Fuel			
Gas Oil	4,200 Gals. qt.		$
Tar and Drip Oil Credits.....	714 " "		
Net Cost of Oil.....			
Net Cost of Fuel (Coal and Oil)			
Iron Oxide, Water and Sundries			
Gas Making Labor:			
1 Superintendent	.....		$
1 Clerk	.....		
3 Gas Makers	at	$4.64	1
3 Engineers	at	4.93	1
2 Boiler Firemen	at	4.48	
2 Generator Firemen & Coal Passers	at	4.48	
2 Laborers (Purification, etc.)	at	4.00	
Sunday and Holiday Overtime	.....		
Repair Labor:			
2 Mechanics	at	5.50	$1
1 Helper	at	4.00	
2 Laborers	at	4.00	
Repaid Material			
Miscellaneous Works Expense ...			
Total Cost of Manufacture			
Unaccounted for Gas (New York & Queens Gas Comp			
Cost of Manufacture per M Cubic Feet of Gas Sold..			

*Additional Boiler Fuel used on account of Steam used for H
Service Commission for First District.

uretted Water Gas (Daily Average) of a Quality to Meet the Statutory Re for the City of New York.

ce.			Total cost per million.	Material per M cubic feet.	Cost in cents per M cu. ft.
44 per Gr. Ton			$128.12	34.00 lbs. per M	12.81 Cts.
44 " "	$11.31				
20 " "	52.58		63.89	22.00 " "	6.39 "
25 " "			31.25		3.13 "
.....			$223.26		22.33
072833 per Gal.			$305.90	4.20 Gals. per M	30.59 "
0425 "			30.35		3.04 "
.....			$275.55		27.55 "
.....			$498.81		49.88 "
.....			12.50		01.25 "
75					
00					
92					
79					
96					
96					
00					
73					
—			$67.11		6.71 "
00					
00					
00					
—			$23.00		2.30 "
.....			$30.00		3.00 "
.....			$10.00		1.00 "
....			$641.42		64.14 "
ny) 10% of Gas Made.					
.....					71.27 "

n Pressure Transmission in Supplying Douglaston Extension under Order of Public

471 Mr. Chambers: You let these exhibits go in with this incompetent statement on them, like this Douglaston Extension, and later on it confuses the Court, and you base a finding on it and it makes trouble for us.

The Master: The trouble is if they would let me select some of the judges they would not be so confused when they get something before them.

Mr. Chambers: I think you were misled in the Consolidated case by the other side's brief.

Mr. Ransom: He was misled in the Consolidated case in finding too low a cost of gas.

The Master: There was nothing in their brief or yours that I did not first check up. The only thing that I found that was of the slightest use was that the Rowland appraisal did not cover some meters and services as well as plants, and I put that in for you. It was the only thing worth while in your whole list of objections.

Mr. Chambers: I did not think you would take anything. You changed the company from "defendant" to "complainant."

The Master: Yes.

Mr. Chambers: I am obliged for that.

Mr. Ransom: I offer in evidence a certified copy of the order of the Public Service Commission in case No. 1856, Matter of the Extension of the Gas Mains of the New York & Queens Gas Company, to serve the Douglaston Area, dated March 19, 1915.

Marked Complainant's Exhibit No. 78.

Recess.

472 Afternoon Session.

GEORGE E. WOODS resumed the stand.

Cross-examination.

By Mr. Chambers:

Q. You didn't go over the books of this company, did you, Mr. Woods, to find out the amount of generator coal they are using?
A. No.
Q. Or the boiler coal, or any of these items?
A. I get reports as to what is going on from time to time.
Q. But that is based on somebody else's reports?
A. I didn't go over the books, no.
Q. What exhibit number is this?

The Master: Wasn't this marked as an exhibit?
Mr. Ransom: That is an original copy.
The Master: What is the exhibit number?
Mr. Ransom: Number 77.

Q. But you don't pretend to say that these are based on the actual experiences of this company as shown by their past history?

A. I should say that these closely approximate a plant of that size—the Flushing plant.

Q. But you didn't take their figures?

A. I didn't use their figures; I knew what figures they had and what the results were and knew what could be expected in a plant of this kind.

Q. What did they have for unaccounted for gas?

Mr. Ransom. When?

Mr. Chambers. Any time, 1916.

Mr. Ransom. Objected to as immaterial.

The Master. I will allow it.

473 A. I couldn't recall. I had seen it—I can't recall at the moment—it has been as high as 17 and 18 per cent and it has been down as low as 8½ and 9.

Q. You don't know, then, what the average is covering the last ten years?

A. Not the average, no. I think for 1919 it was about 11 per cent—that is my recollection.

Q. Well that was high, wasn't it?

A. I wouldn't call it low; I think 10 per cent is a good operating condition—I wouldn't call 11 per cent high.

Q. Well, unaccounted for gas is not measured by time, is it?

A. No, it is not measured by time, but it is measured by conditions.

Q. It ought to be just as much in 1906 as it is now?

A. No, no, not at all.

Q. Then it is a variable quantity?

A. It is a variable quantity; weather conditions would have a great deal to do with it.

Q. You can't fix any rules for unaccounted for gas, can you?

A. No, I said an average condition, a good operating condition would be 10 per cent—it might be more than that.

Q. Suppose it should be less?

A. A plant of that size would be extremely good. I don't know of any plant of that size operating around here at lower than 10 per cent; there may be; if there is one, I don't know of it.

Q. Well, this very plant you said was?

A. Yes, I said it has been around 8½ and 9.

Q. Well, there is one?

A. Yes.

474 Q. Don't you know what it is in any of the other plants, say the New York & Richmond?

A. I have seen a case, I wouldn't like to recall it now, I think it was 12 and 13 per cent.

Q. Well, you are just testifying now from recollection?

A. Yes, that is a guess.

Q. It might be less than that?

A. Possibly—I don't recall definitely, although I have seen a lot of them.

Q. As of what date are these quantities and prices here in this Exhibit 77?

A. As I recall, April prices.

Q. April, 1920, prices?

A. 1920, yes.

The Master: And quantity is of what period?

The Witness: As of an average condition. That would vary from time to time. You take an average condition, it would represent about that figure.

Q. When you testified in the Consolidated case, you made your generator coal different than you have made it now?

A. Yes.

Q. That was 32.50 pounds per thousand?

A. That was it.

Q. How do you explain that difference?

A. I explain that because they are not operating all the time 24 hours in the day. There is the effect of radiation, which will affect them to a certain extent, and a variation in the quality of coal that would affect them to a greater extent than it would in one of the larger plants because it had to cover a longer period of time.

475 Q. You are only speaking of one generator, aren't you, in both cases?

A. Speaking of plants. As I testified to it in the final testimony, you will recall, it was estimated on the 10,000,000 foot plant in the Consolidated case.

Q. You think there would be that difference between 32.50 pounds and 34 pounds per thousand.

A. I so testified.

Q. Well, on what do you base that now, Mr. Woods? Why should there be that variance in the generator?

A. Well, as I stated——

Q. You say when they are not in use—assuming they are in use?

A. If they are in use and giving the same grade of coal at both plants throughout the year, with a large plant and a small plant, the difference would not be quite that much; there would be a little more radiation loss, and so forth, in the smaller machine.

Q. Isn't it a fact that it wouldn't amount to very much?

A. No, not a great deal, but I believe, in my judgment, in operating conditions such as they have at Flushing, operating as they do, any plant operating as they do at Flushing, that 34 pounds per thousand would be a good operating condition.

Q. Do you know what they have done in the past?

A. Yes, I know.

Q. I mean this company—how many pounds?

Q. Oh, they have been down to 32½ and been up to 38.

476 Q. According to the grade of coal?

A. According to the grade of coal.

The Master: Don't the other operating conditions enter into that, too, as well as the grade of coal?

The Witness: As I say, when they shut down, of course, that has an effect upon it.

Q. Don't they shut down in a 10,000,000 plant, too?
A. They are operating continually throughout 24 hours in a 10,000,000 plant, generally speaking.
Q. Well, then you penalize the company here for not operating?
A. I don't penalize them; it is a condition that exists.
Q. How often do they operate these three machines in those plants?
A. I don't think that they are required to operate three at any time—they operate two.
Q. Two all the time?
A. No, not two all the time; the larger machine is at times capable of doing the work.
Q. What kind of coal did you figure on here in this exhibit 77?
A. The grade of anthracite we are receiving in the market here.
Q. What grade is that now?
A. It varies. That is the unfortunate part about it, it is not the same.
Q. Was it as good coal as you used when you testified in the Consolidated?
A. I would say that if we got the same grade of coal there wouldn't be that difference.
Q. You say the coal is not as good now?
A. We have had much better coal.
477 Q. And how long has that continued?
A. We haven't had coal that ran high in ash for the last three or four years, Mr. Chambers, and there are times when the clinker formation and so forth makes a lot of trouble irrespective of the quantity of ash.
Q. You are the same George E. Woods who testified in the Consolidated case, are you not?
A. I guess so.
Q. Do you remember that you were asked this question:

"Q. Mr. Woods, do you know how much generator fuel, anthracite, it takes to make a thousand cubic feet of gas?
"A. I do.
"Q. How much?
"A. 32½ pounds."

A. I did.

"By the Master:

"Q. Is that a recognized quantity?
"A. It is.
"A. By gas engineers?
"A. It is."

A. Right.
Q. That is correct, is it?
A. Yes.

"Q. Is there any dispute about it that you ever heard?
"A. No. You understand, your Honor——
"Q. Different grades of coal?
"A. Different grades of coal. The average amount would be 32½ pounds."

A. Yes.

"Q. You get more out of some coal and less out of others?
"A. That is right."

Q. That is correct, isn't it?
478 A. That is right, and I was testifying as to the Consolidated System when I was testifying.
Q. And that applied to water gas?
A. Applied to water gas, yes.
Q. Now you say you had in mind there 10,000,000 cubic feet when you testified in the Consolidated?
A. As I recall it, I testified to 10,000,000 pounds.
Q. Where did you get your prices from?
A. I got that from a voucher, from a recent voucher, from a bill and voucher of the New York & Queens Company.
Q. A 1920 voucher?
A. That is right.
Q. Where is the voucher?
A. It may be in court here.
Q. Did you just pick out one?
A. I just asked for a voucher giving what they were paying for coal of this kind.
Q. You don't know whether they are paying that, do you?
A. Well, I imagine the bill and voucher would indicate that.
Q. And that is the only source of your information?
A. Yes, that is my source of information.
Q. Now your boiler fuel, you got 1.34 here and 8.48?
A. Right.

The Master: That is per gross ton.

Q. That makes 9.82 pounds?
A. Tons—that is the amount required to make a million feet.
Q. In the Consolidated case you testified that it took what?
A. 14.
479 The Master: And in this case you say 22?
The Witness: 22.

The Master: That is a pretty large variance.

Q. Why is there such a variance there?
A. Well, the capacity of the plant would have something to do with it, shutting it down and keeping it warm in the winter time, the radiation loss would be greater with that plant than it would be with a larger plant, and eliminating the question of the gas transmission under high pressure, in my judgment, the fuel per thousand, boiler fuel over there, would be between 17 and 18

pounds without any higher pressure transmission whatever. I think 22 pounds would be a conservative estimate.

Q. Well, in the winter, isn't this company that is the complainant here, aren't they operating continuously?

A. They did operate in the winter time continuously, yes.

Q. That would not apply, then, if they shut down?

A. If they shut down in the summer time, their radiation loss is going on whether the plant is operating or not.

Q. But you have figured that they would not shut down in a 10,000,000 plant?

A. That is right; their boiler efficiency would not be as good—it would be more per thousand.

Q. The boiler coal depends on the quality of the coal, does it not?

A. Naturally it would have an effect upon it.

Q. Depending on the efficiency of the machines?

A. Yes.

Q. The skill of the operator?

A. Yes.

480 Q. How many pounds have they actually used in the last few years over there for boiler fuel to make a thousand cubic feet?

A. I don't recall the figure; I think it is 22 pounds at least—probably a little more.

Q. Did you check it up?

A. I think I have seen the figures—I know I have seen the figures—No, I did not check it up at the time I made it because in my judgment, under the conditions they were operating, 22 pounds would be the least they could get along with.

Q. You did not check it up to see?

A. No, I didn't have to check it up, because I was sufficiently familiar with the situation to take these figures without checking them.

Q. And your figures are based on the record of the company, or the books?

A. No.

The Master: What would seven-tenths of a gallon of water gas tar equal in coal, per pound of coal?

Mr. Hyatt: You mean in heating energy?

The Master: No, in weight.

The Witness: Nine and a half.

The Master: Nine and a half pounds?

The Witness: Yes.

Q. What kind of machines are these, Mr. Woods?

The Master: Just a moment. How do you figure that seven-tenths of a gallon into pounds of coal, what is the equivalent?

The Witness: A gallon of tar worth nine pounds would be 5.6 pounds tar times 1.7.

The Master: I see by the exhibit that in the year ending
481 1919, December 31st, they use sixteen pounds of coal in seven-tenths of a gallon of tar; that would make it over twenty-five pounds?

The Witness: Yes.

The Master: That is pretty high, isn't it?

The Witness: That is what they used. I think twenty-two pounds would be a good operating condition, your Honor.

Q. That is at the present time?

A. At the present time.

The Master: The impression that Mr. Woods makes on my mind, putting it that way, is, that he thinks they ought to have done a little better than the operating records show; isn't that so, Mr. Woods?

The Witness: Well, I believe that twenty-two pounds would be a good operating condition.

The Master: Then twenty-five is not a good operating condition?

The Witness: Well, there may be conditions that would justify; you take cold weather, &c., it might bring that up, or an excessive quantity, but in my judgment twenty-two pounds is a conservative estimate for boiler fuel.

Q. In other words, you say it takes eight more pounds in a million cubic feet of water gas than it does in ten million?

A. That is right.

Mr. Ransom: With the high pressure transmission.

The Witness: Yes.

Q. In your testimony in the Consolidated Gas case, did you have in mind the same kind of machines?

482 A. The same type of machine, but different size.

Q. What size did you have in the Consolidated?

A. Well, we operate ten, eleven and twelve foot machines in the Consolidated and these machines are seven foot six and eight foot six.

Q. It depends on the skill of the operator, the boiler coal you use?

A. When you speak of machines, I thought you were referring to generator apparatus rather than boiler apparatus. The steam boilers in the Consolidated are largely water tube boilers. They have some water tube boilers at Flushing and a few two-return tubular boilers.

Q. In the Consolidated Gas case you testified that labor handling would be .0075 per thousand cubic feet.

A. Right.

Q. And here you have it a dollar and a quarter.

The Master: What was it in the Consolidated?

Mr. Chambers: .0075.

Mr. Ransom: That is a dollar and a quarter a ton.

The Witness: A dollar and a quarter a ton.

The Master: What is it carried out at?

Mr. Chambers: That would be 3.13 cents.

The Witness: Yes, as against three-quarters of a cent in the other case.

Q. How do you explain that wide variance?

A. Because in the case of the Consolidated plant referred to, they were all on tide water where the coal was taken out.

Q. But you didn't base this on any Consolidated plant?

A. No, I said the Consolidated plants referred to were all on tide water where it was drawn right from the boat and put in the pile.

483 Q. You testified in the Consolidated case that you didn't base that on any particular plant?

A. No, I based it on a ten million plant; I said it ought to be on the water front—a plant of that size should be on the water front for economical operation.

Q. And this is not, you say?

A. No, this is not.

Q. Well, how do you go to work to handle this coal?

A. It has to be taken from the barge and put in automobile trucks and carted to the plant.

Q. A distance of how far?

A. Oh, I should say a half a mile.

Q. That is the way it is handled here?

A. That is the way it is handled.

The Master: Isn't this Flushing plant on the water front?

The Witness: No.

The Master: A half a mile inland?

The Witness: Well, I should say, probably—it isn't a half a mile from the water, but probably a half a mile, I don't know the exact distance, from where they would bring it.

Mr. Ransom: No place where there are any piers or bulkheads?

The Witness: No.

Mr. Neumann: Why not let the witness testify?

Q. Isn't it on any navigable water?

A. No. The amount of money involved, however, in the transportation would not justify the abandonment of the plant for the purpose of putting it on the water; the amount expended for the purpose of putting it on the waterfront would no- justify in

484 changing from the present location of the plant.

Q. Well, it is a badly-located plant, is it?

A. It may have been badly located but it is there.

Q. What did you figure on labor, how much?

A. A dollar twenty-five a ton.

Q. How many men?

A. That was the contract price they got; I didn't take into consideration the number of men.

Q. Isn't it on a railroad, this Flushing plant?

A. There is a railroad, but there is no railroad siding to the plant.

Q. But one could be built?

A. Yes, and probably will be.

Mr. Ransom: It is not on the railroad, the testimony in the case shows.

The Witness: I say it is not on the railroad but by the purchase of some land a siding could be put in.

Q. How far is it from the railroad?

A. Five or six hundred feet I should say—is that right Mr. Spear?

Mr. Spear: About 200 feet.

Q. Then if you had a little siding 200 feet, you would be rid of that transportation or some of it?

A. Yes, with the expense involved in doing that, putting it in.

Q. Supposing the railroad would put the siding in?

Mr. Ransom: Objected to. The company has indicated that they were going to do that when it could acquire the land. We have not yet proved the situation in that respect; the company could not do it until it acquired the land.

485 Mr. Neumann: You just stuck your head in the door, didn't you?

The Witness: They didn't go any further with it.

The Master: Objection overruled.

Q. Then you took that figure of coal-handling from the records of the company?

A. That is right.

Q. And that is not your idea about it?

A. Well, it is my idea because I knew what they were paying for doing that work. I think, under the conditions, it could not be done for any less.

Q. How much was that a year ago, say, or two years ago, that cost?

A. I don't know. I can recall some three or four or five years ago, it was I think fifty cents.

Q. In place of what, a dollar and a quarter?

A. Yes. That is just an illustration, Mr. Chambers, of how things have gone up all along the line.

Q. Well, things are abnormal. That proves it, doesn't it?

A. Well, is it a question of what may be considered abnormal. It looks now as if we had normal conditions, unless it goes higher.

Q. Suppose it goes lower?

A. If it goes lower, it will be lower.

Q. Well, it is an unusual situation, isn't it?

A. Well, the situation has been unusual for the last three or four years; based upon three or four years ago it is very unusual, from 1914, but whether you call it an unsual situation now is another proposition because it has become a usual condition with us.

Q. Now, with reference to your gas oil: You testified in
486 the Consolidated Gas case that it only required 4.10 gallons per thousand?

A. Right.

Q. And here you have it 4.20?

A. Yes.

Q. Why does it take more gallons of oil here?

A. Well, I testified that in shutting down a plant you are likely to have a little bit less efficiency; you would be more likely to have it with the bad quality of coal, which would affect your oil efficiency—I would not undertake to state that you could do it at less than 4.2 per gallon.

Q. Why should there be any shutting down in this plant, this hypothetical plant of yours?

A. For instance, if they were operating a machine, it would take a million and a half a day running the one machine, and their send-out was only a million and eleven hundred thousand, there wouldn't be any place to put the gas.

Q. Couldn't they get along with only two machines over there?

A. If they did, they would build another, if they ran two machines and needed a third.

Q. Well, they don't need a third now, do they?

A. They put in a third because they needed it. They had two 7 foot 6 machines which, at times, required the use of both those machines in operation——

Q. And sometimes——

Mr. Ransom: Let him finish.

The Witness: And then it became necessary, in order to have a reserve, to build a third machine?

Q. When did you build that third machine?
487 A. I don't recall—I am only speaking from memory—I think it was 1914 or 1915. I can't recall the date—has it been as far back as that, Mr. Spear?

Mr. Spear: About 1911.

Q. Now, you say that you have to shut down some of those machines, and that takes more oil and more coal; isn't it fair to say that you have too many machines there now?

A. Absolutely not.

Q. Couldn't you get along with one of those 7½-foot machines?

A. Could not get along with any less than we have now and the probabilities are that some of those will have to be changed to some extent in order to increase their capacity.

Q. Are those efficient machines?

A. They are.

Q. How long have they been in use?

A. Well, Mr. Spear said as far back as 1911 when the last one was put in, and I should say the other two were put in some time between 1905 and 1906—I don't recall the dates, Mr. Chambers.

The Master: What is the state of repair on them.
The Witness: They are in good condition.

Q. When will those machines be running twenty-four hours so that you won't have to shut down?
A. If they are running the one machine and sending out fifteen hundred thousand a day the one large machine would be running twenty-four hours.
Q. Then you couldn't have that extra loss there for shutting down?
A. No—you might have had coal just at that time which might have the same effect on it; or you might have cold weather
488 which will have an effect on the candle power.
Q. Well, your condition of pounds and gallons of coal in your ten million foot plant was subject to that same infirmity?
A. Yes, to some extent.
Q. Now, your tar and drip oil credit, did you base that on any records of the company?
A. That is under ordinary operating conditions with the grade of oil that we get, and for the purpose of carrying heat to produce twenty-two candle power, you get about that much. I have used sixteen and one and a half per cent, seventeen and a half per cent, combined the two, and the drip oil and the tar there will run from fourteen to eighteen and nineteen per cent, but an everage condition would be about seventeen and a half per cent of the drip oil and tar.
Q. That would vary, too, wouldn't it?
A. Oh, yes, it varies from day to day. The average condition for the year would be pretty close to that.
Q. Now, they use that tar, do they?
A. Yes.
Q. For fuel?
A. For the boilers.
Q. They could get more for it if they sold it?
A. If they did they would probably sell it.
Q. Well, do you know whether they try to sell it?
A. Oh, I think they have; my impression is that they have.
Q. What do they do with the drip oil credit, sell that?
A. I think they have sold it at some time; if not, it was burned with the tar.
489 Q. Do you know whether there is a market price for drip oil?
A. The Consolidated had a market price for drip oil.
Q. Isn't it over five cents?
A. There have been times—I think the market price for drip oil would be between four and five cents now.
Q. Didn't the Consolidated get over five cents for it?

Mr. Ransom: Objected to as incompetent and immaterial, as to what it was at some previous time; the testimony is that the price of certain of these residuals has declined since 1918.

The Master: I will allow the question.
The Witness: Yes, if the Consolidated got five, I think the Flushing would get less than that on account of the location.

Q. You allowed in the Consolidated case, .061 gallons per thousand?
A. That is what they had been getting, but you can't get it now.
Q. Here you only allow .04?
A. That is right.
Q. And for tar, in the Consolidated, you allowed .656 gallons?
A. Yes.
Q. How much did you allow for tar in this case, one million cubic feet?
A. What do you mean, on the Consolidated?
Q. You have lumped tar and drip oil together?
A. I think I took both at the same price, my recollection is.
Q. Well, there is a variance between your gallons of tar and drip oil?
490 A. Yes, but the method of disposing of this material and the small quantity of drip oil that they would make would be so small that I took 4¼ cents as an average price of the two, most of which is used by themselves and not worth any more than that for themselves.
Q. How do you explain that big variance between tar and drip oil in your testimony in the Consolidated case and here?

Mr. Ransom: Objected to as nearly a year ago.
The Master: Overruled.

The Witness: I was testifying as to prices as obtained in, I think it was October, 1918. The Consolidated Gas Company was not getting those prices for that material today.
Q. In other words drip oil has gone down?
A. Drip oil and tar has gone down.
Q. Both have gone down?
A. That is right.
Q. Considerably?
A. Considerably, yes.
Q. There is one thing that is not going up?
A. Yes, that is. It was up during the war because they were using those materials in the production of munitions of war.
Q. Well, there is one kind of oil that has gone down, isn't it, strange as it may seem, isn't that so?
A. Yes, drip oil is considerably less. Drip oil during the war commanded a very high price because they could extract toluol for government purposes, for munition purposes. Of course the bottom dropped out of it when the war was over.

The Master: What is it used for now?
The Witness: Practically for fuel purposes, is all.

491 Q. It is good oil, isn't it?
A. It is good fuel oil, yes.
Q. You could use it in the fuel burning business, couldn't you?
A. Yes.
Q. And those are on the increase?
A. I suppose they are.

Q. Isn't it good for anything else except to burn?

A. Oh, I think there are many cases where the amount that the contractors can take care of is limited and they will not take all of the tar that the Consolidated Gas Company produces except at a price at which they can burn it, because they have no market for it. There is a certain amount of those tars that they put in their stills and refine for the purpose of making pitch for the roads, &c., but with their congestion, the demand for it is less than the supply of tar, and we are restricted as to the amount we can sell them except for fuel purposes at a price that it is worth to them for fuel purposes, and they don't want to give us as much for that as it is worth to ourselves.

Q. How do you come to put down what it was worth to yourselves here at so low a price as 4¼ cents?

A. It wouldn't make a particle of difference whether it was 4¼ cents or ten cents as long as they were using it; it would be a credit in one case and a debit in another, and the production cost would be exactly the same.

Q. Suppose we put it down as ten cents?

A. If we could get ten cents we wouldn't be using it for
492 boiler fuel purposes; then we would sell it and use the boiler fuel for generating steam.

Q. How do you fix four cents?

A. Because the Consolidated price is about 4¼ and according to the market price it was the best we could get for it.

Q. The Consolidated was selling it for about four cents?

A. About that price.

Q. Aren't they selling it for five?

A. I don't know; they may have sold a small quantity, I didn't keep in touch with that; I think there may have been a small amount sold at between 4½ and 5, I am not sure.

Q. Then whatever the market price of that tar and oil is, it ought to be credited here?

—. ——.

Q. You have only credited four and a quarter cents?

A. That is all I believe it is worth and is all I believe they can get for it—they wouldn't get as much as the Consolidated Gas Company on account of the transportation facilities.

Q. But you have fixed four and a quarter cents?

A. Sure.

Q. That is what you think the credit ought to be?

A. Yes.

Q. You just said, Mr. Woods, that the net result would not be any different whether it was 4¼, 4½ or 5?

Mr. Chambers: Or 10, he said.

The Master: No, he didn't say 10. What I was going to ask you is, at what price could the stuff be sold where it would make a difference.

493 The Witness: That would depend entirely, your Honor, on the price that they paid for boiler fuel.

The Master: Well, take the price now of eight dollars and something for boiler fuel, at what price would it pay you better to sell the residual?

The Witness: I think a figure of between $4\frac{1}{2}$ and $4\frac{3}{4}$ cents—it is about fifty-fifty. Beyond that point it would be an advantage to sell.

The Master: If you could get more than $4\frac{3}{4}$?

The Witness: If you could get more than $4\frac{3}{4}$. There is always an element entering into that which, at times, you have got to consider is our inability to get labor; it has been a great disadvantage in the use of tar. Basing it upon actual costs, which considers the evaporation, the less labor in handling the ashes and putting in the coal, the less labor required to fire your boilers, it would be about that figure, $4\frac{3}{4}$ cents on the present price of coal. There are times, however, that we could better afford, almost of necessity, to use tar if we could get 5 cents, owing to our inability to get labor—that has been a condition that we have had for the last two or three years.

Q. Now, for iron oxide, water and sundries you figure $12.50 per thousand cubic feet?

Mr. Ransom: Oh, no, no.

The Master: A million.

Q. Twelve dollars and a half a million cubic feet, or 1.25 per thousand cubic feet?

A. Yes.

494 Q. Now, in the Consolidated case you allowed one cent.

A. Yes, sir. I believe that under ordinary conditions it would be about $\frac{1}{4}$ of a cent more.

Q. $\frac{1}{4}$ of a cent for every thousand cubic feet made?

A. Yes.

Q. What do you base that on?

A. Because of conditions that I know. Iron oxide, water and sundries is just one item in connection with this which would probably show somewhat different from what it shows in the cost account of the Flushing company, but I think you would find that iron oxide water and sundries was not less than $1\frac{1}{4}$ cents. You will also find that the boiler fuel is probably in excess of 22 pounds. That is to some extent accounted for from the fact that their water is probably less than we are using over here, because they have drive well in their place and they are pumping their water for condensing purposes and for their boilers. In supplying water right from the ground it requires a certain amount of steam to do that work, which is offset by the water bills they would otherwise have.

The Master: How much did you figure iron mass in the Consolidated case, do you recall?

The Witness: No.

Mr. Neumann: Iron mass and water, 1 cent.

The Witness: 1 cent, I think I figured. My recollection is that iron oxide usually costs $\frac{1}{4}$ of a cent per thousand cubic feet.

Q. It should not cost any more at Flushing than it did here in New York, should it, iron mass?

495 A. No, probably it would not.

The Master: How much did you say you figured on iron mass?

The Witness: The iron mass in the Consolidated case, I don't think I took it, I combined it. I think .25 to .35 cents——

The Master: The Teele exhibit here shows about 1¼ cents for iron mass alone. That is pretty high, isn't it?

The Witness: 1¼ would be high, if it cost that.

Mr. Ransom: The water and the sundries supplies brings the Flushing over 1¼ cents.

The Master: What I want to get from Mr. Woods is his statement that I have gotten, that 1.023 is pretty high for iron mass.

The Witness: I don't recall what that figure is, your Honor. I think that for iron mass it would be high. I think the probabilities are they loaded up with iron mass during that year. That material, you know, is used over and over again until it becomes spent.

The Master: Then I cannot take his 1.023 as being the average?

The Witness: No, I think 1.023 as an average for the oxide would be high.

Mr. Ransom: But the three items together, ¼ would be all right.

The Witness: I believe that would be absolutely right.

The Master: How could that be, when the water here is only .09 of a cent, and the sundry supplies only .02 of a cent, if iron mass is high at 1.023?

496 The Witness: As I stated, .1025 covering the conditions as ordinarily prevailing would be a fair average for the water for the boilers, for iron oxide, and for sundries. In the case of the Flushing company I think their water would be lower on account of that pumping, and that in turn would be offset to some extent by some increase in boiler fuel as the result of pumping this water.

Q. You testified in the Consolidated case, Mr. Woods, as follows: "Q. What is the answer as to iron mass, a city water, and for minor materials? A. Iron mass, City water, sundries supplies, et cetera, 1 cent per thousand cubic feet?"

A. Yes.

Q. You are a little high, aren't you, on your iron oxide water and sundries?

A. My judgment is that 1¼ cents would be a fair average condition for those items.

Q. You didn't base that on the record did you?

A. No, I didn't look at the record. If the record shows 1¼ cents for oxide it would be high for any one year.

Mr. Ransom: It is not 1¼, I think the record ought to show that.

The Master: It is .0123.

Q. Now, you would not be surprised would you, if the unaccounted for gas, according to the company's own statement for 1917, was 7.96 per thousand cubic feet?

The Master: For what year?
Mr. Chambers: 1917.

A. I should say that if that is the record—I don't recall what it is—it has probably gone from 8 to 16 or 17 per cent.

497 Q. There is 7.96 for 1917, and 8.07 for 1918?

A. Well, the weather conditions would have something to do with that. If you will refer to previous years you will find it is higher, and for 1919 it was more than ten per cent.

Mr. Ransom: It was 11.03 per cent.
Mr. Chambers: I object, this is cross-examination.
The Master: The Teele exhibit is in evidence.
Mr. Chambers: Does it show that?
The Master: It shows 11.03 for that year.

Q. Well, 1918 was a pretty bad year, wasn't it?
A. Well, the winter of 1917-1918 was a bad year.
Q. That would show a high unac-ounted-for gas, speaking of the winter of 1917-1918, the records ought to show a high unaccounted-for gas?
A. It may or it may not.
Q. How was the cold in 1918, 1917-1918?
A. I don't think there has been a very great difference in cold, it seems to be getting a little worse all the time.
Q. How do you account for such a low unaccounted-for gas in 1917 and '18?
A. I think it is a particularly good operation.
Q. So it depends a great deal on the operator?
A. On the operation. It would indicate that their meters, mains and services were in good condition.

The Master: That is the way they ought to be.
The Witness: Yes.

Q. And that they were not at some other time.
A. Anything from 9 to 12 or 13 per cent would be a good fair operating condition. Beyond that point there would be
498 something wrong with their mains or meters, or some other condition.
Q. The winter of 1917-18 was a very severe one?
A. 1917-18, yes.
Q. Severer than any you have known for quite a good many years, wasn't it?
A. Well, the winter of 1920 was probably not quite as severe, but covered a longer period of time.

By Mr. Ransom:

Q. You mean the winter of 1919-20?
A. Yes.

By Mr. Chambers:

Q. The time hasn't anything to do with unaccounted-for gas?
A. I don't know what you mean by time.
Q. Well, it might be just as low in 1920 as it was in 1906?
A. If all conditions were the same, yes.
Q. Now, the gas-making labor, you have——

The Master: Let me interrupt for a minute. Don't you get a larger quantity of unaccounted-for gas with a greater number of meters?

The Witness: Well, I think that would probably be true to some extent. It would be proportional, because the sales would compensate for the increased number of meters.

The Master: Well, there is more apt to be a variation with a greater number of meters than there is with a lower number of meters, isn't there, slow meters and other variations?

The Witness: Well, no, my judgment would say no, that the average ought to be pretty much the same. Of course the sales per mile of mains——

499 The Master: If your mains are kept in good condition, and the meters are kept in fairly good condition, why should there be a greater unaccounted for in a suburb than in a city like New York?

The Witness: Well, the sales per mile of main, and the sales per mile of service are very much less than in a large territory, so that any leakage of any kind upon the system, the percentage would be a great deal more. For instance, let us assume that you are sending out a million a day, and that there was actual leakage taking place of we will say 50,000 a day. If through those same mains, without increase in pressure they sell ten million a day; the unaccounted for, so far as leakage is concerned, would still be 50,000 a day, that is, the actual leakage. Loss by condensation, et cetera, would be in almost the same ratio. Low meters, et cetera, would be in the same ratio, but the actual leakage would be the same. For instance, if there was no consumption on those lines you would have an unaccounted for which would be equivalent to your send-out.

Q. Now, Mr. Woods, gas-making labor, in the Consolidated case you fixed a figure of 2½ cents per thousand cubic feet.
A. I did.
Q. Here you jump that to 6.71 cents.
A. Yes.
Q. Making a difference of nearly 4¾ cents?
A. About 4¼ cents.

Mr. Ransom: That was last September. There have been several increases in pay since then.

500 Q. And it is 4 cents, nearly 4¾ cents more per thousand cubic feet?
A. Yes.

Q. Did you base that on any records of the company?

A. No, I know the number of men required to operate a plant of that kind.

For instance, you have a gas maker who makes a million feet a day, in three shifts they would make a million feet for each of these machines, and in a larger plant, where they had larger machines, in a plant capable of handling larger machines that same gasmaker would make three million, so for the gas-maker himself it would be three times as much as in the large plant where they have these large individual units. You could not afford to put up individual units of that kind in a plant like Flushing, you would have to rebuild the plant entirely in order to handle the proposition.

Q. Four cents more to make gas in a million cubic-foot company than in a ten million company?

Mr. Ransom: I object to that. He is comparing September, 1919, with April, 1920, whereas the proof in the Consolidated case showed two increases in pay after the September figure.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. The gas-manufacturing labor in a plant such as exists there would be infinitely more than in a plant making ten million cubic feet a day.

Q. You figure one superintendent here at $5.75?

A. Yes, sir.

501 Q. In the Consolidated how many superintendents did you figure?

A. One superintendent.

Q. At the same price?

A. No.

Q. How much did you give him?

A. I don't recall the testimony that I gave now. I would not like to give it offhand again.

Q. Wouldn't the superintendent be about the same?

A. No, the superintendent in a larger plant would be getting more money.

Q. $5,000 a year—that is what you testified to in the Consolidated case, isn't it?

A. Right.

Q. How much a year would you give the superintendent?

A. That figures, I think, about $2,100, including his house rent, or, he lives in the plant. I make it on a ten million cubic foot plant, making an average of ten million a day, with a man getting $5,000 a year. Here is a plant making one million a day, and the superintendent getting $2,100 a year.

Q. Plus his house?

A. Plus his house.

Q. How much do you figure that at?

A. I didn't figure his house. I suppose it would be $600 to $700 a year.

Q. That would make about $2,600 or $2,700?
A. Yes.

By Mr. Ransom:

Q. House rent is not in this figure, is it?
A. No.

By Mr. Chambers:

Q. You have a clerk here at what, $4 a day?
A. $4 a day.

502 Mr. Neumann: I move to strike out the question of counsel, because that house is figured in the plant.
Mr. Ransom: Not in the $5.75 a day figure.
Mr. Neumann: But that is added in the whole plant.
Mr. Ransom: We will add to these costs whatever you say the value of the house is.

Q. You have not figured the superintendent's house in this?
A. No.
Q. Not a clerk—how many clerks did you have when you testified in the Consolidated Gas Company case?
A. I don't recollect now.
Q. More than one?
A. One or two, probably a clerk and assistant.
Q. And here you only have one?
A. Yes.
Q. You have three gas-makers here on this Exhibit 77?
A. Yes.
Q. At $4.64 a day?
A. An average price of——
Q. How many gas-makers did you have when you testified in the Consolidated case?
A. I don't recollect the number now. I would have to make the calculation again to find out. Gas-making labor on the other statement, there were so many things involved that I don't recall just now, unless I went into it.
Q. You have three engineers here?
A. Yes.
Q. At $4.93 a day?
A. The law requires that we have the plant covered by an engineer at all times.

503 Q. How many engineers did you have in the Consolidated case?
A. I don't recollect the number; probably more than that.
Q. More than three?
A. Yes, because we have exhausted attendants and turbine attendants from time to time.
Q. Now, two boiler firemen you have on Exhibit 77?
A. Yes.
Q. At $4.48?

A. Yes.

Q. How many boiler firemen did you have in the Consolidated case?

A. I don't recall the figure now; I would not undertake to give it to you from memory.

Q. More than two?

A. Yes.

Q. Two generator firemen and coal passers you have here?

A. Right.

Q. At $4.48 a day?

A. Yes, sir.

Q. How much did you pay—they were both firemen and coal passers?

A. Yes, sir.

Q. How many firemen and coal passers did you have when you testified in the Consolidated case?

A. More than that; I don't recollect the number.

Q. You have two laborers here, at $4?

A. Yes, sir.

Q. How many laborers did you testify to in the Consolidated case?

A. I don't recollect.

504 Q. Now, you have Sunday and holiday overtime?

A. Right.

Q. $2.73?

A. Right.

Q. What does that $2.73 relate to?

A. Because some of these men are paid time and a half for overtime for Sunday and holiday work.

Q. What is that?

A. That is a percentage of their daily pay when they work Sundays and holidays, for which they get time and a half.

Q. All those figures are based on your own idea?

A. Those figures are based upon the rates of pay that are being paid by the Flushing Company. I know it requires that number of men to perform that work.

Q. Were they the same last fall?

A. No.

Q. Substantially the same?

A. No, they were somewhat less, I think.

Q. Were they?

A. Yes.

Q. How much less for gas-makers?

A. I don't recollect the exact amount, but I know there has been a change made since last fall.

Q. In these very men at that plant?

A. Yes.

Q. But you don't know how much?

A. I am not undertaking to say from memory just how much it was.

Q. How do you explain the difference of four cents here to make

a thousand cubic feet of gas than you testified to as of October 16, 1919?

505 Mr. Ransom: I object to that as already fully covered.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Because of the difference in the character of the plant, and the unit which a man can produce at that plant as compared with a plant such as I testified to. If you have one five-ton truck, Mr. Chambers, and five one-ton trucks, they cannot be as economically and efficiently operated as the one five-ton truck. The conditions might be such that you could not operate the five-ton truck, and would have to operate the five one-ton trucks.

Q. How many machines did you have in the ten million cubic foot plant, gas machines?

A. I don't recollect, probably four or five machines, operating four or five machines.

Q. That is only one more than you have here in this million cubic feet?

A. No, we are operating those continuously. I had three to four machines in operation all the time in the ten million plant, with a standby for cleaning and recheckering.

Q. How many machines in all in that plant?

A. I think five or six machines.

Q. That is three more than here?

A. Yes, but different sized machines.

Q. And yet you are able to run them for less than you can the three machines?

A. We are talking now about cost per thousand cubic feet. You can operate them for less per thousand cubic feet, naturally.

Q. You testified in October that you could run, according to that, six machines four cents cheaper than you could run, so far as labor is concerned, three machines?

506 The Master: Per thousand cubic feet.

A. Per thousand cubic feet. I did not testify to any such thing as you have asked the question.

Mr. Ransom: The figure relates to the entire process of gas making, and not merely to the machine.

Q. Well, what did you testify to in that regard?

A. I testified that in a plant such as I testified to in October, 1919, as bearing upon the Consolidated Gas Company's system, which did not include the Flushing Company in any sense, that a fair operating condition was 2½ cents per thousand cubic feet for gas making labor.

Q. If you had a plant of twenty million cubic feet capacity, could you operate it for less than these figures that you have in October, 1919?

A. I could not.

Q. There would be no decrease?

A. No.

Q. How about the other way, the converse?

A. If you can operate a plant continuously anywhere from five to ten million—if you recall, Mr. Chambers, in my testimony, I testified to a plant on an average condition operating on ten million feet a day, and that plant would run anywhere from 7½ to 15 or 18 million. I took a fair operating condition throughout the year. At times the gas making labor would be somewhat less than 2½ cents, and at other times it would be somewhat more than 2½ cents, but I believe under the conditions under which we were operating, a fair amount was 2½ cents per thousand cubic feet.

Q. This company out there does not make a million cubic feet a day?

A. They do.

507 Q. They make a good deal more than that?

A. They will make slightly more than that; they average that.

Q. Didn't you hear testimony the other day that it was 1,600,000?

A. That is a maximum capacity. They probably gave you a send-out of 1,600,000. I do not recall the exact figures, but I think their annual send-out was around 375 to 380 million cubic feet make, which would be close to an average make of one million a day. A million a day would be 365 million. Their average make was probably 1,050,000 a day.

Q. They make sometimes 1,600,000?

A. Yes.

Q. Wouldn't that cut the cost down?

A. Yes, and if they made less than a million it would probably bring it up.

Q. Do they make less than a million that you know of?

A. There are times when it must be less than a million to get an average throughout the year of slightly more than a million.

Q. Then they could close down one of the machines and relieve some of these gas-makers and others.

A. I took it as a condition of operating a million a day. At times their cost may be a little more, and at times a little bit less than that.

Q. I don't quite understand these Sundays and holidays here overtime, Mr. Woods. You didn't have that in the Consolidated case, at least not so we could see it.

Mr. Ransom: I object to that as incompetent and not the
508 proper way of proving a statement in the Consolidated case, which was made up on a somewhat different basis. He did not in his Exhibit 353 for Identification undertake to give the details of the different classes of labor and rates of pay. He submitted a separate statement which showed the rates of pay and of overtime.

The Master: Objection overruled.

Q. You didn't have any such item in your Exhibit 353 for Identification in the Consolidated case, did you?

A. I don't recollect. I think probably an allowance was made in figuring up the cost per thousand cubic feet that was taken into consideration. It was not shown in the exhibit in the Consolidated case as it has been shown there.

Q. Did you base this $2.73 on the practice of the company?

A. On the practice of the company, time and a half for overtime for Sunday and holiday work.

Q. And that is based on that?

A. That is right.

Q. For these different men here?

A. That is right.

Q. Now, have they as many men as you have set forth there over in the plant?

A. I should say they have, yes.

Q. Well, do you know?

A. I should say so.

Q. That is, have they a superintendent, one clerk, three gas-makers, three engineers, two boiler firemen, two generator firemen and coal passers, and two laborers?

A. I would say so, yes.

Q. Are you sure about that?

A. I am quite sure that they have that many men.

509 Q. You don't know what they pay them over there, do you?

A. I do.

Q. Those prices?

A. Those are the average rates. The gas-makers and engineers are not all paid the same rate. The average rate for those different classes is there.

Q. The superintendent, do you know what he gets over there?

A. I do.

Q. What does he get?

A. $2,100 a year, I believe.

Q. And his maintenance, his house there?

A. His house.

Q. Does he pay rent for that?

A. No, he doesn't pay any rent that I know of.

Q. Now, the clerk?

A. The clerk I have there at $4 a day. Just what they are paying the clerk I don't know. I don't believe they are paying quite that, because they have a new cleerk they just put on, and he probably is not getting $4. $4 is what they will have to pay as soon as he is broken in.

Q. What are the gas-makers getting over there?

A. The average rate is as indicated on that exhibit.

Q. Then they have got three over there?

A. Yes.

Q. And three engineers?

A. Right.

Q. At these prices?

A. Right.

Q. That is, some of them are getting less, I take it, and some more?

A. Yes, for all three that would be the rate.

Q. Now, repair labor—they have two mechanics over there?

510 A. Not always.

Q. But you have two here steady?

A. I testified that on the average they would have two. They may have two or three at one time and they may not have any for a day or two, because they have different classes of work to perform, and they have to call in men to get that work done; but in my judgment the average employed on repair work would represent what I have indicated on the exhibit.

Q. A helper—have they got a helper over there?

A. They would have when the work is going on.

Q. Isn't work going on?

A. There is always some minor repair work going on. On other days there may be some extensive repairs where they will want to put extra men on the work.

Q. Is that a pretty high price, $4?

A. That is the best we can get. It is a question of how long we can get that. We are paying more than that for a good many of our laborers now.

Q. Labor is very high now?

A. It is considerably higher than it was last October when I testified, and it looks as if it might go higher still, due to our present inability to get men.

Q. You don't know whether it will ever stop, do you?

A. God knows I hope so.

Q. According to you, gas labor and gas oil, and all the things you use, are going higher; there will never be any let-up?

A. We can only tell what our experience has been in the last two or three years. I cannot prophesy any better than you can,

511 but, based on our experience, it has not gone down, but on the contrary has gone up.

Q. Back in 1902 you heard Mr. Addicks testify about coal the same as now?

A. He did, because of strikes in the coal mines. It was not a general condition of labor unrest in the country, throughout the country, but there was a strike in the anthracite mines. We at that time had difficulty in getting anthracite coal at that particular time.

Q. Your salary has not gone up, has it, since you testified before?

A. Not a great deal.

Q. Has it some?

A. Probably a little. I might say, Mr. Chambers, that some of the salaries of people that did not testify got more than I did, so it was not a question of my work in the case.

Q. Has there been a general raise all around since you testified before?

A. I don't know whether there has been a general raise or not. God knows we needed it.

Q. Well, with your salary, Mr. Woods, I would not think so. Was it $18,000?

The Master: Where do you live, Mr. Chambers?

Mr. Chambers: Albany.

The Master: Live down here for a while and see how far you will get with $18,000.

Mr. Chambers: I take it that Mr. Woods lays away something for a rainy day.

Mr. Ransom: There isn't any testimony in any case indicating $18,000.

The Master: $13,500, as I recall it.

Q. That was a stenographer's error, was it, Mr. Woods?

Mr. Ransom: It was your mistake.

512 Q. What salary are you getting from this company?

A. $500 a year.

Q. For the time you devote to it?

A. That is right.

Q. That goes to you direct, or does the Consolidated get it?

A. That goes to me direct.

Q. And that is for the time that you devote to this company, to the affairs of this company?

A. Yes, and my advice.

Q. Now, the repair labor. You said you have two laborers at $4 a day?

A. Right.

Q. Now, in the Consolidated case your repair labor was only 1½ cents to make a thousand cubic feet of gas?

A. Yes.

Q. Here you have almost 2½ cents?

A. Yes, probably our repair labor would be more now in the Consolidated. Instead of being 1½ cents it would be 1¾ cents, as a result of increases in rates since that time, and you would naturally expect it to be more in a plant of that kind, owing to the smaller-sized units.

Q. Your Exhibit 353, for Indentification in the Consolidated case was not based on the Consolidated plant, was it?

A. It was based on their rates of pay, of the system.

Q. Now, the repair material, you have 3 cents here?

A. Yes, sir, right.

Q. And in the Consolidated case you had 1½ cents.

A. Right.

515 The Master: Why should the repair material cost any more?

The Witness: Because your Honor, in making repairs for instance, in repairing machines and repairing the steel work, repairing the door-frames, all these repairs that must take place, these machines won't run any longer a period of time than with the larger machine, but the unit of production is considerably less, so that the actual cost of repair is practically the same as on the larger amount, but

owing to the production the cost per thousand cubic feet is lower.

The Master: Do you think 3 cents is pretty liberal?

The Witness: I think, taking it year in and year out 3 cents would be a fair cost of material.

The Master: Then 4.69 is high?

The Witness: I think taken on the average that would probably be a little high.

Q. Don't you think you could cut that 3 cents down a little?

A. No, I do not; if I had thought it was lower I would have put it lower.

Q. Now, I find one here, Miscellaneous Works Expense, which is lower now than it was when you testified in the Consolidated case. That was 1¼ cents, and now you have it 1 cent?

A. Yes.

Q. There is something going down hill—isn't that a mistake?

A. No.

Q. That is right?

A. That is right.

Q. I cannot understand how that would be lower.

514 A. You would have less watchmen, and things of that kind, and I believe that 1 cent would cover that figure.

Q. Then perhaps the miscellaneous works expense in your 10,000,000-cubic-foot plant would be down, would it?

A. No, it would probably be higher.

Q. That is going up? I don't understand why there is a difference there?

A. Well, there are watchmen, janitors and messengers and all sorts of things they have around a large plant, where there are some things you would not have in a smaller plant.

Q. Well, you said it cost to make a thousand cubic feet of gas in your 10,000,000-cubic-foot plant as of October 16, 1919, 50 cents—50.61?

A. If that is the figure.

Q. Now, you have this up to 64 cents.

A. That is right, and it will not be produced for any less than that, Mr. Chambers.

Q. Do you know what the company did produce it for?

A. I have seen the figures.

Q. You did not check up to see how this gibed with the actual experience?

A. No, I have seen the figures, and know it will check pretty closely to it. I don't think it will conform to my figures in every respect.

By the Master:

Q. Is it possible, Mr. Woods, that this repair material for 1919 included material put into stock, that would make that difference in your estimate of 3 cents in the actual cost of 4.69, according to the record?

A. Well, I would not say. They may have bought material

charged to repair account, and it may be in stock pending the use of it.

515 Q. Yes.

A. I would no say, that might be so.

Q. In arriving at what the fair cost of production would be for one year I ought to have that in mind.

A. I do not know that that is the case.

Q. That is, taking into consideration your statement that you think 3 cents is right, and your testimony in the other case or your statement today that 1¾ would be right for the Consolidated, for a larger plant, as compared with 4.69, it would indicate putting in an additional supply, would it not, or a reckless expenditure of money, either one?

A. Their cost may have been somewhat lower the year before, or there may have been more extensive repairs in 1918 than in 1919.

The Master: Mr. Woods in his Exhibit 77 is talking of present cost, only 3 cents.

Mr. Ransom: Yes, but the year before the figure was way below.

The Master: Do not tell me about the year before because it is not in evidence. I think I have got to shave this. You have iron mass and repair material, that seemed to be higher and would indicate the putting in of stock.

Mr. Ransom: Iron mass totalling about 1.35 instead of 1.25.

The Master: Iron mass .0123 on your exhibit, as against probably 35 to 50/100th- as testified by Mr. Woods from which I draw the inference that you probably put in a supply; and I also draw that inference on repair materials.

By Mr. Chambers:

Q. I want to read you a little testimony, Mr. Woods, that you gave in the Consolidated case.

516 The Master: Is it inconsistent with anything said here today?

Mr. Chambers: Yes.

The Master: All right, go ahead.

Q. I am reading now from page 4844 of the Consolidated record:

"Q. Generator fuel, water gas cost; you mean, do you, by this that you used 32.50 pounds per thousand; to make a thousand cubic feet of gas you used so much?

"A. That is right.

"Q. You had in mind a hypothetical situation, did you? Was it hypothetical?

"A. These are average operating conditions under which we used 32½ pounds."

The Master: Just wait a minute, there was another item there that I wanted to get clear.

By the Master:

Q. You estimate, Mr. Woods, the cost of boiler fuel at 6.39 on the basis of 22 pounds, and the 1919 record would show a cost of 8.82 on the basis of nearly 26 pounds, taking the seven-tenths of a gallon as 9 and some fraction pounds.

A. The figure that I have there, your Honor, the 3 pounds for generator fuel figure, and the other figure is the last price that they paid for boiler fuel.

Q. Yes. What I mean is the operating records would indicate that they used 16 and 9, over 25 pounds of boiler fuel, as against your 22?

A. That may be.

Q. Would that indicate inefficient operation?

A. Not necessarily, because I had estimated 22 as a conservative estimate. It is pretty difficult to say just exactly what that would be, because I was unable to determine, your Honor, just how
517 much high pressure distribution there was, and I made a figure which I thought was a conservative figure, of 22 pounds—that it could not be less than 22 pounds.

The Master: There seems to be quite a variance between twenty-five and a fraction and twenty-two, and a difference in cost of from 6.39 to 8.82.

Mr. Ransom: You have to take into account this high pressure thing, that was new.

The Master: I know, but so is Mr. Woods' statement.

Mr. Neumann: Very new.

The Master: No, I did not mean that jocularly; it is an up-to-date statement.

Mr. Ransom: I understand that, but they may have at a particular time used——

The Master: More than they would use this year.

Mr. Ransom: Probably would use under average conditions.

The Master: Yes, that is what I am trying to get at, and why not, when I take that into consideration, have in mind that they may do better than that.

Mr. Ransom: Yes, and very soon we will have figures showing what they are doing in 1920. Of course, the difference in the quality of coal——

The Master: That is the value of this oral testimony, as supplementing your record.

Mr. Ransom: That is why I am offering it.

The Master: Mr. Woods says they ought to do better than they show here on boiler fuel, iron mass and repair material.

518 Mr. Ransom: On an average of conditions. We regard these figures here as minimums, but they are fair averages.

Mr. Neumann: It indicates quite clearly that one year is not a good basis on which to try and figure out whether a statute is unconstitutional or not.

The Master: On the other hand, Mr. Woods estimates for average

64.14 and actual operation for 1919 indicates 63.445. All right, go ahead now.

Mr. Chambers: I was reading; I will continue.

By Mr. Chambers:

Q. This is the rest of your answer:

"Under the conditions we are operating under here, with the material we have on hand, an average figure under these conditions will be 32½ pounds of anthracite coal."

Now, I will skip a little bit.

Mr. Ransom: Of course.

Mr. Neumann: You can read it all if you want.

Mr. Chambers: You can read the rest; it is not material. I will read it all.

Q. (Continuing:)

"By the Master:

"Q. That, I understand, Mr. Woods, is a statement of fact by you based upon an observation running over many years?

"A. That is, yes.

"Q. And watching the manufacture of gas?

"A. It is what is in the manufacture of gas.

"Q. I say watching it?

"A. Watching it; that is right.

519 "Q. You know from day to day you have got to figure on 32½ pounds for a thousand cubic feet of gas?

"A. That is right.

"By Mr. Chambers:

"Q. It depends on the kind of a generator you have in mind, does it not?

"A. Upon the kind of generators that are in use. A modern generator, as I have in mind."

You remember that, do you not; that is right so far?

A. As far as I can remember that is right, yes.

Q. —.

"Q. What type did you have in mind?

"A. The type of generator? The type used by the Consolidated Gas Company.

"Q. What type is that?

"A. The Lowe improved three-shell water gas sets.

"Q. You had that in mind?

"A. Yes.

"Q. That is the generator you used?

"A. That is the generator which we are using.

"Q. I mean that you used at the basis of this figure?

"A. We used as the basis of that figure, yes.
"Q. What kind of condition did you assume it was in; first class?
"A. In good operating condition, as we keep our machines.
"Q. You based it on the way you keep your machines?

"The Master: Good operating condition, he said.

"Q. What capacity generator was it?
"A. It would not make much difference whether they were making two million or two and a quarter or three million, depending on the size of the machine; with good operating conditions the result would be the same."

Is that correct?

520 A. That is right.

Q. If the experience of this company shows, Mr. Woods, that they used more coal than that, than the coal that you spoke of when you were testifying in the Consolidated Gas Case, and which testimony I have just now read, would you not say that something was the matter with these generators?

A. No, I would not necessarily. It might be possible, Mr. Chambers, that they could get three or four cargoes of coal, and it would be an unfortunate thing, but if they were all bad that generator fuel would run 37 or 38 pounds, and you could not help yourself.

Q. That would only be an isolated incident, would it not?

A. It would be an incident. It is an incident we have at times, where they will get a cargo of coal and immediately the results go off, that they cannot control them or rectify them; they cannot get back to a good operating condition.

Q. You took that into consideration when you testified in the Consolidated case?

A. I did, and, as I stated here, while we have those conditions and we have a bad fuel condition, that with the coal that we receive and the coal that we have on hand, the quantities that we are able to use, we are able to use some of our good coal with our bad coal and try to obviate those conditions, which cannot apply in a case like this.

Q. You want to have the Court understand it costs 14 cents a thousand cubic feet more to make gas over in this New York & Queens plant than it did in this Consolidated plant?

521 Mr. Ransom: Objected to as incompetent. Here they are comparing September, 1919, with April, 1920. The Consolidated cost is about 65 cents now.

The Master: I will sustain that objection.

Mr. Chambers: Exception.

Q. Do you remember that you testified in the Consolidated Gas case that you allowed about $152 a thousand cubic feet plant capacity for a water-gas plant?

The Master: On value.

Mr. Chambers: On value.

Mr. Ransom: Objected to as not cross-examination.
The Master: Overruled. I was going to ask it myself.
Mr. Chambers: $152.60, I think, to be exact.

A. I did.

The Master: That was in the early part of 1919?
The Witness: Such plants as we had, your Honor, on a plant for 10, 20 and 30 million. I will tell you, just what the value of the Flushing plant is I do not know.
Mr. Chambers: Well, he has answered my question.
The Witness: Well, I would like to complete it.

Mr. Chambers: I do not want you to make a speech, with all due respect to you, Mr. Woods.
Mr. Ransom: Let the witness finish his answer.
The Master: No, I will take that as your answer, Mr. Woods, for the time being. As I understand it, the question was
522 whether you did not estimate the value of manufacturing water-gas plant in the early part of 1919, good operating condition, based upon production per thousand cubic feet, at $152?
Mr. Chambers: He said yes to that.
The Witness: Your Honor, I will qualify that by this statement: That I did not say that it was $152 as of 1919 prices.
The Master: No.

By the Master:

Q. Your testimony in the Consolidated Gas case was, as I understood it, Mr. Woods, that for the purpose of an intercompany adjustment between the Consolidated, New York Mutual, the Ravenswood and New Amsterdam plant, you made a report in which you said that the value of water-gas plant ought to be figured at approximately $152, with an additional $10 and something for land over in Long Island and an additional $50 and something for land in New York.

Mr. Neumann: $15.
The Master: No, 50.
Mr. Neumann: I think the record says 15.
The Master: Then the record is wrong and I will correct it.

Q. There was $202 for the gas plant and building in New York and $160 and something for land and plant in Long Island; is that correct?
A. $162.50 in Long Island and I think $205 for the Mutual.

Mr. Ransom: $205.75.

Q. That was your testimony in the Consolidated case?
A. Right.
523 Q. I understood that to be what that plant was worth for the purpose of fixing the plant capacity, the value of the plant capacity, that the Consolidated were using of the New York Mutual and the Ravenswood plant.

A. That is right.

Mr. Ransom: I suggest that the witness ought to be permitted to finish his answer.

The Master: He has finished it. You can re-direct him to anything you want.

Mr. Ransom: How can I re-direct on something there is no direct of?

The Master: But this is cross.

Mr. Ransom: How can there be cross on something there is no direct on?

The Master: Then it is new matter, and I will let you cross examine him on it. The answer is that I will give you a chance to ask anything you like.

Mr. Hyatt: He is supposed to be an expert, anyway.

The Master: Well, I had it in mind and was going to ask Mr. Woods that.

Mr. Chambers: I guessed that you were, so I thought I would beat you to it.

By Mr. Chambers:

Q. Mr. Woods, if you made your gas at 23½ candle power at the plant, at the works, that would be 22 out on the district?

Mr. Ransom: Objected to unless you are referring particularly to this complainant. What plant do you mean, a suburban plant?

Mr. Chambers: What plant does Mr. Woods mean?

The Master: I did not hear the question.

524 Mr. Chambers: I asked him if he made 23½ candle power at the works, whether that would be 22 out on the district.

Mr. Ransom: What works?

Mr. Chambers: I asked whether that would be 22 out on the district.

The Master: Ordinarily; that is what he said.

A. Yes.

Q. You can make 23½ at the plant, can you not? Could you not at your hypothetical plant here make 23½?

Mr. Ransom: Objected to, there is no hypothetical plant in this case.

A. Why, yes, you can make 23½ candles.

Q. Would you not call this a paper plant, Exhibit 77? What do you call it, Mr. Woods?

A. At such a plant, like the Flushing plant, at any point in this vicinity.

Q. It is an hypothetical plant, is it not?

The Master: I will sustain the objection.

Mr. Chambers: Exception. Can I not ask him that? It is a paper plant.

The Master: No, his testimony refers to the Flushing plant or a plant like it, located at that point.

Mr. Chambers: It does not relate to the Flushing plant.
Mr. Ransom: Objected to as fully covered.
The Master: We have had enough of that.
Mr. Chambers: I do not think we have.
The Master: I do. Objection sustained.
Mr. Chambers: Exception. I would like to have him refer to it as the hypothetical plant, because I like that word.
The Master: I know you do.

525 By the Master:

Q. While Mr. Chambers is getting his mind on something else, that figure that you gave with reference to the New York Mutual and Ravenswood plants as to value was the average pre-war investment in a plant of that kind, I take it; is that right?
A. That is right.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, because the record will show what it was.
Mr. Chambers: He did not testify before as to a pre-war plant; he testified as in 1919.
Mr. Ransom: No.
The Master: No, I analyzed that figure in the light of all pre-war conditions, and Mr. Woods reached the conclusion I did, that for the purpose of that intercompany adjustment, just as for the purpose of the rate base in this case, he was taking the necessary investment under ordinary conditions, over a period of years, in a plant of that kind.

Q. Am I right about that, Mr. Woods?
A. That is right.

The Master: That is the basis under which I am working here, just as I did in the Consolidated case. My conclusion was, in the Consolidated case, taking the years as they come and go, the figures fixed by Mr. Woods in January, 1919, fairly represented the average pre-war value, and the value to the consumer and to the public, of a water gas plant, about $150 plus the land.
Mr. Ransom: Of the size of the Mutual and Ravenswood plants.
526 The Master: Of that general type. I do not think there is much difference between sizes of plants. The record indicated to me in the Consolidated case that was a fairly safe basis of calculation, that the pre-war basis was $150 for water gas plant per thousand cubic feet.
The Witness: Your Honor, if you wanted to build a plant of 250,000 now it would cost you $175 per thousand.
The Master: Of course it would.
Mr. Neumann: That is reproduction cost today, is it not?
The Master: No.

Q. It would cost you more proportionately for a small plant than for a large plant, of course?

A. Taking a concrete case in a rough sort of way, your Honor, as comparing the Flushing company with this company, would be to take a packing box 4 by 4 by 4 and get its cubical contents, and the surface of that box, and take another 6 by 6 by 6, you will find that the actual material per cubical contents in the 4 by 4 by 4 is very much greater than where you use the 6 by 6 by 6. For instance, if you built a plant with generators, piping, exhausters and so forth, that will fit a machine to produce a million cubic feet a day, that is going to cost a great deal more than one that will produce three million cubic feet a day. In other words, there will not be three times the material in that three million capacity plant than in that million plant or million and a half, or whatever it may be. So that as the units are smaller, so in turn the value per cost of unit of installation must be more.

527 Q. How much more; how much difference is there, say, between the New York Mutual plant on the pre-war basis and a plant like the Flushing plant?

A. I should say that the Flushing plant would be somewhere between $225 and $250.

Q. As compared with $150 or thereabouts of the Mutual?

A. Yes, because it all depends on the size. When you get up to the exhausters and the piping and everything else, you might have one of three million or three of one million, and they will cost you double what the one will cost.

Q. Taking the same basis of calculation as you used it for the Mutual and the Ravenswood plants on the intercompany adjustment in 1919, you would say that this Flushing plant would be from $225 to $250?

A. I do.

Q. Plus about $10 for land, or less?

A. The land I have not looked up at all, I would have to investigate that somewhat. I should say if they had their plant and holders and everything located at that point—I would only make a guess, but I should think it would be $15 or $20 a thousand.

Q. More than the Ravenswood?

A. I believe it would, because those units take up a lot of ground, your Honor, as compared with the others, and the space occupied in so far as capacity is concerned and per unit of space occupied, they will occupy more than these other plants.

Mr. Neumann: Mr. Wood, in making up that estimate ——

528 Mr. Ransom: I object to the interruption unless Mr. Chambers is through.

Mr. Neumann: What unit of value would you take for the land?

The Witness: I do not know.

Q. You have two million capacity there, have you not?

A. Practically that, yes.

Q. That is two thousand M's, is it not?

A. Two thousand M's, yes. I am not familiar with the land costs at Flushing. They will occupy more space per unit of capacity than these other plants.

By Mr. Chambers:

Q. Do you remember, Mr. Woods, in the Consolidated case you testified to this:

"Q. Then really what you did, you figured the value of a thousand cubic feet of water gas plant based upon the actual cost of constructing the Astoria water-gas plant?

"A. Practically that, your Honor, yes. I used the other figure to check up, and then made a check on the Astoria accounts to see how nearly it arrived, and I arrived at a figure of $140, I think I found a figure in the 80-cent Gas lease of some $142 or $143, and I used the figure of $140.

"Q. Yes, but your judgment depended very largely upon the actual cost of constructing the water-gas plant over in Astoria?

"A. It did.

"Q. That means a complete plant with necessary facilities?

"A. That is a complete plant with part of the cost of the holder that was at Astoria.

529 "Q. And the necessary facilities?

"A. That is right.

"Q. Now, this $140 plus nine per cent, what is that, interest during construction?

"A. $140 included overhead, and the interest during construction was added to that amount.

"Q. And that was the figure on which you based your estimate of the value of a part of the plant capacity at the New York Mutual?

"A. That is so. I applied that same figure to that in connection with the New Amsterdam Company and the New York Mutual Company, without making any valuation of their property whatever.

"Q. But the New York Mutual plant was very much older?

"A. Yes, it was an older plant.

"Q. Why didn't you make an allowance for that?

"A. Well, because the purpose of this report, when I had my previous reports, your Honor, was in connection with the use of these joint facilities, until I was told—instructed by Mr. Cortelyou, through Mr. Carter, to get up a report as to the use and what I believed would be a fair distribution of those charges throughout the various companies for the use of those facilities.

"Q. But I am talking about the figure you put against the New York Mutual part of plant capacity. What you were trying to get at, as I understand it, was what the total value of a plant was for a certain capacity?

"A. That is right."

530 Mr. Ransom: I object to this. He is endeavoring to cross-examine his own witness on these things. He is reading in fragments of the record.

The Master: I will let him go ahead for a few minutes.

Q. (Continued.)

"Q. Taking the percentage of that capacity for the Consolidated would be a fair way?

"A. That is right.

"Q. It is your testimony that in your opinion a fair charge was based upon a value of plant capacity on the basis of $152.60 per thousand cubic feet for a water-gas plant?

"A. As of that period.

"Q. Well, this was 1919?

"A. Well, I did not change the figure from 1919. That is the 1916 figure, I used in connection with my 1919 report, I did not change the cost."

And then over here it was 15.

The Master: I have to adjourn now.

Adjourned to Thursday, May 13, 1920, at 9.30 o'clock a. m.

Last Complainant's Exhibit No. 78.

531 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 13, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann and Mr. Deegan, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Van Steenburgh and Mr. Hpatt, of Counsel for Defendant Dennis O'Leary.

GEORGE E. WOODS resumed the stand:

The Master: Who had Mr. Woods on cross?

Mr. Chambers: I had, and I had not quite finished with him.

The Master: Go ahead.

Cross-examination continued.

By Mr. Chambers:

Q. Mr. Woods, you are around this plant, are you, quite often, you say?

A. Yes.

Q. How often?
A. As I said—lately I have not been there as much as I ordinarily am and like to be; usually, every month or six weeks I go through the plant.
532 Q. And how long do you spend there every month or six weeks that you are there?
A. I might spend half an hour, three-quarters, an hour and a half.
Q. And it is your practice to go there about that often?
A. Yes.
Q. Look it over roughly?
A. Generally go through the works.
Q. Do they test for candle power there at the works?
A. I imagine they do, all the stuff is there.
Q. Well, do you know that they do?
A. I have seen them make tests.
Q. You have seen them make tests for candle power right at the works?
A. Yes.
Q. Where is the apparatus set up?

Mr. Ransom: Objected to as not cross examination.

The Master: I will allow it.
Mr. Ransom: Exception.

The Witness: In the office building.
Q. How do they make the tests?

Mr. Ransom: Objected to as not cross examination, relates to no issues in the affirmative case.
The Master: Overruled.

The Witness: In the usual manner of making tests.
Q. What is the usual manner, the same as you testified in the Consolidated?

Mr. Ransom: Objected to as incompetent and an improper form of question, not the proper method of proving something by reference to another case.
533 The Master: I don't think it is proper, but I will allow Mr. Chambers to ask him what he means by the usual manner?
Mr. Ransom: Exception.

The Witness: Using the standard bar, 60 inch bar.
Q. Burning candles?
A. Burning candles or sometimes in making tests—quite often they might use a secondary standard.
Q. What is a secondary standard?
A. They may use a Pentane lamp—a Pentane lamp would not be called a secondary standard; it is a standard that has been used; it is an English standard. When they did away with the candles and used ten candle power Pentane lamps, they used that as a primary standard the same as an Elliot lamp—that is a secondary standard for quick reading.

Q. Are those the usual methods, the well known recognized methods?

Mr. Ransom: Objected to as incompetent and not within the scope of the cross examination.

The Master: Overruled.

The Witness: Yes.

Q. Do they record the candle power after they make the tests?

A. I imagine so.

Q. In their books?

A. Just wherever they record them, I can't say, probably in their books or on a sheet of some kind.

Q. Does the City make tests there, too, that you know of?

Mr. Ransom: Objected to as not any subject of cross examination.

534 What has that to do with any issue concerning which Mr. Woods testified? In this case the defendants have affirmatively alleged in this court that the candle power question is a matter of affirmative defense and, unless pleaded, they couldn't go into it.

Mr. Neumann: I think that is absolutely absurd and no one knows it better than counsel who uttered it.

The Master: That is enough, I didn't ask for a discussion. Overrule the objection.

Mr. Ransom: Exception.

The Master: Does the City make tests there?

The Witness: They do make tests; I have never seen the City making tests, but I imagine they do.

The Master: Do you know anything about it, do you know where the testing station is?

The Witness: I have seen the buildings where they have the testing apparatus.

The Master: Have you seen the testing apparatus?

The Witness: I don't believe I have seen the testing apparatus of the City's.

The Master: How do you know they have a testing station anywhere?

The Witness: Well, of my own knowledge I imagine I don't know, because I haven't seen the testing apparatus.

Mr. Chambers: Where is the building?

The Master: Where is the building where you understood they tested it?

The Witness: I can't recall the street now, it is some mile or mile and a quarter from the plant. I wouldn't unde-take to say
535 what the street was; it is out in the Murray Hill section.

Q. Do you know that the City sends the New York & Queens a postal card daily of the tests they make?

Mr. Ransom: Objected to as not proper cross examination.
The Master: I will sustain the objection on the ground I don't care whether they do or do not.
Mr. Chambers: Exception: I think it is pretty important.
The Master: No, that doesn't prove or disprove anything. Just because the City sends cards doesn't prove anything.
Mr. Hyatt: The question is does he know and I think he ought to be allowed to say what he knew if he did know.
The Master: Objection sustained.

Q. Apparently, I gather from what you say, that you never paid much attention to the candle power tests made by the company.

Mr. Ransom: Objected to.
The Master: Overruled.

The Witness: Oh, yes.
Q. I mean, did you look in the book to see how they were running?
A. I don't know as I have looked in their books to see how they were running, but I get a report as to the candle powers.
Q. Who makes that report to you?
A. I get a report from Mr. Spears' office for the month's operation.
Q. He sends that to you at the end of the month?
A. Right.
536 Q. And that report has the candle power on it, I take it?
A. In some part of it.
Q. Of the company's test?
A. The candle power at the works.
Q. Do you know who makes the tests there for the company?

Mr. Ransom: Objected to as not proper cross examination, not within the scope of any issue in the complainant's case.
The Master: Overruled.
Mr. Ransom: I except.

The Witness: I do not.
Q. Who makes the tests in the Consolidated Gas Company for candle power?

Mr. Ransom: Objected to as immaterial.
The Master: Objection sustained.

Q. Is it the same person who makes the tests for the Consolidated Gas Company for candle power who also makes the tests for this company?

Mr. Ransom: Objected to as incompetent and immaterial and not proper cross examination.
The Master: Sustained.
Mr. Chambers: Two exceptions.
The Master: I am not sustaining it on the ground it is not cross examination. I have permitted Mr. Chambers to go into matters not strictly cross rather than to compel him to bring it out in his direct

case; I would just as lief have it now as any other time, but I don't think it is relevant or material.

Mr. Chambers: The reason I go into it here and treat it as cross is because somehow or other they are afraid, in these cases,
537 to bring on the superintendent—you have noticed that; they never give us a chance to cross examine anybody who acts as superintendent of any plant, we have never had a crack at anybody or a chance to cross examine.

Mr. Ransom: You spent weeks and months cross examining every one you pleased all over the country.

Mr. Chambers: And we have had to use Mr. Woods in lieu thereof.

The Master: I am sustaining it because I don't think it is relevant or material to this issue.

Q. To return to Exhibit No. 77, Mr. Woods, what do you include in your item of miscellaneous work expense?

Mr. Ransom: Objected to as already fully covered; the details of that are given on cross examination and on direct examination.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: As I said, janitors, watchmen, messengers, telephone bills, electric light bills, sundry supplies in the way of stationery, cleaning snow off the holders, such items as that.

Q. You didn't base that on the company's figures?

A. No, I did not.

Q. You just took what you thought——

A. What I believed to be——

Q. About right?

A. That would cover that expense.

Q. And it might be lower and it might not, from your actual experience, is that it?

538 A. It would vary.

Q. Is there any way that you can segregate or separate those items, any of them?

A. I can't because I believe that it will require about a cent per thousand to perform that work.

Q. That is, you couldn't tell us how much it would be for telephones, and how much for removing snow?

A. No.

Q. It would vary, some years it might be more and some years less?

A. That is right.

Q. Isn't that pretty high, that figure you have there, for a plant of this kind?

Mr. Ransom: Objected to as fully covered; it was shown at the last hearing that it was very low, both as compared with the actual experience of this company and the figures of the Consolidated.

The Master: Overruled.

The Witness: I believe it is a conservative figure.

Q. Well, in the Consolidated case, Mr. Woods, you allowed a cent for that same item—a cent and a quarter; do you thing there is only that difference there, shouldn't it be considerably less in a small plant like this?

A. If I thought it should have been less I would have made it less, Mr. Chambers.

Q. I know, but you say it varies?

A. It does—all those items will vary from time to time.

Q. How about repair material, what have you included in that item?

Mr. Ransom: Objected to, that is fully gone over, we don't need to start and go over these things today.

539 The Master: Overruled.

Mr. Ransom: Exception.

The Witness: All material that would be required in the repair of the plant and buildings.

Q. Well that is just double what you testified to in the Consolidated, isn't it?

A. Right.

Q. I don't see quite how you make that out, a cent and a half in the Consolidated you testified?

A. As of October, 1919, yes.

Q. Then that has doubled since October, 1919, or has it doubled because it is a different company?

A. Because it is a different situation, a different condition.

Q. In working out Exhibit 77, you have increased the prices in amount because of the difference in time between October and now, have you, in all instances?

A. No, I have not.

Q. That is not the reason for the increase?

A. No.

Q. It is because of the size of the plant?

A. That is right.

Q. And when Mr. Ransom here says, every little while, that it is because prices have gone up, that is not quite the thing, is it?

A. Labor has gone up.

Q. Some, but that isn't the element that caused you to increase these figures in Exhibit 77 over Exhibit 353?

A. Not in the wide variation that appears between the testimony that I gave in the Consolidated and what applies to this proposition; it is a different kind of a plant, a smaller plant.

540 Q. That is what I am getting at, that is why you made those figures higher in Exhibit 77?

A. I have made those figures in 77 as a condition that exists at the Flushing plant, under which they must operate.

Q. Well now, if you made up this Exhibit 77 as of September, 1919, for this same plant, would they have been substantially the same?

A. In so far as unit quantities used per thousand, they would. The price may have varied; the price of labor was probably different; the number of men required, the oil required, the coal required, and so forth—I wouldn't have made any change in September from what is shows there.

Q. Would you have made much of any, in labor?

A. I would have ascertained what their labor rates were at that time.

Q. Well you don't know, as you sit there, that over in Queens they are paying very much more for gas making labor, repair labor, or labor for handling coal, than they were in September, 1919, do you?

A. My judgment is that it is about 25 per cent more, Mr. Chambers, now, than it was as of that time.

Q. That they are paying?

A. Yes.

Q. For labor?

A. Yes.

Q. Certainly, oil and those things would not make any difference between September and now?

Mr. Ransom: I object to the question as vague and indefinite; he has already shown the figures as to the cost of oil then and now.

The Master: Overruled.

541 The Witness: Whatever the difference was in oil and coal, that difference would have been put on that exhibit, what they were paying as of that time.

Q. Who did you get your figures from for prices here, Mr. Woods?

A. Got them from vouchers.

Q. I mean did you go yourself and get them?

A. I did. I had the vouchers sent to me.

Q. From the plant over there?

A. Yes.

Q. Sent it to you?

A. Right.

Q. And you picked out, selected what you wanted?

A. I asked them to give me their current prices that they were paying for coal oil, asked to look at the bills.

Q. And beyond what was on these vouchers you didn't know?

A. The bill and the voucher is what I used.

Q. And you relied on the voucher for your information?

A. I did.

Q. Did you examine very many of them?

A. No.

Q. Just a few?

A. Just a few.

Q. What month did you pick out, say?

A. I don't recall, I think—my recollection is, which may not be absolutely correct, Mr. Chambers, that insofar as generator coal and oil, it applied to bills as of April.

The Master: Of course, Mr. Chambers, what I said in the Consolidated case applies here. I am not taking Mr. Woods' testi-
542 mony as to prices; I am taking his testimony as to quantities. I am taking his calculation based upon other evidence that there may be in the case as to whether the prices are in fact right—I wouldn't spend much time on that.

Q. Well, that was April, 1920, and what month for labor?

A. Labor, I took current pay rolls about as of today, practically—in April.

Q. What month was that, April, 1920?

A. April, 1920. My recollection is that boiler coal—and I am not absolutely certain, but I think that the bill was of some time in February—my recollection is that they had not received any coal since February. I think the price now would be higher than as indicated on that sheet for boiler coal.

Q. Well, they are using coal on their reserve supply, aren't they?

A. They had some in stock and I don't think they received any, but I think any purchased since that time would be a higher price than as indicated on that exhibit.

Mr. Chambers: That is all for the present, I suspend.

Cross-examination.

By Mr. Neumann:

Q. Mr. Woods, you testified about the factors that went into the question of unaccounted for gas, did you not?

A. I did.

Q. Did you mention among those leakage in gas*e* holder?

A. I said leaks wherever they might occur.

Q. It is true that gas holders do leak?

A. There are times. They usually show, and the leakage is comparatively small. I would not say that there was not at times
543 a leak around a rivet or around a seam, because at times there are leaks developed.

Q. And the holder would be one of the things that should be watched very carefully for repairs?

A. They are kept in good repair.

The Master: No, the question is, they should be watched pretty carefully?

The Witness: They are watched.

The Master: Well, they should be, yes.

Q. All of these factors that go to make up unaccounted for gas are based on estimates or guess, are they not?

A. We know what the unaccounted for is. As to what the different percentages are as a result of condemnation, leakage in mains, leakage in service, slow meters, variation in temperatu*e*r at which the gas is registered at the consumers' meters, that, of course, is an estimate. The combined, of course, is known, because we know the

amount of gas which has been made, which has been corrected to a temperature of 60 degrees, which is the standard throughout the world for correcting gas temperatures, gas meters, and we know the sum total of the amount of gas that has been recorded on the consumers' meters. The difference between the one and the other is the unaccounted for gas.

Q. Would not also one of the elements be the gas that had already been sent on to the consumers' meters and used and not billed for at the time?

A. Well, naturally, Mr. Neumann—that was brought out in the other case. The production of gas, the amount of gas made during any one month would not represent those consumers' meters
544 as read, would not represent the amount of gas or the same gas that was produced in that month, because the indexes are being taken every day.

Q. And that would be true, too, at the end of the year, wouldn't it? Take for instance as a definite period, December 31st—there would be some gas that had already been consumed by the consumer that had not been paid for up to December 31st of whatever year you take?

A. That would be so, yes. At the same time, the conditions being the same the previous year, and the indexes being taken about the same time, you would get almost an accurate result of the consumption by the consumers' meters for that year. You have that little overlap from month to month.

Q. And from year to year?

A. There might be a small amount from year to year.

Q. I am just trying to get at the facts, Mr. Woods. Now, condensation has something to do with unaccounted for, hasn't it?

A. Yes, that is a result of temperature.

Q. In which system is there more condensation in the mains, in a low pressure system or in a high pressure system?

A. Pressure would produce condensation, both pressure and temperature.

Q. I don't think you have answered my question, Mr. Woods. I will repeat it for you if you want.

A. Well, I gathered—gas under high pressure, you would get a greater condensation than you would under low pressure, because high pressure and low temperature has a tendency to drop out
545 any of the vapors that may be contained in the gas. There is a vapor tension there, and if the temperature or the pressure gets below the point at which the gas can carry it, it will drop out.

Q. Consequently the percentage of unaccounted for would be larger under high pressure than it would be under low pressure?

A. There would be some difference.

Q. Do you know about what the percentage would be?

A. I would not like to say. It would depend upon the pressure and it would also depend upon the amount that was being subjected to high pressure.

Q. Based on your experience, can you give any estimate of what it would be likely to be in, say, a plant of a million capacity?

A. It would only be an estimate, and I would not like to say. It might affect it to the extent of one per cent.

Q. Now, speaking about high pressure, how does that affect the illuminating power of the gas at the place of service?

A. It would have a tendency to affect the candle power, that is, high pressure would tend to drop out some of the illuminants, and condensation to some extent might affect the candle power. That would depend upon the pressure to which the gas was put.

Q. Well, the further away from the service, the further away the service is from the station holder, the lower then would be the candle power, is that true?

A. It would depend. If you should subject a gas to a low temperature within half a mile from the works, and the temperature came up beyond that point, you would not have any drop in candle power, because there would be nothing to drop it out.

546

Q. Do you recall when the Douglaston mains were completed, Mr. Woods?

A. No, I do not, the date.

Q. You talked in your direct examination about the Douglaston mains and the high pressures, didn't you?

A. Yes, I said they were operating under high pressure.

Q. Well, do you know when they commenced operating under that high pressure?

A. Well, they have had some high pressure there for some time. They used a part of the line that was operating under high pressure, and extended that line to Douglaston.

Q. Do you know when that line was started?

A. I don't recall the date.

Q. Was it some time in 1919?

A. I should say it was, yes.

The Master: Could not Douglaston have been supplied without a high pressure?

Mr. Neumann: May I object to that for the present? I want to develop that situation as I go along.

The Master: I want to know now.

The Witness: It could, your Honor.

Q. Do you know when they commenced to build the extension to Douglaston?

A. I don't recall the date?

Q. Wasn't it some time in 1919?

A. I think it was.

Q. The early part of 1919?

A. That is my best judgment.

547

Q. It would be feasible, would it not, to continue to serve Douglaston under low pressure if there was a holder erected somewhere in the neighborhood of Flushing?

A. Why, it would be feasible to supply Douglaston under low pressure now if you took into consideration the expense involved in

laying low pressure mains to that district. It is only a question of capital invested.

By the Master:

Q. What is the difference between low pressure and high pressure mains?

A. Because you can operate on a high pressure main, you can run a 4 or 6 inch line where you would want a 10 or 16 inch line under low pressure.

Q. Explain that to me. I don't know about it.

A. Under low pressure they would be running on 4 or 5 or 6 inches of water pressure, in other words, less than one-quarter pound, to make the distribution to that point.

Q. Why would you need a larger pipe or distributing main under low pressure?

A. In order to get it there. For instance, if you use a 4 inch main, which they usually use in this high pressure system, depending on the size, you can put that up to 15 or 20 or 30 pounds, so that the carrying capacity of that main is multiplied 10 or 15 times.

Q. You get the same result by a larger main?

A. You would get the same result by a larger main. The only reason that high pressure systems are put into use at all is a matter of investment, because if you have a long extension to put in where the consumption does not justify, you can easily figure—

548 For instance, like in the Douglaston proposition, the investment in a low pressure system there at the price of gas, the interest on such an investment would be more than the gross income.

Mr. Neumann: I move to strike out that part of the answer about the interest on the investment.

The Master: Motion denied.

Mr. Neumann: Exception.

By Mr. Neumann:

Q. Under high pressure, Mr. Woods, you secure more drip-oil, do you not, than you do under a low pressure?

A. Well, there would be a small amount, yes; it would be infinitesimal.

Q. Have you any idea what the percentage of increase is?

A. No, I think it would be small. I calculated there about one and one-half per cent—that that would be the average. It would very under a high pressure or a low pressure, depending on the quality of the oil.

Q. The difference between high and low pressure is in the blower, is it not, or in the type of blower? To put it another way, you change from a low pressure to a high pressure by installing a different kind of blower?

A. Well, in the case of the Flushing Company, for low pressure the holder itself is of ample weight to give sufficient pressure to deliver gas on to the district throughout the low pressure system. In the case of high pressure you use a compression pump. You draw

the gas from the holder, put it through this piston pump into a cylinder at anywhere from 5 to 10 or 15 pounds, and as high as 40 pounds, and from there it is delivered to the end of the line,
549 and the regulators on the end of the line bring the pressure down to a commercial pressure.

Q. You know what a blower is, don't you, Mr. Woods?

A. Oh, yes.

Q. They are used in connection with high pressure, aren't they?

A. They might use what they call a high pressure blower; they might use what they call a positive blower, positive exhauster on what might be called semi-high pressure. For instance, they use a positive blower or positive exhauster for 5 or 10 pounds. Beyond that point they usually go into the regular reciprocating pump built practically the same as a water pump.

The Master: What has this plant got?

The Witness: Reciprocating pumps, practically piston pumps.

Q. Not a blower?

A. No, piston pumps.

Q. Which is the more expensive, the piston pump or the blower?

A. Well, it depends on its use. There would be very little difference.

Q. Approximately about $1,000 would purchase either one of them, wouldn't it?

A. I don't recall just what they paid for those. My recollection now is that they have two compressors in the Flushing plant. Just what they paid for them I would not like to say at the moment.

Q. Now, Mr. Woods, is it fair to say of your testimony that a plant of this size in comparison with a larger one does not operate as economically per unit?

A. I don't follow that question.

550 The Master: To put it another way, can you operate a 10,000,000 plant more economically than a 1,000,000 plant.

Mr. Ransom: I object to that question in that form. It is a question of whether certain items become greater per unit of gas produced.

The Master: I will take his statement on this.

Mr. Ransom: Exception.

The Master: Can you operate a 10,000,000 cubic foot plant, having all the consideration in mind?

A. The best way I can answer that is that the production cost of gas in a plant of a million feet capacity would be greater than it would be in a ten million plant.

The Master: I think that is an answer.

Mr. Chambers: I don't think it is quite an answer to that question.

The Master: I think so. He says it will cost more to make a thousand cubic feet of gas in a million cubic foot plant than in a ten million cubic foot plant.

Mr. Hyatt: That is only a half truth, and we ought to have on the record what the distribution cost is.

The Master: We are not talking about distribution now; this witness has not testified about distribution. We will talk about distribution cost when we get to it. I have in mind perfectly that the distribution cost in these schedules is about thirty cents, as against a finding in the Consolidated Gas that it should be about twenty. We will have it before this case is over.

551 Q. Now, Mr. Woods, taking the same question and applying it to the capacity of two million in comparison with a plant of ten million, would you say that it could be run as economically?

Mr. Ransom: I object to the form of the question.

The Master: Objection sustained. I will let you ask him whether he can produce gas as cheaply per thousand cubic feet, in other words, whether it would cost more to produce a thousand cubic feet in a two million plant than in a ten million plant.

Mr. Neuman: May I ask the Master on what ground he sustains that objection?

The Master: On the ground that the question of economical operation is not the question here. It is a question of the cost of production, which includes the cost of operation.

Mr. Ransom: Both plants might be operated just as economically, and yet in one gas would cost more per thousand cubic feet than in another.

The Master: That is what I had in mind.

Mr. Neumann: If I understood Mr. Woods' testimony, he was permitted on direct examination to base his answers on many questions that were pure hypotheses.

The Master: I am allowing you to bring out—— .

Mr. Neumann: But you are reframing my questions and not to bring out the point I want to bring out.

The Master: On the question of economical operation, you can operate a million cubic foot plant, or a ten million cubic foot
552 plant, or a thirty million cubic foot plant economically. You can operate them all as economically as it is possible to operate any plant. In other words, what I am trying to make clear is—and I will put it in the form of questions to Mr. Woods——

There isn't any reason why you cannot operate a million cubic foot plant economically, is there?

The Witness: There is not.

The Master: Or a two million foot plant?

The Witness: That is right.

The Master: Or a ten million foot plant?

The Witness: That is right.

The Master: Or a thirty million foot plant?

The Witness: That is right.

The Master: And a gas man ought to be able to operate any one of those plants as economically as another, having in mind the conditions?

The Witness: Yes, sir.
The Master: The cost of production will change?
The Witness: Yes, sir.
The Master: In other words, running it just as economically, and taking just as much care in the production of the one company as the other, you won't get as good a production cost result in one as in another—is that your point?
The Witness: That is right.
The Master: I will let you cross examine him in any way you like on that.
Mr. Neumann: You have asked the questions that we had in mind and were trying to develop.
553 The Master: As usual, I know what you want and get the question, and you fellows fuss around with it and don't get it.

Q. Now, Mr. Woods, would you say then that a plant of say two million capacity, it would be for the best interests of the company to have as large a send-out as possible?

Mr. Ransom: Objected to as vague and meaningless.
The Master: I will allow it.
Mr. Neumann: He has testified.
The Master: Don't argue, please, when I have ruled on it. Let us see if we can't get rid of this case without a lot of discussion on the record.
Mr. Neumann: Well, if Judge Ransom will only keep quiet——
The Master: And you will keep quiet.
Mr. Ransom: I have a right to make an objection.
Mr Chambers: Mr. Neumann has to make a lot of noise to ask a question.
The Master: Ask your question.
Mr. Neumann: I have asked the question. It is unanswered.
The Master: Answer it.

A. Based on the experience of the last two or three years it seems to me the more we make the more we lose.

The Master: The question is a very simple one. Taking a two million foot capacity plant, to get the best results you ought to get all the send-out possible—is that so or not?
The Witness: It would be better—whatever the capacity of the machine would be it would be a good thing in the interest of
554 better opperation, more economical operation, to be operated at the full capacity of whatever the machine might be.

Q. Therefore, it would be to the best interest of the company to obtain as many consumers as it possibly can in order to increase its send-out up to its capacity?

Mr. Ransom: I object to that. He has not said any such thing.
The Master: Objection overruled.
Mr Ransom: The question is vague and meaningless and inexact.

A. When you refer to getting as many customers as possible, you have to consider where they must get those customers from, and how much it is going to cost to get those customers, and what it is going to cost to handle them. It might be that a slight saving at the plant would be more than offset by your large investment or the expense of handling it on the outside. That would be a question of the particular business you were looking for.

Q. Now, the Queens Borough, where this plant is located, is a growing borough, is it not?

A. Yes.

Q. It is the one of the five boroughs that has made the largest increase, taking the two last censuses into consideration?

Mr. Ransom: I object to that as immaterial unless it relates to the particular area. Queens Borough is a large community and a large part of it is essentially rural.

Q. This is the only plant out there, isn't it?

Mr. Ransom: It is not the only plant in Queens Borough.

555 The Master: From my knowledge of the extent of Queens I shall sustain the objection on the ground that it is too wide a question.

Mr. Neumann: Exception.

The Master: You can limit your question to the territory covered by this gas company?

Mr. Ransom: The Third Ward, that is the Flushing territory.

Mr. Neumann: Well, all right, I will reframe the question. Instead of making it Queens Borough——

The Master: Without knowing precisely the extent of Queens I should say it is several times as large as Manhattan.

Mr. Neumann: I will confine it to the Third Ward.

The Master: The question is do you know whether there has been a tremendous increase in the Third Ward of Queens as compared with other boroughs and other sections of other boroughs?

Mr. Ransom: Since when?

The Master: Oh, in the last ten years.

A. Why, comparatively speaking. As I recall the Third Ward in Queens it is about the size of the Borough of Manhattan.

The Master: The Third Ward of Queens alone?

The Witness: The population that they supply is somewhere between 35,000 and 40,000 people against 3,000,000 or 4,000,000 here. Of course it has great room to grow.

Q. You know as a fact, do you not, that Queens has been growing, including the Third Ward, or the Third Ward of Queens has been growing?

556 Mr. Ransom: Objected to as not within the scope of this inquiry unless limited to the Third Ward.

The Master: He has limited it to the Third Ward. It has grown, hasn't it?

The Witness: It has grown and is growing I think. To what extent I do not know.

Q. In your judgment, Mr. Woods, it should be the policy of this company to invite more consumers rather than to endeavor to keep them out, should it not?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Neumann: Exception.

Mr. Ransom: The company has to serve everybody who comes within the statutory requirements.

The Master: My reason for sustaining the objection is that it has already been answered. The witness has fully described the reasons that might operate against taking on more customers unless they had to.

Mr. Ransom: That is customary outside of the statutory requirements.

The Master: They have got to supply their territory.

Mr. Ransom: When it comes to a matter of long extensions why then certain other questions are presented.

Q. Mr. Woods, do you know the reason why the Douglaston extension was not started until 1919?

Mr. Ransom: I object to that as incompetent——

Mr. Neumann: The condition of the record at the present time is this: They have put in an order from the Public Service
557 Commission indicating that in the year 1915 they were directed to build this extension to Douglaston. The testimony at the present time is that they did not commence to build it until 1919.

The Master: I understood they finished it in 1919.

Mr Neumann: I am asking this witness whether he knows why they didn't commence.

The Master: Didn't he say they finished it in 1919?

Mr. Neumann: They commenced it in 1919 and finished it in 1919.

The Master: What materiality has it in this record as to why it was delayed for four years? Why should I go into that collateral issue?

Mr. Neumann: The fact is that they resisted the building of this extension and took the case up to the Supreme Court of the United States, all the way through the State Courts.

The Master: What has that got to do with this issue?

Mr. Neumann: In view of the witness' testimony I think it is quite important.

The Master: Why is it important?

Mr. Neumann: As indicating that whoever resisted the order used poor judgment.

The Master: Objection sustained.

Mr. Neumann: Exception.

Mr. Ransom: It is costing this company about 86 a thousand cubic feet to supply this Douglaston area.

The Master: I sustained the objection.

558 Mr. Hyatt: Strike that out. I don't see why counsel should testify. That happens so very often during the course of this trial that somebody ought to sit on him.

The Master: You are wasting time.

Mr. Ranson: There should be no comments here by persons who have no right in this case.

The Master: Don't take any more, Mr. Stenographer.

Q. Mr. Woods, you testified about the continuous running of gas machines. I believe your testimony was to the effect that they ran 24 hours. By that you mean that its actual running time is only 19 hours, do you not?

A. No, it depends on the cleaning time, the number of cleans, the amount of time required to make a clean.

Q. Is it not a fact that no machine runs continuously for 24 hours?

A. In our calculations we consider them in operation throughout the 24 hours, including the cleaning time.

Q. What is that cleaning time?

A. That would depend entirely on the character of the fuel as to how long that will require.

Q. What is your experience generally speaking?

A. That it will vary. You can clean a machine in 50 minutes sometimes, and sometimes it will require two hours or two hours and a half. If the coal is bad, bad clinker formation, there are times when it requires as much as two and a half hours and there are other times when you can clean them in 50 minutes.

559 Q. Now, before you can clean a machine you have to allow it to cool down, do you not?

A. Oh, no.

Q. You clean it while it is red hot?

A. Absolutely.

The Master: Of course it cools down while you are cleaning it?

The Witness: No, it does not cool down much as a rule. The generator itself, that is where the coal is, of course you may draw your fire a little to get it a little low. It depends on the fuel. There are times when you can have a full fire and clean, when the clinker and ash is at the bottom. If you get much on the side of the machine then it is necessary to bring the fuel down. Under ordinary conditions you have from 6 to 7 or 8 feet of fuel in these generators, and there are times when you have to run your fire down before you clean, if you have much side clinker formation, in order to get the bars in and clean them out. The carburetter and superheater, generally speaking, get a little bit hotter during the cleaning than beforehand, as a result of opening the doors at the bottom with the draft passing through to heat them up. After cleaning and cooling it requires a little bit longer to blow, because you usually put more coal in at that time than you do under ordinary running conditions, which means that you coal up about once every hour.

Q. Mr. Woods, based on your experience in the Consolidated system, is it not a fact that so far as boiler fuel is concerned, in order to produce a thousand cubic feet that you have to use as low as twelve pounds?

560 A. Yes, and as high as seventeen.

Q. That is right. That has been your experience in the Consolidated system?

A. Yes.

Q. Now, Mr. Woods, would it not be fair to say that drip oil and water gas tar when used for boiler fuel purposes by any company should have the same money value equal to its coal equivalent?

A. It has a value which would depend——

Q. No, I think that calls for a direct answer.

Mr. Ransom: He is answering——

The Master: No, I think he is entitled to it. That is a perfectly simple question. Ought not the company to charge itself with the value of the tar and oil used for fuel upon the basis of what it would have to pay for coal for the same result?

The Witness: Yes, I think that would be fair.

Mr. Neumann: That is what I want.

The Witness: I wanted to qualify this to this extent, which of course would not make a particle of difference in their operating cost. It might be——

Mr. Neumann: I move to strike that out, because it is beyond the question.

The Master: I will take the witness' explanation of his answer. I understood him to say a long while ago that it did not make any difference in the net result, because if they charged themselves with the price which would represent the fuel they would have to credit themselves with the same amount.

The Witness: What I was going to say was——

561 Mr. Neumann: If the Court please, I think that was beside the question. I think that was a perfectly simple question, and the answer to the question speaks for itself.

The Master: I will let the witness make any explanation he wants with reference to it.

Mr. Neumann: Exception.

The Witness: I was only going to say that there might be conditions whereby the tar might be worth four or four and a quarter cents a gallon, as compared with the coal we could buy. The selling price of that tar, however, it might be that you couldn't get anything for it, you might get two or two and a half cents a gallon. Now, you might charge yourself with what you could dispose of that tar for. It would not make a particle of difference in your production cost, because it would be a debit on one side and a credit on the other, and whether it was put in at three or four or six cents would not make a particle of difference.

The Master: I understood you to say that a long while ago. Go ahead.

Q. Now, what is the general average time that a water gas machine will run without overhauling?

A. Well, that depends upon the character of your fuel and the amount of ash that might go over into your carburetter and superheater. We figure that we can always operate on 800 hours so far as the carburetter is concerned. There are times when fuel conditions are good that you can run longer than that. A superheater at times will run longer than that. There are times at peak loads
562 that we have had to run considerably longer without any material drop in the efficiency of the apparatus.

Q. Would you say that a machine that was kept up to fairly good efficiency would run without interruption for eight hundred hours without overhauling?

A. Without a general overhauling, yes. There might be minor repairs, there might be a broken hot valve, or some of the blast valves might become leaky, or a stack valve might develop a leak, something happen to some of the connections whereby you might have to shut it down for two or three hours or for a day, which would be damage of some kind that happened to the machine during its ordinary course of operation.

Q. Based on your experience, and that is what you figure for the Consolidated system, that a machine ought to run about eight hundred hours?

A. Yes, it will run eight hundred hours.

Q. Now, do you know whether this company keeps any records of any kind as to when its machines are in operation or out of operation?

A. Of my own knowledge—I imagine they have those records. I cannot say that I have seen them.

Q. You keep such records in the Consolidated system, do you not?

A. We do.

Q. What are they called with that company?

A. Well, we only keep a record—that is, it is a works' record, more of a statistical record for the purpose of examining and seeing just how long the different machines are running. That is what we call a record of operations and results.

Q. Now, Mr. Woods, going back to Exhibit 77, you have a little foot note here on the bottom of this exhibit in which you state
563 "additional boiler fuel used on account of the steam used for high pressure transmission in supplying Douglaston extension under order of the Public Service Commission for the First District——"

A. Right.

Q. Isn't that part of the transmission cost, the distribution cost?

Mr. Ransom: I object to that.

Mr. Neumann: I think the witness ought to be allowed to answer. You are yelling all the time.

The Master: I think Mr. Neumann is not called upon for a speech.

Mr. Ransom: Boiler coal is not under the uniform system of accounts a part of the cost of distribution.

The Master: The question is asked of Mr. Woods, is that additional coal part of the distribution expense?

Mr. Ransom: What is your Honor's ruling?

The Master: I am overruling the objection.

Mr. Ransom: Exception.

A. It might be considered a distribution charge. However, the boilers, etc., that operate the plant perform that work. If you wanted to take out of the manufacturing and add that coal on to distribution it would not make a particle of difference.

Q. You also generate steam, do you not, for the transmission of gas?

The Master: What is that?

Mr. Neumann: I will withdraw the question.

Q. I will direct your attention, Mr. Woods, to Exhibit 77, the third item, Boiler Coal. That item of Boiler Coal contains
564 coal that is used to produce steam for transmission pumping, does it not?

A. That is right.

Q. Transmission pumping takes place after the gas is manufactured, does it not?

A. Naturally.

Q. Directing your attention to the fourth item Labor, Handling, Carting, etc., the handling of coal also relates to transmission, does it not, part of it?

A. In so far as the amount of boiler coal used for transmission purposes is concerned that would apply, yes.

Q. Generally speaking, based upon your experience in the Consolidated System, what did you allow, approximately, for transmission out of that item?

The Master: What difference does it make, Mr. Neumann?

Mr. Neumann: Quite some difference.

The Master: What?

Mr. Neumann: Quite some difference, because it will reduce the cost of manufacturing gas from their figure——

The Master: Then you have to put in the figure for cost of distribution, have you not?

Mr. Neumann: They may be duplicating both items; we have not both exhibits here. I think that if we are confining ourselves to the exhibit that is supposed to indicate the cost of manufacture, only those items that go into the cost of manufacture and in part of distribution should be in that exhibit.

The Master: That will be a matter of analysis of figures later. I do not think you need any more time on that.

565 Mr. Ransom: This company could not disregard the Uniform System of Accounts and follow the temporary suggestion of the temporary representative of counsel for the Commission.

Mr. Neumann: I resent that, and I think it should be stricken from the record.

The Master: All right now; you have resented it.

Mr. Neumann: I cannot quite understand what he means by "temporary."

The Master: I cannot, either.

Mr. Neumann: And to say the least it is very ungentlemanly.

The Master: Proceed.

Q. Mr. Woods, generally speaking, based on your experience in the Consolidated System, in this item that I have just spoken of is not the general average one-third for manufacture, one-third for auxiliary purposes, and one-third for transmission purposes?

A. I have never known any division of that kind.

Q. In this Exhibit 77, Mr. Woods, have you made any allowance here for gas used and consumed at the plant?

A. The gas used at the plant would be indicated—my recollection of the accounts is that it is put in Miscellaneous Works Expense.

Q. Then this figure of one cent per thousand for miscellaneous works expense would include gas used at the works?

A. That would be a charge against that account, yes.

Q. You have no knowledge, have you, of just how much gas they use or consume at the plant?

566 A. No, not any specific amount.

Q. The books, if anything, would show that?

A. In all probability, yes.

Q. There is no separate record kept, so far as your experience goes, of that, outside of the books?

The Master: What is the use of wasting time? Exhibit 64 shows miscellaneous works expense at .39 of a cent, and shows that there was used by the New York & Queens during the year 1,933,330 cubic feet.

Mr. Tobin: It does not show that particular item, does it—that particular item of gas used at the plant—as a part of that?

The Master: Used by the New York & Queens Gas Company. I suppose that must include the gas used at the plant. Where else would they use it, Mr. Woods?

The Witness: I do not know, but I imagine that might include the gas used at the offices and other places where they might have used the gas.

Mr. Ransom: That includes gas used at the offices and at the shop.

Mr. Cummings: I think we ought to know whether Mr. Woods is taking that into consideration in his hypothetical plant.

The Master: What is that?

Mr. Cummings: I think we ought to know whether he has taken that into consideration.

The Master: But he has already said in his cent he included that. But Mr. Teele's figures taken from the books, as against his estimate of a cent for miscellaneous works expense, shows .39 of a cent, and apparently does not include the gas used by the company as

567 part of the works expense cost. That is carried as a separate item, used by the New York & Queens.

Mr. Cummings: Mr. Woods seemed to be, to my mind, a little bit in doubt as to whether he had included that.

The Master: No, I do not think so.
Mr. Cummings: He said it ought to be charged to that.
The Master: I do not think he was in any doubt.
Mr. Cummings: Did you charge it that way?
The Witness: I did.
Mr. Cummings: What?
The Master: In his statement of what was included in miscellaneous works expense he said that it included electricity, watchmen, messengers, telephone, gas, electricity. That was his testimony right along.
Mr. Tobin: The point about it is this, if the Referee please: there is with some gas companies a separate item and a separate account taken of the actual gas used at the plant, that is entirely independent of gas used at the offices of the company.
The Master: Well, they probably have it here.
Mr. Tobin: And in some companies it runs to quite a big item. That is the reason why we ask as to where it might be found in this calculation of Mr. Woods.
Mr. Cummings: Now you see he does not know how much that is.
The Master: Next question.
568 Mr. Cummings: He has no knowledge about it.

Q. Mr. Woods, do you from time to time look over the reports of the various companies operating in the vicinity of New York?
A. Do you mean other companies?
Q. Other gas companies outside of your own system.
A. I look over the reports they file with the Public Service Commission at times.
Q. That is what I mean, yes. Did you look over them for the year 1919?
A. I have not.
Q. The report filed by the Brooklyn Union Gas Company for the year 1919 indicates that they only use 31——

Mr. Ransom: I object to that method of reading in the report of the Brooklyn Union. I offer to place in evidence the entire report of the Brooklyn Union Gas Company.
Mr. Cummings: That is an old stunt of yours, Judge, to get things into the record.
Mr. Neumann: He said from time to time he familiarized himself with these reports and read them and looked them over. He ought to, if he is a competent man, know what other companies are doing and how much they are using.
Mr. Ransom: If the Commission will publish the 1919 reports, as we tried to get them to do, we will know those things.
The Master: I shall permit Mr. Neumann to ask the question.
Mr. Ransom: That is not a question, that is a statement.

569 Q. The report filed by the Brooklyn Union Gas Company for the year 1919 indicates that they only used 31.68 pounds of generator fuel to make a thousand cubic feet of gas?

The Master: What is the question? For what year is that?
Mr. Neumann: 1919.

The Master: Do you know whether that is so or not, Mr. Woods?
The Witness: I do not. I should say that they used more.

Q. You would say that they used more?
A. That is my judgment, yes. I have not seen the figures.
Q. Notwithstanding the report that they made to the Public Service Commission?
A. I do not know.

The Master: The witness has said he does not know anything about the report, that he has not seen it.
Mr. Ransom: I offered to put the report in evidence.
The Master: That is why you will get nowhere with that inquiry.
Mr. Neumann: Well, if the Master does not think that line is useful I do not want to lumber up the record with——
The Master: I do not see how it can be. The witness will simply say, "I do not know what they are reporting, I do not know what they are doing."
Mr. Cummings: Then for the purpose of testing his judgment.
The Master: How do you test it? You do not prove anything.

Mr. Cummings: But we can determine whether or not his
570 judgment is sound.

The Master: Would you say, for instance, that a report made by this company, to which reference has just been made, is correct; and he says no, it cannot be correct, they cannot do it at that. Where do you get?
Mr. Cummings: Then it shows bad judgment, does it not?
Mr. Neumann: It seems to me before a witness undertakes to testify in any particular year what particular quantities they used, one of the factors that he ought to take into consideration is the published and available data of other companies bearing upon that subject.
Mr. Ransom: It is not available.
Mr. Neumann: What is the use—the young man, Mr. Ransom, is impulsive: he cannot restrain himself.
Mr. Hyatt: He has got a wonderful sense of humor, too, besides.
The Master: Is there anything else, Mr. Neumann?
Mr. Neumann: No, I think I have demonstrated the point I wanted to make.
The Master: That is not what I wanted to know. Is there anything else you want to ask this witness?
Mr. Neumann: There is no need repeating the questions as to all of the items, because it is quite apparent that the witness would answer the same question by the same answer.

The Master: Why, certainly. Anything else?
571 Mr. Cummings: I think Mr. Neumann ought to be allowed to show Mr. Woods used bad judgment in those things, based on the New York & Queens report.

The Master: Does the District Attorney of Queens want to ask a question?

Mr. Cummings: It is like telling a man that they cannot put you in jail when he is there.

Mr. Ransom: I should like to say that this effort to come in and represent the Corporation Counsel is not with his authority, there is no one representing the Corporation Counsel in the case with his authority. It is no doubt a very commendable thing for Mr. Hyatt to come in here and wish to participate in the case.

Mr. Hyatt: That is another indication of that sense of humor.

Mr. Neumann: Before Mr. Hyatt proceeds, may I ask just this one question?

Q. Does this Exhibit 77 contain any charges, of any kind, for storage?

Mr. Ransom: Of what?

Mr. Neumann: Of gas. What would you think, peanuts?

Mr. Ransom: Of coal.

By the Master:

Q. Does it contain any item of gas storage expense?

A. The gas storage would be included in this.

Q. Miscellaneous works expense?

A. Because their storage holders are at their plant, and it is included in the works operation.

Q. It is included in miscellaneous works expense?

572 A. Whatever expense attached to that would be in there.

Q. As part of plant operation?

A. Part of plant operation, as far as the Flushing plant is concerned?

By Mr. Neumann:

Q. The gas is stored after it is manufactured?

A. Yes.

Mr. Neumann: That is all.

The Master: So far as Mr. Hyatt is concerned, I shall continue to recognize Mr. Hyatt as counsel for the District Attorney of Queens, until the District Attorney of Queens by some formal statement on this record removes Mr. Hyatt as his counsel. Proceed, Mr. Hyatt.

Mr. Ransom: Exception to your ruling.

Cross-examination.

By Mr. Hyatt:

Q. Directing your attention, Mr. Woods, to Exhibit 77, do you know of your own knowledge that this company, the complainant company, has for the past year used on an average, per 1,000 cubic feet sold, 37 pounds of anthracite coal to manufacture its gas?

Mr. Ransom: Objected to as an wholly inaccurate statement. Exhibit 64 shows no such thing.

The Master: The objection is sustained upon the ground that the witness has not attempted by Exhibit 77 to say what this company has in fact used.

Q. Does this witness know of his own knowledge the amount of generator coal and the pounds of generator coal per 1,000 cubic feet manufactured?

573 The Master: That this company has actually used?

Mr. Hyatt: That this complainant has used.

The Master: During the year 1919?

Mr. Hyatt: For the past year or so.

The Master: Do you know that of your own knowledge, Mr. Woods?

The Witness: Why, I have seen the figures, your Honor. I do not recall them at the moment.

The Master: This Exhibit 77 does not purport to show that?

The Witness: No, that exhibit purports to show what a good operation would be.

Q. Do you know of your own knowledge that this complainant company has for the past year used on an average 4.2 gallons per 1,000 cubic feet of gas sold in the manufacture of its gas?

Mr. Ransom: Objected to on the grounds previously indicated. This exhibit does not relate to——

The Master: Where do you get that 4.2 from, Mr. Hyatt?

Mr. Hyatt: I will withdraw that question.

Q. Do you know, Mr. Woods, of your own knowledge the amount of gas oil per 1,000 cubic feet of gas manufactured, used by this complainant company in the manufacture of its gas during the past year?

A. I have seen the reports——

Q. I only want an answer yes or no.

The Master: Can you now at this minute tell us of your own knowledge what those figures are?

574 The Witness: I cannot recall the figures, your Honor. I have seen the figures, but I cannot recall them at the moment.

The Master: Next question. Exhibit 77 does not purport to show what the company actually used?

The Witness: No, sir.

Q. Do you know of your own knowledge at the present time how many men are employed by this complainant company and have been for the past year, making gas in the works or manufactory of the complainant company?

Mr. Ransom: Objected to on the grounds previously indicated.

Mr. Hyatt: Does he know of his own knowledge, yes or no.

The Master: I will allow this question.

A. I have known the number of men employed. The number of men employed has varied from time to time. I could not recall and I do not know the number of men they had each particular day, no.

Q. Do you know how many men they have been employing during the past year on an average, per day, in the work of repairs?

Mr. Ransom: Objected to on the grounds previously stated.

The Master: I will sustain it upon the ground that the witness' answers to previous questions would indicate that he is not prepared at this time to testify from knowledge as to any of these items on Exhibit 77, and that this Exhibit 77 is intended to be and purports to be only his estimate of what there should be there, without a representation that they do or they do not have.

575 Mr. Hyatt: Then I am going to ask him to enumerate, if your Honor please, what are the sources of his information with respect to Exhibit 77.

Mr. Ransom: I object to that.

The Master: Ask your question and I will rule on it.

Q. When you prepared this Exhibit 77, Mr. Woods, what information did you use in compiling the cost, for instance, of anthracite coal for the generators?

The Master: Objection sustained upon the ground that it has been sufficiently covered.

Mr. Hyatt: Exception.

Q. The same question with respect to boiler coal?

The Master: And as to all the other items.

Mr. Hyatt: And as to each and every other item appearing with reference to the cost of materials on Exhibit 77.

The Master: The question is not allowed, because it is sufficiently covered.

Mr. Hyatt: Exception.

Mr. Cummings: It clearly appears that it is a creation of his own, it has nothing to do with the New York & Queens.

The Master: If anything clearly appears, I am right in my ruling that it is covered.

Mr. Cummings: You certainly are not. He has created out of his own mind a plant which he thinks resembles somewhat this plant.

The Master: Then that is what clearly appears.

576 Mr. Cummings: He admits that it has nothing to do with this plant.

The Master: Then that clearly appears.

Mr. Hyatt: May I state, your Honor, if he does not know what this plant actually does, how can he draw a schedule to use for hypothetical purposes, unless he is familiar with the facts of this plant.

The Master: Next question; I will argue that with you later.

Mr. Hyatt: All right.

Q. Mr. Woods, you have three generators in this complainant company's plant; what is the rated capacity of generator A?

Mr. Ransom: Objected to.

The Master: You mean by generator A which one, the big one?

Mr. Hyatt: I am going to adopt A, B, C.

The Master: You have to adopt A to something. Is A the big one?

Mr. Hyatt: I am going to eliminate it by a process of putting the label on each one.

By the Master:

Q. You have two of one size, as I recall it, and one of a larger size. You have two of one size?

A. Yes.

Q. What size is that?

A. Two are 7 foot 6, and one 8 foot 6.

Q. Two of them 7 foot 6 and one 8 foot 6; is that right?

A. Yes, that is right.

Q. Take the 8 foot 6 as machine A, what is its rated capacity?

A. It will make from one and a half to one million six hundred thousand a day.

Mr. Hyatt: That is not an answer to my question, may it please your Honor. I want to know what its rated capacity is when
577 it is sold to this company. When it is sold it has a certain rated capacity, and I want to know what that is.

The Master: I will find out.

Q. What is its rated capacity?

Mr. Ransom: Rated capacity is given a definite meaning by the defendant commission.

The Master: That is what I am going to find out.

Mr. Hyatt: It may mean a lot of things.

Q. What is its manufacturing rated capacity?

A. A million and a half a day.

Q. Machine B will be one of the 7 foot 6 machines?

A. Yes.

Q. What is the rated capacity of that?

A. I think they have been rated at 750,000, and with a little higher blast they can make a million apiece.

Q. So machine C means the same as the other 7 foot 6,—would be the same answer, would it?

A. That is right.

Q. It is rated at 750,000?

A. 750,000.

By Mr. Hyatt:

Q. Do you know of your own knowledge, Mr. Woods, if at any time during the past year either or any of these machines have been operated to the extent of their rated capacity?

A. I am quite sure they have.

Q. Do you know of your own knowledge?

A. Well, I have made inquiries as to the amount of gas made in the machines that were operated.

578 Q. No, do you, yes or no, know of your own knowledge how many times either or any of these machines have been operated to their rated capacity during the past year?

A. Well, I know from my experience with that type of machine and its method of operation that it will produce that amount.

Q. No, I do not want that. If you will, just kindly answer the question yes or no.

By the Master:

Q. You are not over at that plant except as you have stated?

Q. No, very seldom, your Honor.

Q. Then you cannot state it of your own knowledge?

A. Not just what that machine has done, no.

The Master: Why don't you say so?

By Mr. Hyatt:

Q. Yet you have prepared a schedule based upon your knowledge of what this plant ought to do, have you not?

A. I have.

Q. How could you prepare any such schedule without knowing what the conditions of operation were in this complainant plant?

Mr. Ransom: That is objected to as argumentative and vague.

The Master: Overruled.

Mr. Ransom: Exception.

A. I do inquire as to their operation. I keep in touch with the plant and know what they are doing.

Q. What do you mean by keeping in touch?

A. Well, I make inquiries. I do not go there and make the gas, but I make inquiries as to their method of operation and what the works do.

579 Q. Do you take somebody else's word for it?

A. Why, of course, if I am not there I must take somebody else's word.

Q. Do you ever go there and examine for yourself?

A. Examine what?

Q. The operation of the plant.

A. I do.

Q. How many times a week?

Mr Ransom: Objected to as fully covered.

The Master: Objection sustained.

Mr. Hyatt: I take an exception to that.

Q. You have testified now—I want to direct your attention, Mr. Woods, to this unaccounted for gas. You have testified to condensation in the mains, have you not?

A. I have

Q. How many feet are your pipes put below ground?

A. I do not know; they probably have an average depth of three feet.

Q. What is the temperature of the ground during the winter time at that depth?

Mr. Ransom: Objected to as absurd.
Mr. Hyatt: I want to find out whether there is condensation or not, or precipitation.
The Master: Objection overruled.
Mr. Ransom: Exception.

A. It will depend upon the depth of frost.
Q. What is the average temperature? You are an expert gas engineer and I would like to know.

Mr. Ransom: Average temperature of what—of the frost, or the air, or what?
Mr. Hyatt: I did not interject frost, Judge Ransom. I asked him what the temperature of the ground about the pipes was during the winter time.

580 A. It is assumed, I believe, in this vicinity, Mr. Hyatt, that except under extreme winter conditions, a long period of time where there might be frost, if the pipes are laid below the frost line——
Q. Why do you answer that way?

The Master: I rule that Mr. Woods is answering the question and ought to be permitted to answer.
Mr. Hyatt: If he is an expert he can tell us that immediately, your Honor.

By the Master:

Q. What did you assume, Mr. Woods?
A. That the average temperature beneath the frost line of the ground is 60 degrees.
Q. It is what?
A. It is 60 degrees.
Q. 60?
A. Yes.
Q. And where is the average frost line?
A. Well, that may be anywhere.
Q. Is there any knowledge on the part of engineers as to where it is usually?
A. No, because ordinarily you do not get three foot of frost, but in extreme weather or under extreme condition it may be 4 to 4½ feet.
Q. That is what I am trying to get at. Ordinarily you do not find the frost below 3 feet?
A. No.
Q. So your temperature at 3½ feet is ordinarily 60 degrees?
A. Yes.

By Mr. Hyatt:

Q. So you put it down there to get away from the frost?

A. Yes.

581 Q. There would not be any condensation in the pipes, would there, any hydro-carbons in this gas, at 60 degrees temperature?

A. At 60 degrees, if it was not below that. If there were points in the line where the mains, as the result of other sub-surface construction, were three feet, it might go lower than that.

By the Master:

Q. But where it is below three feet and the frost has not gotten below the three foot line and the temperature remained at 60 degrees, there is not this condensation?

A. There is not condensation below 60. I will qualify that to this extent, your Honor, that there is a certain condensation going on in the mains that is not reflected in unaccounted for gas, in that we might register the gas at the meter at 75 or 80 and it would go into the holders, and during the summer months the temperature of the gas in the holder might be 75 or 80, although it had been corrected in so far as volume is concerned down to 60; that gas passing out of the holder into the mains will drop its condensation from the 75 or 80, that it might be in the holder, down to 60.

Q. To where you figured it, 60 degrees?

A. Yes. So there would be, so far as actual unaccounted for is concerned, the difference between the consumers' meters and——

Q. The corrected make?

A. The corrected make; there would be no difference.

Q. But there still would be a condensation?

A. There would be condensation.

582 By Mr. Hyatt:

Q. That is only in the summer time?

A. In the summer time, yes.

Q. You do not mean to tell me, Mr. Woods, that gas companies build gas mains and holders with a view to inviting condensation and the loss in the hydro-carbons to consumers' premises, do you?

A. No, they do not invite those things.

A. Yes.

Q. And there would not be any condensation in the consumers' premises if the consumers' premises were above 60 degrees, would there?

A. No.

Q. In other words, there is a point of saturation here with reference to this gas, and when that point of saturation is reached that means that the gas contains all the hydro-carbons that it possibly can, and if it gets below that temperature there is precipitation of hydro-carbons; isn't that true?

A. Oh, that would vary; it would depend.

Q. Isn't it true, now?

A. No, it is not true absolutely. You are trying to confuse things.

Q. I am not trying to confuse anything; I am trying to get something on the record here that ought to be explained.

A. No, I am telling you this——

The Master: Mr. Hyatt, it is conceded, is it not, that there is some unaccounted for gas?

Mr. Hyatt: Certainly, it is conceded, but I do not like the way that he accounts for it; it is hazy.

583 The Master: What is the point of your cross examination; what is it you are trying to bring out?

Mr. Hyatt: The point is he says 7 per cent, 7 and a fraction, or even 11 per cent under some circumstances, is not an excessive amount of unaccounted for gas, and it seems to me that all the factors he enumerates in his causes for unaccounted for gas could easily be obviated by gas companies constructing their distribution system in such a way that it need not happen.

The Witness: It does happen, Mr. Hyatt, and it happens with all companies.

Mr. Hyatt: I know, but just think of a company doing business and losing 10 per cent of its product all the time; imagine that.

The Master: In the Kings County case, according to Judge Greenbaum's decision, it looks as if they lost 18.

Mr. Hyatt: Yes, that is a fact, your Honor, but that is one of the things that Judge Greenbaum said indicated inefficiency.

The Master: Let us assume now that your contention is the mains should be laid lower than three feet.

Mr. Hyatt: I do not assume that, your Honor; I am not an engineer. I am asking Mr. Woods——

The Master: There must be some purpose in a line of inquiry. There must be something that you want to develop, not a mere line of talk.

Mr. Hyatt: I am not talking. I am trying to get something on the record.

584 The Master: I want to find out what you are trying to establish. It seems clear to me that the gas companies lose gas, they lose gas among other things by reason of condensation; condensation occurs, among other reasons, because the frost will get down below the pipes. Is it your point that they must lay their pipes 4 feet or 5 feet below the ground?

Mr. Hyatt: That is not my point.

The Master: Or that it is bad judgment for them to take three feet? I want to see what you are driving at.

Mr. Hyatt: Well, your Honor, I beg to differ from your attitude.

Mr. Cummings: You are asking Mr. Hyatt to constru-t a model plant here. That is going too far.

The Master: I do not know what he is driving at. Ask your next question.

Mr. Cummings: You are asking him how he would build it.

Mr. Hyatt: It is a question of the company's——

The Master: I did not ask for a statement, Mr. Hyatt. Ask another question.

Q. Do you think that is a model plant, Mr. Woods, that loses 11 per cent of its product in the course of distribution?

A. I believe such a plant, even if it were constructed today under any conditions, operating as they are, with the variations in temperature, with the slow meters and the leaks, broken mains and services that may account for it, that 11 per cent would be a fair and reasonable unaccounted for of gas.

585 Q. Then I will ask you this: As time goes on does a gas plant tend to lose more and more unaccounted for gas?

A. Not if they maintain their system. It will vary from time to time and from year to year.

Q. Does it tend to that? I did not ask you whether they maintained their system. Does it tend?

The Master: I think that is a proper answer. I understand the witness' answer to be that it will not increase if they maintain their system.

The Witness: That is right.

By the Master:

Q. It will if they do not?

A. That is right, if they do not maintain their services and meters.

Q. And their holders?

A. And the holders. There is no reason why they should have more.

Q. If they do not repair their holders they will have more?

A. That is right.

Mr. Hyatt: There is just one more question, your Honor, that occurred to me.

By Mr. Hyatt:

Q. Did you ever operate a photometer, Mr. Woods?

A. I have.

Q. Could you tell the difference upon looking at it, whether gas was 18 candlepower or 24 candlepower?

A. Looking at the gas?

Q. Just looking at the gas?

A. I could not.

Mr. Hyatt: That is all.

The Master: Anything else?

586 Redirect examination.

By Mr. Ransom:

Q. Mr. Woods, if some portion of the mains, the distribution mains of the company, are exposed to the air in connection with

grade crossing construction being carried on by public authorities, would such exposure to the air at certain times of the year tend to increase or decrease the quantity of gas unaccounted for?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. The most that can be said of that is that it is a temporary situation, not a permanent one.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Cummings: He is assuming that such a thing was done here too, your Honor.
The Master: Objection overruled.

A. That would affect it.

The Master: While that temporary condition exists?
The Witness: That is so.

Q. If that situation remained permanent at a grade crossing on part of the system then the increase would be permanent?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.
Mr. Hyatt: I object to the form of the question as leading.
The Master: Overruled.
Mr. Hyatt: Exception.

A. It would.
Q. If mains were exposed to the air during the necessity of being run above the surface in crossing meadows or marshes, would
587 that at certain times of the year tend to increase or decrease the quantity of gas unaccounted for?

Mr. Neumann: Same objection as last urged by me.
The Master: Overruled.
Mr. Neumann: Exception.

A. That is so.

Mr. Cummings: Have you put on the record here that there are any marshes?
The Master: Whatever the reason may be for the exposure of the mains at any time of the year, it will affect the unaccounted for?
The Witness: Yes, it will have a greater condensation.

Q. And if mains were laid through water which was subject to varying temperatures at various times of the year, would that tend to increase or decrease the quantity of gas unaccounted for?
A. That would apply the same——

Mr. Neumann: The same objection as last urged.
The Master: Overruled.
Mr. Neumann: Exception.

A. (continued.) would apply the same as an exposed main. Whatever the temperature is the main is subject to, the gas will come to that same temperature.

Mr. Cummings: We might assume that they are all in water.

The Master: This is the time for Mr. Woods to bring out this situation, if such a condition exists.

588 Recross-examination.

By Mr. Hyatt:

Q. You would not call it a model plant, would you, Mr. Woods, if a good portion of the mains was above the ground?

A. There may be conditions where you must do that, you would have to do that.

Q. I did not ask you that. I ask you if you would call it a model plant?

The Master: I imagine what he really means is this: Would you say it was an ideal operating condition so far as distribution is concerned if you had some of the mains above ground or in water?

The Witness: I would say it was not ideal, your Honor, but those are the conditions that you meet.

Q. If you were an engineer, constructing a gas plant for a gas company, would you obviate that as much as possible?

A. As much as possible, but in all probability it could not be obviated.

Q. But it could be obviated some, could it, though not substantially?

The Master: Well, you are just guessing.

Mr. Hyatt: No, I am not just guessing.

The Master: You are asking if it could be, you would; if it could not be you would not. Next question.

Mr. Chambers: I want to ask a couple of questions.

Q. Do you know whether or not the men engaged in the manufacturing department of this complainant are hired by the month, by the week, or by the day?

A. I suspect that some are employed by the week and most of them by the day.

589 Q. Most of them by the day?

A. Yes.

Q. Any hired by the month?

A. Yes.

Q. What kind of labor is hired by the month?

A. The superintendent would be by the month.

Q. What kind of labor is hired by the day?

A. Common labor.

Q. Is it because you hire men by the day that you have to pay for overtime and Sundays?

A. It is not.

Mr. Hyatt: That is all.

The Master: Now Mr. Chambers:

Recross-examination.

By Mr. Chambers:

Q. Mr. Woods, you do not know any mains of this company that are laid in water, do you?

A. Yes.

Q. Where?

A. The line that extends—as I recall, the name of the street is Linden Avenue, and it extends across the meadows from Flushing into College Point. That pipe is laid on piles in the marsh land, running across; a 12 inch line, as I recall, over the meadows into College Point and the Whitestone section.

Q. And the pipes are right in the water?

A. It is a tidewater there; it is laid on piles and it is filled in, but the water surrounds the pipe all the while.

Q. Do you think that is good construction?

A. It is a means of getting there, the only means of getting to that section.

Q. No, but that is good engineering to lay the pipes in the water?

590 Mr. Ransom: Objected to. If it is the only way, then it is good engineering.

The Master: I suppose you could build a tunnel, could you not?

The Witness: If we could have done anything else we would have done it. We had to put those piles in to support it.

Q. Your condensation would not occur in the summer time at all, would it, when the pipes are exposed?

A. It would depend upon the temperature.

Q. It would not occur in the warm months, would it?

A. No, not to any great extent, except as I explained to the Master, it would depend upon the temperature of the gas in the holder, and while that would not, the condensation that would be taking place at that time would not affect the unaccounted for, because that had been taken care of in the correction for the meter readings.

By the Master:

Q. What is that, tidewater comes in from the Sound there?

A. Yes.

Q. You have seen temperature of water in July and August below 60, have you not?

A. Yes, I think in the summer the water will get up to 64 or 65, your Honor.

Q. But you have seen it below 60, have you not?

A. Oh, the greater part of the year.

Q. I suppose this is pretty shallow water and it heats up pretty quick when the sun gets on it?

A. Yes, it is that marsh land.

Q. But during the night you will probably find the water below 60, will you not?

591 A. Yes, because there is an ebb and flow of tide through there.

Mr. Chambers: That is all.

Recross-examination.

By Mr. Neumann:

Q. Mr. Woods, you visit all the plants of the New York & Queens and the Consolidated all the time, do you?
A. I do.
Q. Will you please state for the record at how many plants of the Consolidated system or its subsidiaries the superintendent lives on the ground of the plant?
Q. We have no superintendent of the subsidiaries living right at the plant. I wish to say, though, that if we had the facilities we would be glad to have them there.

Mr. Neumann: I move to strike out the last part of the witness' answer as not responsive.
The Master: I am going to let it stand because it would have responded to a question I should have asked.
Mr. Hyatt: "We would be glad to have them there," I don't know what that proves.
The Master: The fact has already been developed on this record that it is a really useful thing to an operating plant to have the superintendent on the ground, so that he can be in very close touch with it and not miles away when something happens.
Mr. Neumann: And I am attempting to prove that that is not a rule in other plants, or a custom.
592 The Master: I don't care whether it is or not.
All right, Mr. Woods, leave the stand.
Mr. Hyatt: Thank you very much.

Herbert W. Alrich, recalled for further direct examination.

Direct examination.

By Mr. Ransom:

Q. Mr. Alrich, referring to Plaintiff's Exhibit 47 for Identification, concerning which you were being interrogated when you were last on the stand, relating to land owned and used by the complainant company as of December 31, 1919, have you since gone to the Flushing plant and personally checked and verified the dimensions shown by you on Exhibit 47 for Identification?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way to prove the fact he is endeavoring to develop in this case.
The Master: Overruled.

The Witness: I have.
The Master: How did you do it?

Mr. Neumann: Objected to.
The Master: Overruled.
Mr. Neumann: Exception.

The Witness: I picked up Haviland's Survey.
The Master: You what?
The Witness: Picked it up—that is a technical expression, picking up a survey.
The Master: It is a new one on me—now tell us something about it?
593 The Witness: Do you want me to state my complete process?
The Master: Yes.
The Witness: I went to the Topographical Bureau of the Borough of Queens and got the monumenting for that section, which is Section 55, then I got Haviland and his field notes——
Q. Who is Mr. Haviland?
A. George W. Haviland is the surveyor who made a survey for us in 1919, of the property.
Q. Is he a City surveyor?
A. He is; he has been operating in Flushing for about a hundred years—and with his original survey and his field notes and the instruments, we began at the City's monuments.
Q. Who do you mean by "we?"
A. I mean Mr. Haviland, John Doherty, his assistant and myself.
Q. They went with you?
A. They did. We took and picked up his survey.
The Master: By that you mean you followed his lines?
The Witness: Yes.
The Master: Went back over his monuments and measurements?
The Witness: Yes.
The Master: And his stakes?
The Witness: Yes.
The Master: Did you actually remeasure the distance from monument to monument?
The Witness: We did, took all the off-sets——
Q. And you found these dimensions to be correct?
594 A. Substantially correct.
The Master: What do you mean by substantially correct?
The Witness: Why, the dimension on Myrtle Avenue is given there as 334.09 feet. I would not pretend that we got that as .09 of a foot; I should say we got it to an inch, 334 feet and 1 inch, and .09 is the result of trigonometrical calculation.
Of course no man will pretend, when he is measuring on the ground with a hundred foot tape, that he can measure to the thousandth of a foot.

The Master: You offer that in evidence?

Mr. Ransom: I offer in evidence Plaintiff's Exhibit 47 for Identification.

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent.

The Master: Why is it immaterial?

Mr. Neumann: And not properly proven.

The Master: Why is it immaterial?

Mr. Neumann: Will the Court permit me to put all my objections on record?

The Master: Go ahead.

Mr. Neumann: Not properly proven. According to the witness' own statement, it is incorrect; according to the witness' own statement, it is not based on what he did personally, but what two other people did; according to the witness' own statement, it is incorrect; the measurements are not correct; he admits himself that there is some chance of there having been incorrections in the measurements.

The Master: Anything else?

595 Mr. Neumann: And in addition to that, the witness, whose name I have now forgotten—I think it is Halleran—testified that there was a street running through this property, and the map here indicates that this witness has attempted bodily to take that street and put it in as part of this plant.

Mr. Cummings: I have an objection, that is not based on the deeds, and that is what you should have made surveys on.

The Witness: You are asking me a question of law and I am telling you what I did.

The Master: Anything else?

Mr. Cummings: I make that objection, that it is based on another man's survey.

Mr. Ransom: The Master wouldn't take it if it were based merely on the deeds.

The Master: Anything else? Objection overruled. Mark it in evidence.

Mr. Neumann: Exception.

Complainant's Exhibit 47 for Identification was received in evidence.

Q. Mr. Aldrich, at the request of the Master when you were last on the stand, have you prepared a diagram, corrected to date, showing the plant and structures, or showing it as of December 31, 1919?

A. I have.

The Master: The location of the various plants and structures?

Mr. Ransom: Yes.

Q. Will you produce that diagram?

A. I produce such a map that bears the marking, New York & Queens Gas Company, Flushing Works, No. 8065.

596 The Master: Is that drawn to scale?

The Witness: It is.

Q. And this is one of the file maps in the company's records?

A. It is.

Q. On the left-hand side of the diagram I notice two zigzag lines which indicate a tear in the tracing; is that correct?

A. That is correct.

Q. That is not meant to show any structures or conditions and does not in fact extend substantially into the plant?

A. It does not. The tracing is drawn——

The Master: The blueprint shows this repair in the tracing?

The Witness: It does.

The Master: That was evidently the sewing which has shown up on the blueprint.

The Witness: It was.

Mr. Neumann: Why not have the stenographer put a mark there, so it can be indicated on the record which lines are referred to?

The Master: It is fully explained. It is quite apparent that the sewing shows up on the blueprint.

Q. Otherwise the diagram is correct as of that date?

A. It is.

The Master: To your own knowledge?

The Witness: It is.

Q. And at the present time?

A. It is.

Q. So far as the plant and the holders and the gas tank areas are concerned?

A. Yes.

597 Mr. Neumann: Objected to as incompetent, irrelevant and immaterial and not properly proven, not shown to be authentic, no foundation laid for it. It is apparently taken from the records of the company and introduced here without any statement as to who prepared it, or anything else.

The Master: I don't care who prepared it, the witness says it is right. Objection overruled.

Mr. Tobin: I would like to raise the further objection that this witness has not indicated in any way that he knows the location of these buildings on the plan; further than that, he is not an officer of this company.

The Master: Objection overruled, mark the paper.

Marked Complainant's Exhibit 79.

The Master: Is there anything else of Mr. Aldrich?

Mr. Ransom: That is all.

The Master: Cross-examine Mr. Aldrich.

Cross-examination.

By Mr. Chamber:

Q. Mr. Aldrich, are you paid any salary by this company?

A. The New York & Queens Company?

Q. Yes.

A. I am not.

Q. You don't get anything from them?

A. No, only such expense as I charge against them in connection with any work I may do—that is, disbursements of my own.

Q. You spoke a moment ago of the company as "our" or "we"—as your company; what did you mean by that?

598 A. That is just a bad habit that I have that you may have noticed before in the Consolidated case.

Q. You kind of feel that you are a part of the New York & Queens Company?

A. Naturally, after nineteen years' employment by the allied interests.

Q. And how much time do you devote to this company?

A. Well, I can't answer that very definitely. This is one of the affiliated companies that I have to cover in my tours and have since the Consolidated acquired it.

Q. While you are testifying here who is paying for your time, the New York & Queens or the Consolidated?

A. The Consolidated Gas Company is paying my salary.

Q. You are loaned out?

A. Why I don't know that I would characterize it that way, it is among the things that fall within my line of duty.

Q. When you testified in the Consolidated Gas Company case, you didn't say you devoted any time to this company?

A. I most assuredly did in answer to Major Clark—read the record—I think I know it better than you do.

Q. It now appears that you devoted quite a lot of time?

Mr. Ransom: Objected to.

The Master: Wait a minute. This witness has testified as to location of certain land, buildings, etc., occupied by this complainant company. Cross-examine him as to the accuracy of those statements.

599 Mr. Chambers: Well, I want to find out how interested he is.

The Master: He is very much interested; he has already stated that he is employed by the Consolidated Gas Company, which company owns all the stock of the New York & Queens Company, and he feels that this is part of his employment and he is paid by his employer. Now if you want to show that he has been convicted and has been to jail, go ahead, if you think that will have any bearing.

Q. How long have you been acquainted with the structures on the complainant's land?

A. Well, I first visited the plant in about 1914. The Consolidated acquired the stock in 1913, and I first visited the plant about 1914, as near as I can remember, and then went all over the works and sized it up.

The Master: Now, Mr. Aldrich, I am going to ask you to answer questions, yes or no, or give dates as near as you can and not make

speeches. Let us shorten this thing. You were asked when you first saw it, and you could have said 1914 or thereabouts.

The Witness: I think he asked me how long I had been familiar with it.

The Master: Since 1914 would have been an answer. Don't let's have these speeches spread out.

Q. Are there any structures that you testified to that were not upon the land of this company that you mentioned?

Mr. Ransom: Objected to as vague.

The Master: Mr. Aldrich described a number of manu-
600 facing structures, and Mr. Chambers wants to know if there are any that were not on the land?

The Witness: No, they were not all there that are there now, and some that were there then are not there now.

Q. Tell me some that were there then and that are not there now, first?

Mr. Ransom: Objected to as immaterial and not within the scope of the cross-examination.

The Master: What is the purpose of the question?

Mr. Chambers: I want to find out what they built since he became acquainted with it, and what they retired of these buildings.

The Master: I overrule the objection.

Mr. Ransom: Exception.

A. The one million cubic foot holder on Farrington Street had not been constructed, and on that site were two frame dwelling houses. The governor house was not built adjacent to the holder, the gasoline tank on Farrington Street just south of the governor house was not there; the Babcock & Wilcox boilers had not been installed, and at that time we raised the building; that is, we made the boiler house higher—there have been some changes in the works connections. The two turbine driven blowers in the generator house have been installed; the brick stack was built; the 150,000 gallon oil tank has been built, together with the enclosing basin of the oil tanks; the frame buildings just east of the oil tank for the storage of gas ranges has been built since that time. Those are the things that I immediately recall without any memorandum before me.

Q. What pieces of plant have been retired, that you have described?

601 Mr. Ransom: Objected to as immaterial and not within the present scope of the cross examination.

The Master: Overruled.

The Witness: I recall a steam engine that was used on the blowers.

Mr. Hyatt: Do I understand the question to refer to these things that appear on the maps?

The Master: No, Mr. Chambers was asking what property was retired.

Q. Why was that retired, was it worn out?

Mr. Ransom: Objected to as not within the scope of the cross examination.

The Master: Overruled.

The Witness: I don't recall the particular circumstances of the removal of that engine.

Q. All right, go to the next one?

A. We made a withdrawal, on the books, of the metal work of the gas holder right at the corner of Byrd's Alley, Byrd's Alley and Myrtle Avenue, retaining the tank as a tar tank.

Q. Anything else?

A. Those are the items that I immediately recall to mind without a memorandum.

Q. Had that been a holder before that?

A. It had been a gas holder.

Q. And was it worn out, wasn't it fit for a holder any more?

A. No, it was more desirable as a tar tank than as a gas holder.

The Master: You were building a new gas holder?

The Witness: We had built the new gas holder.

602 Q. They had put in a new gas holder?

A. A larger one along Farrington Street.

Q. The biggest one on this map?

A. Yes, it shows 123 feet in diameter.

Q. And you got how many more?

A. Two more.

Q. This one marked "holder" up here in the corner (indicating) is not a holder any more, is it?

A. Used as a tank.

Q. That is what I wanted to designate?

A. It holds tar.

Q. Well, it isn't a gas holder?

A. A tar holder.

Q. Is this relief holder a holder to hold gas?

A. That holds gas.

Q. It is used now?

A. It is.

Q. And has been?

A. It has.

Q. Is it pitted at all?

A. It is not; it is in excellent condition.

Q. You do not know how old it is?

A. I do not, but, having been used as a relief holder, it would be always thoroughly coated with tar and therefore preserved—you might say embalmed in tar.

Q. I didn't ask you that.

A. I am trying to answer your question.

Q. Well, I didn't ask you anything about that: the last question I asked you was whether you knew how old it was, and you made this speech?

A. You asked me if it was pitted.
Q. Before that, and you said no.
A. That was the second question.

603 The Master: The record shows what he said.

Q. Now the storage holder, how old is that, do you know?
A. I don't know.
Q. Is that pitted?
A. It is not, and I have examined it recently.
Q. Is it used as a storage holder or relief holder, or what?
A. It is now used as a relief holder. These holders are so connected that they may either be used as a relief holder or——
Q. Mr. Aldrich, you said it was used as a storage holder, and then you said a relief holder; there isn't any need of saying anything beyond that. So that that name "storage holder" is not correct?
A. Yes, it is correct.
Q. Well, it is a relief holder?
A. They might switch tomorrow.
Q. I didn't ask you that. It is used now as a relief holder?
A. It is used as a relief holder.
Q. Why didn't you put relief holder there?
A. I would have to put both words to suit all conditions.
Q. So you have two relief holders now?
A. We have two holders, either of which may be used as a relief holder or alternatively as a storage holder.
Q. Now, they are relief holders for——

The Master: We have heard that; next question.
Mr. Chambers: Exception.

Q. This big tank here, what is that used for, storage?
604 A. Storage.
Q. What is it made of, do you remember?
A. Steel.
Q. And these other two holders, these relief holders, what are they made of, what kind of material?
A. Why, presumably, steel.
Q. You are not sure about that, I take it?
A. No.
Q. And this little tar holder, that must have been an old-fashioned holder, was it?
A. Why, no; holders are built today with masonry tanks.
Q. This other circle here, what is that?
A. That is a tar pit.
Q. That is not a holder?
A. No, it is a tar pit, it is a separator, it is a hole in the ground lined with masonry.
Q. Where is this house that the superintendent lives in?
A. Right here on Farrington Street (indicating).
Q. Marked "dwelling"?

A. Yes, marked "dwelling," and it is about 96 feet north of Myrtle Avenue.

Q. You don't know how old that is?

A. I don't think it is very old, it looks in pretty good shape.

Q. Then you don't agree with Mr. O'Connor, who said about twenty or twenty-five years?

A. It doesn't look so.

Q. And you haven't any idea how old it is except by looks?

A. No.

Q. Who made up this exhibit—whose handiwork is it?

A. Why, it is composite; the original drawing was made by a man named Leven.

605 Q. You didn't measure it up to see if it was accurate, did you?

A. I made several corrections on the plan from my examination of the works.

Q. Where, what corrections?

A. For instance, right here (indicating); this drawing, as originally made, showed this wall as a continuation of this east wall of the generator house.

Q. You are speaking of this generator house?

A. I am speaking of this exhauster room here (indicating). The drawing as originally made showed this wall as an extension of that one. I personally ascertained in the field, that it is set one foot back and had the drawing changed to correspond.

Q. It was not right in that particular?

A. It was not right as previously made.

Q. Where else did you alter it or change it?

A. I had this gasoline storage added on; I had this underground tank; I had that hose house; I had this tar tank; I had changes made in these connections; I had the interior of this office building changed to show the partitions as they now are.

Mr. Cummings: Were they put in approximately or——

The Master: I won't permit this; Mr. Chambers is cross examining—one at a time.

The Witness: I had the three buildings in the upper plot added on. That is all that immediately occurs to me without a memorandum.

Q. On this map you have a street in there between the stove shed and the oil tank?

A. I don't see one.

606 Q. What is that strip over here (indicating); there are no buildings on that, are there?

A. No buildings, no.

Q. Where does that Center Street come in here?

A. I don't know of any Center Street.

Q. You didn't look at that other map, did you?

A. Which map?

Q. The map that Halleran had.

Mr. Cummings: The one you just checked, Mr. Aldrrich. In making your survey you must have run across the street.

Mr. Neumann: There is a street shown on the city maps.

The Witness: We haven't any record of one ever having been laid out, although some maps do show one. The Tax Map, for instance, shows this cross there (indicating), the City's own Tax Map.

Mr. Ransom: Referring to the pink-tinted portion between Block 171 and Block 170.

The Witness: Correct.

Q. But on any map that you had, you did not see a street through there?

The Master: Tell me, this Block 170 runs to what line, where is the dividing line between Block 170 and Lot 40, or Block 171?

The Witness: Well, Block 170, your Honor, includes property to the west of this, and I think also to the south.

The Master: I am talking about the northerly line between Blocks 170 and 171.

The Witness: I should describe it as the northerly line of Block 170, Lot 31, being a line of 298.32 feet north of Myrtle Avenue and parallel thereto.

The Master: What I am trying to find out is, into what
607 block, the space that would seem to be a continuation of some proposed street is, whether in Block 171 or Block 170?

The Witness: It was not clear on the Tax Map, what disposition they intended to make of this strip which connects Lot 31 with Lot 40; it was not clear what disposition they intended to make of it.

Q. So you just dabbed it with pink?

A. We have deeds covering it, and the Tax Map indicates, drawing the lines on there, that they recognized——

Q. Don't the deed cover some other streets, too; for instance, don't your deeds run out on Myrtle Avenue?

A. I don't recall that they do; in any event Myrtle Avenue has been open for a hundred or two hundred years.

The Master: Let us go to something else.

Q. Are there any buildings between the strip Lot 40 and 41?

A. Nothing but fences.

Q. Have you described all of the pieces of property that have been retired since you have been connected with the property?

The Master: That question will not be allowed. The witness said as far as he can recall without any written memorandum.

Mr. Chambers: Exception.

Q. Where are the three gas machines here that you described, in what building?

A. They are in two different buildings. The larger machine which Mr. Hyatt chose to label "A" is in the southerly generator house, and the other two machines, the seven foot six machines, are

in the northerly generator house which stands at right angles with the first one.

608 Q. Was that large machine put in since you have been going over there?

A. No, that was put in in 1911.

Q. What make is it?

A. It is a Lowe.

Q. And the other two?

A. Those are also Lowe type of apparatus.

Q. Do you know how old those other two are, the seven foot six machines?

A. I do not.

Q. Do you know how old the stable is, do you know anything about it?

A. I do not—it doesn't look like an old building.

The Master: Your answer is you don't know?

The Witness: I don't know.

Q. And the oil house?

A. The oil house, I do not know.

Q. What is the storage capacity of the oil house?

A. How many barrels it will contain?

Q. Yes.

A. It is not a building for storing of oil in bulk, but for the enclosure of the barrels. I don't know, it would doubtless hold eight barrels—not piled on top of one another, just standing on end.

Q. And the coal bins, are they covered or not?

A. They are in part covered and part open.

The Master: That is an answer.

Q. And the tar tank, how old is that—since you were there, did you say?

A. Yes, that tar tank has been put in within a couple of years.

Q. And the hose house?

A. Put in within two years.

Q. The governor house?

The Master: He said since 1914.

609 The Witness: Well, Mr. Chambers means the pump station on Myrtle Avenue, I judge—I don't know how old that is.

The Master: You said the governor house had been built——

The Witness: The governor house had been built on Farrington Street.

The Master: Since 1914?

The Witness: Yes.

Q. And these buildings over here, the stove shed (indicating). What is that for?

A. Storing ranges pending their repair—ranges that have been brought in.

Q. How old is that stove shed?

A. Built within a couple of years.

Q. And the paint shop?

A. Likewise within a couple of years.
Q. What is that paint shop for?
A. For the works painter to store paints, oils and materials.
Q. And these oil tanks over here (indicating) what are those for?
A. Storing the gas oil.
Q. Then you have a place to store oil here (indicating) this oil house (indicating) where you store the barrels?
A. That is lubricating oil.
Q. And the other is your oil for making gas?
A. Yes. There is a further storage here, the gasoline storage on Farrington Street.
Q. How much of a storage have you got for oil?
A. 180,000 gallons of gas oil.
Q. Both tanks?
A. Both tanks.
Q. How long have those tanks been there?
A. I don't remember when the smaller one was built; the larger one was built since 1914.

610 The Master: A good part of this plant has been built since 1914, hasn't it?

The Witness: Well, we have done quite some extensive work.

Q. It must have been in kind of poor condition, wasn't it, when you first became connected with it?
A. I shouldn't so characterize it.
Q. Well, you made quite extensive improvements?

The Master: Oh, we have had that, I brought that out myself.
Mr. Chambers: I merely wanted to emphasize it.
The Master: You don't have to emphasize it.

Q. Everything that is over there is on this map, now, by way of structures, or have you got some that are not on there?
A. It would be rather small incidental apparatus that was not shown on this map; it would be some auxiliary, rather too small to show. For instance, even this overflow tank in the boiler room is shown.
There has been an effort made even to show the oil heater in this pump room, you see.
Q. Were you here when Mr. O'Connor testified?
A. I was not.
Q. You spoke of the dwelling house and the office building; where is the dwelling house and the office building?
A. On Myrtle Avenue just about midway between Farrington Street and Byrd's Alley.
Q. And you don't know how old that is?
A. I do not know.
Q. And this dwelling is a wooden structure?
A. It is.

611 Q. One and a half stories?
A. Two stories.
Q. And the office building is what, brick?

A. Is brick, with a frame extension, as I already testified, on the easterly side.

Q. What is the material that the generator house is made of?

A. Brick.

Q. How many stories?

A. Two—most all the buildings are brick.

Q. What do you mean, where else are there any brick buildings?

A. I don't understand your question.

Q. What other buildings do you have in mind?

A. That are brick?

Q. Yes.

A. The compressor house is brick; the office is brick, as I have already testified——

Q. And the generator house?

A. And valve house adjacent to the two smaller holders, are brick.

Q. You wouldn't call those buildings?

A. I should—you could live in one of them.

Q. Well, they are very small?

A. That is a relative expression. They may look small on this map when near by a holder of one hundred and twenty-three feet in diameter and another one seventy-six feet in diameter is shown, but they are buildings none the less. One would have to have a permit from the Building Department to build them.

Mr. Ransom: Have you finished your answer as to brick buildings?

The Witness: No.

Mr. Ransom: Let him finish.

The Witness: The pump house to the west of the two generator houses is brick; the two generator houses, as I previously
612 stated; the engine room, the main part of the boiler house, the room containing the meters, tar extractors, exhauster and washer, is brick; the house for the storage of lubricating oil is brick; the governor house on Farrington Street is brick.

Q. Now, this governor house that regulates this small relief holder——

A. The valve house.

Q. The valve house, how big is that?

A. Why, I judge it is about—I have no memorandum before me—I should say it is about 10 by 10 feet.

Q. And the other one?

A. Is rather larger, it is about 10 feet wide and I think about 12 to 15 feet long.

Q. And the oil house is about that same size?

A. Oh, no, the oil house is rather larger.

Q. It looks about the same size?

A. I know, but it is rather a larger building.

Q. Well, you say this is drawn to scale?

A. It is.

Q. If it is right it ought to show?

A. I should say it was about 10 feet wide and fully 15 feet long.

Q. Now the foundations to these brick structures, do you know anything about them?

A. In a general way.

Q. What do you mean by in a general way, you have never examined them?

A. Oh, yes, I have made some examinations.

Q. Which foundations have you examined, or which buildings?

A. The generator house—both generator houses; the boiler house, and of course the governor house on Farrington Street I have had to do with the building of that and saw it put in.

Q. What are the foundations of this large generator house?

613 A. Brick and concrete as I recall.

Q. And the foundations of this boiler house?

A. You mean governor house?

Q. Governor house?

A. On Farrington Street—is concrete.

Q. And what kind of a roof is on the generator house, the large generator?

A. Corrugated iron.

Q. And on this—what do you call this?

A. The governor house.

Q. On Farrington Street?

A. Gravel as I recall.

Q. Do you know anything about the machinery that is in these buildings, the age of it, any further than you have stated?

A. I do not.

Q. That is, you have stated fully now your knowledge about the contents of the buildings?

A. I have.

Q. And the age of the buildings?

A. I have.

The Master: Anything else? Anything, Mr. Neumann?

Mr. Neumann: Yes, if the Court please.

The Master: Go ahead.

Cross-examination.

By Mr. Neumann:

Q. Directing your attention to Exhibit 47, Mr. Alrich, will you state just what you did in connection with the measurements of that property covered by the exhibit?

The Master: The question is not allowed, it has been fully covered and fully answered.

Mr. Neumann: I think, if the Court please, what the witness said was, he used the expression "we" all the time; he said that we three men went over, himself and two others.

614 The Master: I won't take any more on that.

Mr. Neumann: I want to have the record show just what he did.

The Master: Well, I won't take any more.
Mr. Neumann: Exception.

Q. Mr. Alrich, you are not a surveyor, are you?
A. I practiced that branch of surveying, which is an adjunct to my business, and I am a surveyor in my line; surveying is a highly specialized profession.
Q. Now I direct your attention to this question on page 50 of the mimeograph record:

"Q. You didn't go on the ground and make a survey yourself, did you?
A. I did not testify as a surveyor, I testified to it as a map."

Do you remember that question and answer?
A. I remember the question and I remember the answer so well that I know the stenographer made the error. I have already called the attention of our counsel to it. I said I did not testify to it as a survey—we have a correction prepared on that.
Q. Well, what experience did you have as a surveyor?
A. I have done considerable surveying in connection with our construction work.

Mr. Neumann: I move to strike that out; that doesn't mean anything.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. State definitely what properties you have surveyed, and the time that that covers?
A. Well, I would have to think up a pretty long list. Some of those that immediately occur to me are in connection with the
615 condemnation proceedings, those for the extension of the Willard-Parker Hospital, the Chelsea Improvement; the North River Dock Improvement at 46th Street, where the line of the taking was laid out by surveyors of the Dock Department and, as the fixing and location of those lines is open to discussion as will be shown by the facts, in the case of the Chelsea Improvement, we required the Dock Department to ship their lines 7 inches to the west; when those lines were laid out by the Dock Department they were gone over by ourselves. I worked on the work of verifying those lines in those three cases. In the last case I mentioned, in the 46th Street condemnation proceeding, there were four different surveyors that had blazed the line of the taking, and none of the four entirely agreed. There was the Dock Department; there were the surveyors of the Borough President's office—Borough President of Manhattan—and two City surveyors, and they all got different results. I went over that myself to make a report to the company, which represented the facts for which we would contend.
The Master: I am going to interrupt you at this point. If this case involved the actual location of a line dividing the property so that the expertness of the work would be a very material fact and worthy of serious consideration in the conclusion to be reached, I

should perhaps hesitate to accept Mr. Alrich as a surveyor in that sense, but this case does not involve any such question; it doesn't make any difference whether the property line is an inch either side of the line shown or whether it is an inch more or less than the measurement given, and I shall decline to permit further cross-examination along this line.

616 Mr. Neumann: May I just say this to the Master, that this witness has attempted here to grab off apparently a street, and it can only be on the basis that he is a surveyor and knows something of it.

The Master: No, I am telling you now what my attitude is. You can ask another question if you want to make a record.

Q. You didn't testify in those three cases in court or before any board, did you?

The Master: One moment. If Judge Ransom will object to the question I will sustain the objection.

Mr. Ransom: I shall object to it.

Mr. Neumann: Exception. My questions would all be along the same lines so there is no need of my presenting them any further.

Mr. Ransom: I will let him answer that question.

Mr. Neumann: It is too late.

The Master: I won't, I don't think it is material to this issue.

Q. Mr. Alrich, were you present while Mr. Woods testified this morning?

A. I was.

Q. Did you understand Mr. Woods to say that this New York & Queens Company plant did not use any blower in connection with its high pressure system?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

Mr. Ransom: Exception. What difference does it make what Mr. Woods said?

The Witness: I should say that the record shows what he said and I would rather read the record; my recollection might be wrong.

Q. I am just trying to find out whether you recall what he said?

617 A. I recall in a general way that he recited the facts as known to myself.

Q. Do you recall the fact as to whether he stated that there were or were not any blowers in this plant in connection with the high pressure system?

Mr. Ransom: Objected to.

The Witness: He tried to explain——

Q. Yes or no, Mr. Alrich?

A. I recall in a general way his statement regarding it.

Q. Do you recall whether he stated there were or were not blowers or a blower in connection with the high pressure system?

Mr. Ransom: Objected to.
The Witness: I do.
The Master: What is your recollection?

Q. What is your recollection?
A. He stated they used compressors or pumps; he used the alternative expression pumps, piston pumps.
The Master: That is his recollection, now what is the point?
Q. Now, I call your attention to page 58 of the mimeograph record in which you stated as follows:

"An enclosure within the boiler house contains two No. 6 Special Sturtevant Blowers driven by Terry Steam Turbines."

Is that correct?
A. That mimeograph record is incorrect; that word is generator house.
Q. Outside of that, though, the answer is correct?
A. My statement is correct. There are two Sturtevant No. 6 blowers driven by Terry steam turbines for blowing on the generators.

618 Q. On page 59 of the mimeograph record, Mr. Alrich, you testified as follows:

"On the east side of Byrd's Alley is a gas holder in steel tank having a capacity of 250,000 cubic feet, which is the relief holder used in connection with this work, and to the south of it, and also on Byrd's Alley is a holder having a capacity of 100,000 cubic feet which is the holder from which the gas is drawn and sent by the compressors to Douglaston."

Do you recall that answer?
A. I do.
Q. And is that the only holder from which gas is sent to Douglaston, within your knowledge?
A. It is the only holder from which gas is taken immediately and sent to Douglaston.
Q. What do you mean by immediately?
A. It might be possible to——

Mr. Neumann: No, I move to strike that out.
Mr. Ransom: Let him finish.
The Master: He is explaining what he means,—I think I know what he means.
The Witness: It may be possible to first send the gas from the large holder into the small one and then send it to Douglaston. Indirectly, then, the gas sent to Douglaston would have been taken from the large holder, but as a reservoir from which——
Q. What is the fact?
The Master: As I understand it, before it starts out to Douglaston, it comes through this little holder.
Q. In other words, in order to reach the pumps you have got to get it into this small holder?

619 A. Or, if they could use the 250,000 cubic foot holder—they could by switching the valves.

Q. Do you know what the practice is over there irrespective of what they could do?

A. The present practice is to draw from the 100,000 cubic foot holder, as I testified.

Q. And that is based on your own knowledge?

A. It is.

Q. Now you stated in answer to the question of the Master on page 59, the Master's question being as follows:

"What is the capacity of this plant", and your answer, "About 2,000,000 feet per day"; do you recall that question and answer?

A. I do.

Q. Where did you get that information from, Mr. Ulrich?

A. I can't state any particular source.

Q. Did you get it out of the air?

A. No; I always get my information from a safer source than that, and more reliable.

Q. Where did you get it from in this instance?

A. I couldn't tell you where I got that any more than I could tell you how I learned the English language. I acquired these facts by my contact with the company's affairs.

Q. By a process of absorption?

A. No, learning.

Q. Were you here the day Mr. Spear testified?

A. I was not present at the time he testified; I left the room.

The Master: I will have to suspend now as I am expecting a very important long distance call.

We will adjourn until Tuesday at 9:30 and run all day if necessary in order to finish this up.

620 Mr. Neumann: The situation with reference to Tuesday, if the Court please, is this: If I will be compelled to go on the cross examination of witnesses whose testimony will have to be tested by the books, I will be in this position, that I may have to ask for further indulgence by reason of the fact that Mr. Frank, who worked on these books, has resigned yesterday. Now, it is embarrassing to me, and I want to put myself frankly upon the mercy of the Court in that respect; it is something over which I have no control. I think the Court must feel that I am inclined to do everything I can not to retard the case.

Mr. Ransom: Well, we could go ahead with Colonel Miller.

Mr. Neumann: Well, we would have to check the inventory.

Mr. Ransom: Evidently the cross examination will take up a part of Tuesday.

Mr. Neumann: I will be glad to do this; I will be glad to go ahead as much as I can until I get to a point where I cannot go any further, and then say to the Court that I want more time—I will be glad to do that.

The Master: How many other witnesses will you have for direct?

Mr. Ransom: Two, possibly three.

The Master: We will adjourn until Tuesday morning.
Mr. Ransom: But they will be short.
The Master: I will dispose of it on Tuesday.

Adjourned to Tuesday, May 18, 1920, at 9:30 A. M.

Last Complainant's Exhibit—79.

621 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 18, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.
Mr. Neumann and Mr. Deegan, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.
Mr Hyatt, of Counsel for Defendant Dennis O'Leary.

HERBERT W. ALRICH resumed.

Cross-examination continued.

By Mr. Neumann:

Q. Mr. Alrich, I show you Complainant's Exhibit 79, and I direct your attention to the lower right hand corner?
A. I see it.
Q Can you read the marks and figures that are there?
A. I can.
Q. Am I correct in stating that this drawing was revised on 9/1/14?
A. You are.
Q. By R. W. S.?
A. Ralph W. Scott, yes, sir.
622 Q. Were you there at that time?
A. I was.
Q. The next one is when?
A. 2/17/16, McParland.
Q. And the next one?
A. 4/25/16, J. J. S., meaning John J. Stevens.
Q. And the next one?
A. 11/15/18, by McParland again.
Q. And the next one?

A. 11/19/18, by McParland again.
Q. And the next one?
A. 9/16/19, by Horace W. De Ved.
Q. And the next one?
A. 12/2/19, by McParland.
Q. And the next one?
A. 12/3/19, by H. W. De Ved.
Q. The next one?
A. May 10, 1920, by Mrs. Marian B. Ray.
Q. Can you tell Mr. Alrich the various markings that were put on this drawing by those various revisions?

Mr. Ransom: I object to that as immaterial and not within the scope of the issues here. The witness has been cross examined as to the different additions that he knew of and withdrawals.
Mr. Neumann: The witness is assuming to say that this drawing or diagram, or whatever you want to term it, is correct. Now, I am trying to test his knowledge.
The Master: Objection overruled.
Mr. Ransom: Exception.

Q. I can recall some of the changes that were made by particular ones whose initials are in the lower right hand corner of the sheet.

The Master: That is an answer.

623 Q. Can you tell the revision of 1914?

Mr. Ransom: I object to it as immaterial.

A. I do not recall now what change Scott made.
Q. Can you tell the revision of 1916?
A. The revision of 1916 represented in part the erasing of the two return tubular boilers in the main boiler room which were retired, and out-lining the Babcock & Wilcox boilers that were put in their place, and by adding on the boiler room extension.
Q. Is that all?
A. That is all that I recall now on the 1916 alteration.
Q. Now take the next revision?

The Master: Oh, I think we have had enough of this.
Mr. Neumann: Does the Master rule that I cannot question him any further on this?
The Master: I say I think we have had enough of this.
Mr. Neumann: I mean does the Master——
The Master: What is the purpose? If there is any definite purpose I will let you ask it, but I do not see what is to be accomplished by it. If it is simply for the purpose of testing his recollection and credibility I won't allow it.
Mr. Neumann: That is one. The second is to check up on property that was retired and put on there as indicating when the revision took place.
Mr. Ransom: That is only offered as showing present conditions.

Mr. Neumann: That is what you say now, we don't know what you may claim later on.

624 Mr. Ransom: This diagram is not offered as a historical survey.

Mr. Neumann: It is in, and I assume you will claim it is in for all purposes.

The Master: Yes, but at that I don't see what the importance of it is. Do you object to this question, Mr. Ransom?

Mr. Ransom: Yes.

The Master: Objection sustained.

Mr. Neumann: Then, there is no need of my asking any further questions along those lines, because they would all be along the same lines.

The Master: Quite correct.

Mr. Neumann: Exception. I am not going to waste the Court's time.

Q. Now, throughout your entire testimony, Mr. Alrich, you have talked about a man by the name of Haviland who made a survey of this property. So far as you know, Mr. Haviland is still living, isn't he?

A. He was living on May 1, 1920, which is the last day I saw him and talked to him.

Q. And since then you have not heard anything to the contrary?

A. No. I have been out of town several days in that time. He might have died and been buried in that time without my knowing it.

The Master: Just answer the question.

Q. Coming back to Exhibit 79, Mr. Alrich, will you indicate where the storage holder is for gas oil?

The Master: I think we have that on the record.

Mr. Ransom: It was gone into at great length.

625 The Master: Haven't we had that? It seems to me it is up in this upper right hand corner.

Mr. Ransom: It is so labeled, "Oil Tank, Oil Tank."

The Master: It seems to me that was perfectly clear on the record.

Mr. Neumann: Well, if it has been covered I don't want to cover it again.

The Master: You see I recalled it.

Cross-examination.

By Mr. Tobin:

Mr. Ransom: I call attention on the record to the fact that so far we have had three different deputy attorneys general appearing in this record. I don't know how many we are going to have.

Q. Do you keep a time record of how you spend your days, Mr. Alrich?

Mr. Ransom: I object to that as immaterial.
The Master: Objection overruled.
Mr. Ransom: Exception.

A. I do on some occasions, but not as a regular rule.
Q. Take yesterday, did you keep a time record of yesterday?

The Master: What is the purpose of this?
Mr. Tobin: The purpose is this: We would like to ascertain as to how much time is charged up to these different sub companies. You will find in the inventory which is attempted to be introduced here that a certain amount of work is charged up as having been
626 spent by the employees of the Consolidated Gas Company, and also for the further purpose of indicating how extensively this man is employed. He pretends to supervise about everything that there is at the works and the plant.
The Master: Go ahead.

A. I made no memorandum of yesterday.
Q. What is the practice in your office, Mr. Alrich, as to the time spent by yourself and your employees?
A. As to the subordinates, an exact time record is kept of the time devoted by them to the work of the different affiliated companies.
Q. As to time spent by you on work done for the New York & Queens Gas Company do you keep a time record of that and charge it against the company?
A. I have done such a thing at the time we first came in control of the property, and I remember distinctly——
Q. What is your practice, that is what I want to know?

The Master: For the last year or two.

Q. For the last year?
A. It has not been our practice during the last year or two.
Q. At any time during 1919?
A. I should say I made no memorandum during the year 1919 of any time devoted by me to the New York & Queens Gas Company.
Q. Have you charged any time against the New York & Queens Gas Company?
A. I say I made no memorandum at any time spent by me on work of the New York & Queens Gas Company.
627 Q. I am asking you if there was any of your time charged against the New York & Queens Gas Compny?
A. That charge would be an act of the accounting officers of the company with which I would have nothing to do.
Q. Do you report to the Consolidated Gas Company as to the time spent by you on work of the New York & Queens Gas Company?
A. I may have made an oral report that I do not now recall.
Q. You made no written report?
A. No written report.

Q. Who has charge of various improvements, that is the supervision of the various improvements of these different subsidiary companies, including the New York & Queens Gas Company?

Mr. Ransom: I object to that unless limited to the New York & Queens Company.

Mr. Tobin: Well, I will limit it to that.

Mr. Neumann: It was all right when you asked that question, wasn't it, Mr. Ransom?

Mr. Ransom: In the Consolidated case.

The Master: Limit your question to the New York & Queens Gas Company?

A. Mr. William H. Bradley, the chief engineer of the Consolidated Gas Company, with the advice and counsel of Mr. George E. Woods, assistant chief engineer, and Mr. W. Cullen Morris, the engineer of construction.

Q. You have nothing to do with that part of the work?

A. I have something to do with the work——

Q. What part do you take as to improvements?

A. If some improvements were planned there now and the
628 execution of the work was instructed, it would depend upon the character of it. If it was a gas holder——

Q. I asked you what part you take?

Mr. Ransom: Let him finish his answer.

The Master: He is answering your question?

A. (continued.) If it were a gas holder, the comparison of the bids received from different contractors would be in my hands. I would make a report to the officers I have mentioned recommending that one contract or the other should be accepted, and after the contract was made the supervision and the inspection of the material, the design of the structures, the design of the foundations, supervision and inspection of the work in the field would be in my hands, and after the work was done, if there were any extras claimed upon the work I would write a memorandum criticizing any such claims that might be made. All phases of the actual construction of the work would be in my hands. If it was an installation of a water gas machine I might have less to do with it than I would with a gas holder.

Q. May I ask you this, Mr. Alrich. Does this work which you have just set forth embrace all the companies which are a part of the Consolidated System?

Mr. Ransom: I object to that as immaterial.

Mr. Tobin: Well, it is important to know just how extensive this man's activity is. I think the witness should be allowed to answer that question.

The Master: I will let him answer.

Mr. Ransom: Exception.

629 A. It does.

Q. Do you go upon the ground when work is under construction?

A. I do, frequently.

Q. To what extent?

The Master: He said frequently.

Q. Can you tell the Master in some round figures the average amount of money that is usually under construction—take the year 1918, the amount of money set out and under construction by the Consolidated Gas Company and its various corporations?

Mr. Ransom: I object to that as immaterial and not within the issues of this case.

The Master: I will let him answer.

A. I haven't the figure in mind at all.

Q. You have no idea as to that figure?

A. Not now.

Q. Can you tell as to the ownership of these various buildings and improvements that are being set up at various times by the New York & Queens Gas Company?

The Master: What do you mean by the ownership?

Mr. Tobin: I would like to know whether this witness can tell who owns these buildings that are being constructed from time to time.

The Master: What buildings?

Mr. Tobin: Take for instance a new gas holder that is being put up.

The Master: I understand it is being put up by the New York & Queens.

Mr. Tobin: I want to know whether he knows that or not.

630 The Master: I will let him answer the question.

A. I do know.

Q. How do you know?

A. Because such work is always negotiated in the name of the particular company, and the contract is executed by the officers of that particular company, and such an executed contract comes into my hands.

Q. The name is simply given to you, the name of the owner of the property is simply given to you by somebody else, is it not?

A. No, I see the executed contract.

Q. Who does the marking of these plans and specifications?

A. The drafting department.

Q. Is that under your supervision?

A. In part. I am one of the construction engineering staff.

Q. And that is all under your supervision?

A. Not entirely.

The Master: He says in part.

A. We also get an executive order when such work is authorized,

stating the name of the company in whose behalf the work is to be done.

Q. Who sends you that executive order?

A. The officers of the company involved.

Q. Who would it be, the Secretary or the Vice-President or General Manager or who? Taking the New York & Queens, who would send you that order?

A. Mr. Spear.

Q. As General Manager?

A. Well, I don't know pursuant to what office he would send it to us. I know as a matter of fact he would communicate to us
631 the action of the directors of that company.

Mr. Tobin: We would like to have Mr. Alrich locate the exception in the deed, Exhibit 43. That would help us in our checking up.

Q. Can you indicate on the map, Mr. Alrich the exception in this deed?

A. I don't know what I understand what you mean.

Q. I will show it to you?

A. My answer is that I can.

Q. Will you kindly indicate it on the map, Mr. Alrich?

A. There was a previous conveyance from Henry Wilson to the Newtown and Flushing Gas Company which included an irregular area, making an irregularly shaped projection up into what is now Lot 40 of Block 171. The conveyance from the Flushingside Realty Company to the New York & Queens Gas Company described the regular figure, excepting the irregular area included within that that had already been conveyed by Henry Wilson.

Q. You claim that that exception is covered by the deed from Wilson to the New York & Queens Gas Company?

A. That property had already been conveyed to the New York & Queens Gas Company by Wilson, and the Flushingside Realty Company held no fee to that. The fee to it was already in the Gas Company.

Redirect examination.

By Mr. Ransom:

Q. How is the gas oil conveyed from the two oil tanks to the generators, by pipes or how?

A. By a pipe.

632 Q. Can you state the approximate location of the pipe?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The map or diagram is supposed to be complete and correct.

Mr. Ransom: He said it was not.

Q. Does this show the location of the oil pipe?

A. It does not show the location of the pipe, no, it shows the tanks without the pipe connections.

Q. Can you indicate about where it is?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial. He is trying evidently to impeach his own exhibit.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: I don't see how it is specially material, but I will take it.

A. In a general way I would state, there being no memorandum before me, that the pipe runs southward from the oil tanks a distance of about twenty-five feet, then turns eastward to a point just west of the coal bins, and then turns southward along the westerly side of the coal bins and the generator house in to the pump house which is shown at the southwest corner of the generator house, which contains two machines.

Mr. Neumann: I move to strike out the witness' answer upon the ground that it appears from the answer itself that it is based on a guess.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Then about where would you say it was with respect to this area (indicating on map)?

A. Indicating on Exhibit 77, I will trace the line I have described with my pencil.

633 The Master: The witness did not trace it, he simply indicated it without marking the exhibit.

Q. Referring to the portion of land which is between the area on which is located the oil tanks, and the stove shed, and the pump shed, and so on, if there were a street there——

The Master: It is the space between the oil tanks and the main operating plant which would be Center Street, I think it is called, if there was such a street, and it was continued through.

Q. Is that within the company's enclosure and fence?

A. It is.

The Master: It is actually fenced in?

The Witness: It is.

Q. A fence comes down on the north side of the large storage holder——

The Master: To interrupt you, Judge Ransom, I think we will get a better statement on the record. Does the fence enclose the property shown in pink on Exhibit 47?

The Witness: It does, and somewhat more.

The Master: Where does it cover more than the space shown in pink, where is the fence?

The Witness: It extends along the easterly side of Lot 40 southward until it abuts the northerly side of Lot 31.

The Master: In other words, the easterly line of Lot 40 continues straight down?

The Witness: It is.

The Master: So that if this Map 47 were tinted in pink showing actual possession, then the fence line would include the addi-
634 tional space between the line continued of the easterly line of Lot 40 down to where it meets Lot 31?

The Witness: It would.

Q. The condition which you have described has been the condition for several years?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not the proper way of proving adverse possession, if that is their claim.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The company has been in use of that area as far back as my knowledge——

The Master: No.

Mr. Neumann: I move to strike that out.

The Master: Has the condition which you have just described with this fence been so for several years?

The Witness: I do not know——

Mr. Neumann: That is enough, he has answered.

The Witness (continuing): I don't know when the line of the fences as they now stand was established. The fences have been changed since my knowledge of the plant began.

The Master: I know, but has the present condition been there for several years?

The Witness: No, this fence, as I have already testified was built last year.

The Master: Where was the fence before that?

The Witness: I do not recall.

The Master: What do you mean, last year?

The Witness: September, 1919.

635 Q. You are referring to the wire fence?

A. The wire fence that I have already testified to.

The Master: Didn't you see the fence that was there just before the wire fence?

Mr. Neumann: If the Court please, that is objected to as incompetent, irrelevant and immaterial. The witness has fully covered this subject.

The Master: I cannot accept the witness' statement without further inquiry, having in mind his familiarity with this plant. Mr. Alrich cannot leave a statement on the record so far as I am concerned, that he does not know where the fence was which preceded this wire fence.

Mr. Neumann: How can he say anything different if he doesn't know different?

The Master: I am going to find out what he means by saying he doesn't know.

Mr. Cummings: I object to it as immaterial anyhow.

The Witness: The fences upon the property prior to that, as I recall, were rather patchy, and there were parts of it, as the photographs show, that were not enclosed at all. As I recollect, the corner down at Myrtle Avenue and Farrington Street was not enclosed——

The Master: Don't let us get down to the corner. I am talking of this space that is claimed to be a street, or intimated as a street. I want to know where the fence was along there prior to the wire fence?

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial and not within this witness' province so to testify,
636 and if properly qualified to testify, he has already fully covered that subject.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Witness: I don't remember the fence at all on the north side of Lot 31, clear from Farrington Street.

The Master: Was there any fence across that street prior to the wire fence?

The Witness: I do not recall a fence at the easterly side; I think there was at the westerly side along Byrd's Alley.

The Master: I am talking about the easterly side.

The Witness: I don't remember such a fence. It was in use and occupied——

Mr. Neumann: I move to strike that out.

The Master: Motion granted. What do you mean, it was used and occupied? You had no buildings in that street?

The Witness: Yes, as I remember, there were frame structures occupying that. I remember them particularly at the time the holder was being built.

The Master: How long ago was that?

The Witness: In 1915.

The Master: I guess we have enough on the record.

Mr. Hyatt: I have a few questions.

The Master: I will straighten out now once for all the question of Mr. Hyatt representing the District Attorney of Queens County.

I got a letter from the District Attorney of Queens County which in substance said that the Corporation Counsel was not author-
637 ized to act for him.

Mr. Hyatt: You saw a letter to the contrary.

The Master: I wrote to the District Attorney of Queens County asking him to appear here, in some form, either in person or by representative, and make the statement on the record. I have heard nothing further from him, and I do not know of any representative here, except as you claim to be a representative, Mr. Hyatt. I think

under the circumstances I am going to decline to hear you until this matter is straightened out.

Mr. Hyatt: May it please your Honor, I gave you a letter directed to Mayor Hylan, in which he asked Mayor Hylan to ask Mr. O'Brien to appear and represent him; and then there was attached to that letter another which requested Mr. O'Brien to appear, and Mr. O'Brien has directed me to come here and represent the District Attorney in that connection.

The Master: The District Attorney has a right to change his counsel and has a right to withdraw his request for the Corporation Counsel.

Mr. Hyatt: Your Honor, on your own statement, you said that you would not alter the situation without his personal appearance here.

The Master: I did not say that.

Mr. Hyatt: I misunderstood you, then.

The Master: I said I requested him to be here to make the statement.

Mr. Hyatt: Then the burden is on him, is it not?

638 The Master: I am not going, in view of the written communication——

Mr. Hyatt: I take an exception.

Mr. Cummings: I do not think it is fair to the Corporation Counsel, without giving him some notice that this was going to be brought up here today.

Mr. Ransom: He had notice from the District Attorney of Queens.

The Master: The unfairness in the situation is on the part of the District Attorney of Queens County; and it is to the District Attorney of Queens County that Mr. Hyatt has got to look, and it is to him that any criticism must be directed.

Mr. Hyatt: I think all the presumptions, your Honor, are in my favor.

The Master: Not at all. I have gotten an official communication addressed to me as the Master in this case, apparently signed by the District Attorney of Kings County.

Mr. Ransom: Queens County.

The Master: Of Queens County.

Mr. Hyatt: That is not an official communication if it is apparently signed, your Honor.

The Master: I do not know his signature. All I know is that it came in the mail on the letterhead of the District Attorney of Queens County, and purports to be signed by the District Attorney of Queens County. I am not going to permit any counsel to appear for the District Attorney of Queens County when under his signature he says he is not authorized to appear for him.

Mr. Hyatt: I take an exception.

639 Mr. Ransom: The District Attorney of Queens County notified me to the same effect, and said that he was also writing to the same effect to the Honorable A. S. Gilbert, and also to the Corporation Counsel.

Mr. Hyatt: I do not understand what right the District Attorney

would have under the circumstances to communicate with any of the counsel of record in this proceeding, your Honor, other than the Corporation Counsel himself.

The Master: I will not recognize Mr. Hyatt further until I get it straightened out.

Mr. Hyatt: Exception.

Mr. Cummings: Had Mr. Hyatt known of this previously he would have been able to bring it up clearly. I think it is unfair.

LEWIS B. GAWTRY, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Gawtry, where do you reside?
A. 58 East 66th Street, New York.
Q. With what institution are you now connected?
A. The Bank for Savings of the City of New York.
Q. In what capacity?
A. First Vice President.
Q. Until recently what was your connection with the Consolidated Gas Company of New York?
640 A. Up to the 1st of March, 1920, I was Vice-President.
Q. How long had you been connected with the Consolidated Gas Company before your resignation?
A. Twenty-five years.
Q. In what capacity did you first become connected with the Consolidated Gas Company?
A. Purchasing Agent.
Q. Did you organize the purchasing department of the Consolidated Gas Company?
A. I did.
Q. And ever since that time down to March, 1920, did you have supervision over that department?
A. I did.
Q. What were the different capacities which you fulfilled with the Consolidated Gas Company?
A. I started as purchasing agent, became assistant secretary, secretary and vice-president.
Q. Assistant secretary in 1898?
A. Yes.
Q. Secretary in 1900?
A. Right.
Q. Vice-President in 1902?
A. Right.
Q. During the twenty-five years down to March, 1920, the purchasing department was under your direction and supervision?
A. It was.
Q. For a number of years prior to your resignation as vice-pres

dent of the Consolidated Gas Company, did you conduct the negotiations and negotiate the agreements on behalf of that company for the purchase of coal?

A. I did.

641 Q. Was it the practice of the Consolidated Gas Company during that time to purchase coal for certain other companies affiliated with it?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, unless confined to the New York & Queens Gas Company.

The Master: Overruled.

Mr. Neumann: Exception.

A. It was, except for the Mutual.

The Master: I want to get my record straight today. There is no appearance by the Queens County District Attorney, is there—no counsel representing the District Attorney of Queens County?

Mr. Chambers: You have ruled him out, apparently.

Mr. Cummings: You have ruled him out.

The Master: I am saying now, Mr. Hyatt having left the room, is there any counsel representing the District Attorney of Queens County? I understand there is not, and the record will so show. I know the District Attorney of Queens County ought to be represented, and I wanted the record to show that he is not.

Mr. Chambers: If the Corporation Counsel cannot get in any other way then we will appoint him counsel.

The Master: You will not.

Mr. Chambers: I will get some more. The Court cannot stop us from having another.

The Master: I am going to make a rule about you now. Who is going to handle this case for the Attorney General?

Mr. Chambers: Why, there are several of us here.

642 The Master: Well, who is going to do the talking now?

Mr. Chambers: I cannot tell you.

The Master: Somebody is going to do the talking for the Attorney General's Office, and one counsel is going to be recognized, and not more than one. Who is it going to be, Mr. Chambers? You can make your own selection.

Mr. Chambers: I cannot tell you at this time.

The Master: Mr. Tobin, isn't it?

Mr. Tobin: Yes.

The Master: Having last taken the floor, I will recognize Mr. Tobin and nobody else.

Mr. Chambers: I take an exception.

The Master: And the stenographers will take no statement by anybody else from the Attorney General's office until I get a statement that Mr. Tobin has been supplanted.

Mr. Tobin: Why, that is not proper, if the Master please, because I am working entirely under the direction of Mr. Chambers.

The Master: I want to know who represents the Attorney General

here once and for all. I am not going to take objections by all coun sel. Mr. Chambers can make the statement or not, just as he pleases

Mr. Chambers: No, I decline to make the statement as to who i going to do the talking. I am perfectly willing to abide by the rul ing that one counsel talk at a time. You can make your ruling and I will take exception.

The Master: I did not say anything about one counsel talking a a time. There is only one going to do the talking today.

643 Mr. Chambers: I take an exception. I decline to say that today, because I have not considered that. Throughout these cases I think it is perfectly proper for the Attorney General to be represented by one or more counsel, and it is perfectly proper for one or more to cross-examine, so long as one starts it and completes it.

The Master: For the orderly conduct of this proceeding I shall only recognize one counsel talking in behalf of the Attorney General. The Attorney General can have six representatives here if he so desires, but only one counsel will be recognized today. Mr. Tobin having taken the floor and cross-examined the last witness, I am going to recognize Mr. Tobin and nobody else today.

Mr. Chambers: I take an exception.

Q. Mr. Gawtry, in making coal purchases did you take into account the requirements of the New York & Queens Gas Company and did you purchase coal for that company?

A. Yes.

Q. What kind of coal did the New York & Queens Gas Company purchase?

A. Principally anthracite, broken size.

Q. That is what is known as broken anthracite coal?

A. That is correct.

Q. The largest size of anthracite?

A. Yes.

Q. Is that a size of coal made especially for gas-making purposes?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, nothing shown by this witness yet to testify to any such facts.

644 The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Practically, yes.

Q. What has been the practice of the purchasing department of the Consolidated under your direction, and of the coal companies with respect to contracts for anthracite coal, as to the time of the year when contracts are made?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not binding on this company, not shown to cover this company.

The Master: Overruled.

Mr. Neumann: Exception.

A. All anthracite contracts start from April 1st of each year and are made for the period of a year.

Q. The coal year, when you use the expression "coal year" you mean from April to April?

A. April to April.

Mr. Neumann: One moment. That is objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving a practice or custom.

The Master: Overruled.

Mr. Neumann: Exception.

Q. Beginning April, 1918, did you make any contracts as of that date for the ensuing year, including the months of January, February and March of 1919?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not shown to cover this company.

The Master: Overruled.

Mr. Neumann: Exception.

645 Mr. Tobin: There is the further objection, if your Honor please, that the best proof is the contract itself, and we ask that it be introduced.

The Master: Overruled.

Mr. Tobin: Exception.

A. There were no contracts made during that period, because the Government had charge of the coal supply.

The Master: Because who had charge of the coal supply?

The Witness: The Government.

Mr. Neumann: One moment. I move to strike out that part of the witness' answer "because the Government had control of the coal supply."

The Master: Motion denied.

Mr. Neumann: Exception.

Q. By the Government, you mean the United States Fuel Administration?

A. I do.

Mr. Neumann: Same objection.

The Master: Same ruling.

Mr. Neumann: Exception.

Q. So that coal secured by the New York & Queens Gas Company during January, February and March of 1919 was not pursuant to any contracts with the coal companies?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and nothing yet shown with reference to the New York & Queens, no foundation laid for it.

The Master: Overruled.

Mr. Neumann: Exception.

646 Mr. Tobin: I ask, if the Master please, the date—I cannot just recall the date that Mr. Gawtry left the company.

The Master: March 1, 1920.

A. What was the question?

(Question repeated by the stenographer.)

A. That is correct.

Q. Did you ordinarily purchase your coal through jobbers or deal directly with the coal companies?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving a custom or practice.

The Master: Overruled.

Mr. Neumann: Exception.

A. Direct from the coal companies, the parent companies.

Q. That is, as wholesalers?

A. As wholesalers.

Mr. Neumann: I move to strike that answer out, because I do not think that means anything, "wholesalers."

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. During the coal year beginning April 1, 1919, were you in fact able to get all the coal that you required from producers?

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and not the proper way of proving it. It is a conclusion of this witness. He may state what he did, and from that the Master must determine whether they were able to get coal or not.

647 The Master: I think there is a good deal of force in that objection. I will sustain it.

Mr. Ransom: It is your feeling that the question calls for a conclusion?

The Master: Yes.

Q. During that coal year what did you do to get coal?

A. We tried in every possible way. We had to go to Washington frequently, to Philadelphia, to the railroad officials of the different roads on which coal is shipped, to the Coal Administration, Mr. Garfield—every possible way.

Mr. Neumann: I move to strike from that answer the words "possible way."

The Master: Overruled.

Mr. Neumann: Exception.

Q. Mr. Garfield was the director of the United States Fuel Administration during that time?

A. He was.

Q. Did you get all your coal from producers, or did you have to get it from other sources?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, vague and indefinite.
The Master: Overruled.
Mr. Neumann: Exception.

A. We got most of it from producers; we got some from brokers.
Q. During the coal year beginning April 1, 1918, were the prices for anthracite coal fixed by agreement between yourselves and coal companies, or were they fixed otherwise?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.
648 The Master: Overruled.
Mr. Neumann: Exception.

A. 1918 that is?
Q. Yes, during the coal year beginning April, 1918?
A. Fixed by the United States Government.
Q. The Fuel Administration?
A. The Fuel Administration.
Q. Were railroad and other charges likewise fixed by the Government?

Mr. Neumann: Same objection.
The Master: Overruled.
Mr. Neumann: Exception.

A. They were.

Mr. Neumann: If the Court pleases, if the Government fixed these prices there must have been some order of some kind, and that would be the best proof of it.
The Master: Yes, but this proof is good enough.
Mr. Neumann: I except, your Honor.

Q. As of December 1, 1918, what was the price thus fixed on broken anthracite coal?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. The record thus far indicates, if anything, that the coal prices are fixed April 1st of each year.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: A further objection, if your Honor please, that the contracts are the best proof of what the price was, and I think they ought to be put in instead of asking this witness that question. We ought to have the contracts, as the best proof.
649 The Master: Overruled.

Mr. Tobin: Exception.

A. $5.85 at the mines, plus the railroad freight of $1.85, plus water freight of 60 cents, taxes and insurance, to bring it alongside the plant, alongside Flushing.

Mr. Neumann: I now move to strike that answer out upon the ground that the question of counsel was a general question.
The Master: Motion denied.
Mr. Neumann: Exception.

By the Master:

Q. As I understand it, all anthracite coal was $5.85 at the mine?
A. Of that size, broken size, yes.
Q. In addition to which you had the railroad and water transportation and the insurance and war taxes?
A. Right.
Q. No matter what plant it went to?
A. Yes.

By Mr. Ransom:

Q. Was $5.85 the April price or December price?
A. The December price.

Mr. Neumann: One moment. I move to strike that answer out, because the present state of the record indicates that the prices were fixed in April of each year.
The Master: Motion denied.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Q. Did the U. S. Fuel Administration from time to time change the price per gross ton at the mine?

Mr. Neumann: Objected to on the ground it is incom-
650 petent, irrelevant and immaterial, and not the proper way of proving it. If it was by an order, the order would be the best proof of it and not this witness' statement.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. Several times during the year.
Q. And the price per gross ton at the mines was what was called the base price?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and that is a question for the Master to determine, not for this witness.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. It was.

Q. Did the United States Railway Administration from time to time change the charges for railroad freight and were there also changes in the water freight and the tax and other elements that you have referred to?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, not the best way of proving it. The best proof would be the orders themselves.

The Master: Overruled.

Mr. Neumann: Exception.

A. There were changes.

Q. Can you give us the price of broken anthracite coal as fixed by the United States Fuel Administration as of January 1st, 1919, and throughout the year following, including therein the price at the mine and the variations in railroad freight, lighterage charges, and so forth, to the New York & Queens Gas Company's plant at Flushing?

651 Mr. Tobin: Objected to.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. What price the Government fixed is immaterial so far as this case is concerned.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: If your Honor please, we believe that the best proof is the contracts or the memorandums or agreements, had by the New York & Queens Gas Company, as concerns this particular transaction. We do not think this witness ought to be allowed to testify in that way.

The Master: Apropos of this objection, Mr. Gawtry, do I understand your testimony to be that this complainant company was compelled to and actually did pay the prices that you are now testifying to?

The Witness: They did.

The Master: In other words, it had no other prices that it could pay?

The Witness: None.

Mr. Ransom: The vouchers are in evidence.

The Master: Objection overruled.

Mr. Neumann: Exception. What is that, Mr. Ransom?

Mr. Ransom: The vouchers are in evidence.

Mr. Neumann: I do not think that proves the price.

The Master: Answer the question, Mr. Gawtry, or counsel will keep this up all day.

A. I can give those prices; yes, sir.

Q. Will you do so?

652 Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Overruled.
Mr. Neumann: Exception.

A. In the year 1919, January, February and March, coal at the mine was $5.95 a gross ton.

By the Master:

Q. $5.95?
A. $5.95, the railroad freight was $1.85, and the f. o. b. price at the port was $7.80, and we had water freight, tax and insurance. During the months of April, May and June, the price at the mine was $5.85, a reduction of 10 cents, the railroad freight was the same, $1.85, plus the same water freight, the same tax and the same insurance.
Q. You did not tell us what it was alongside in January, February and March, including water freight and insurance.
A. $8.495.
Q. And what was it the next period of three months?
A. $8.395. From July 1st to December 31st the coal at the mine was $5.85, and there was an increase of 5 cents.
Q. $5.85?
A. $5.85.
Q. I thought it was $5.85 for the prior period. What was it, $5.80?
A. It was $5.95 for the first three months, and $5.85 for the next three months.
Q. Then it was $5.85 again?
A. Yes, and there was an increase of 5 cents for railroad charge.
Q. I see. I thought your statement of 5 cents increase had to do with the price at the mine?
653 A. For the six months July 1st to December 31st the railroad changed from Port Johnson up to Pier 18, Jersey City, and made a longer haul for which they secured 5 cents extra freight, and that made the railroad freight 1.90, price alongside Flushing approximately $8.445.

By Mr. Ransom:

Q. What was the insurance rate during 1919?
A. A quarter of one cent. It varies a little, but it is generally about that. Approximately two cents a ton.

Mr. Neumann: I move to strike that answer out on the ground it appears it is a guess.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. Is Flushing within or outside the New York towing limits?
A. Outside the towing limits.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving it.

The Master: Overruled.
Mr. Neumann: Exception.

Q. Is the lighterage charge on coal greater outside the towing limits than within them?
A. It is.

Mr. Neumann: Object — on the ground it is incompetent, irrelevant and immaterial. If this is the subject of a contract, the contract would indicate all that.
The Master: Objection overruled.
Mr. Neumann: Exception.

Q. Beginning April 1, 1919, the coal year beginning April 1, 1919, did you have contracts for anthracite coal, including the requirements of the New York & Queens Gas Company?
654 A. I did.
Q. What contracts for anthracite coal were in force during the coal year beginning April 1, 1919?
A. A contract with the Lehigh and Wilkes-Barre Coal Company including the New York & Queens Gas Company for that period.

Mr. Ransom: The vouchers are in evidence.

Q. That is, the New York & Queens Gas Company received anthracite coal only under the Wilkes-Barre contract?
A. Correct.

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial. The contract, or contracts, if there are others, would indicate that.
The Master: Overruled.
Mr. Neumann: Exception.

Q. What is the contract price at the mine under that contract?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. The present state of the record——
The Master: Objection sustained.

Q. You have the contract here, Mr. Gawtry?
A. Yes.
Q. Will you produce it?
A. (Producing paper.) $5.85 at the mine.

Mr. Neumann: I move to strike that out.
The Master: Motion granted.
Mr. Ransom: I offer in evidence the contract that is produced by Mr. Gawtry under date of April 17, 1919.
Mr. Neumann: May we see it?
Mr. Ransom (handing counsel): I do not offer in evidence
655 any of the pencil marks or ink marks which appear thereon, outside of the letter.
Mr. Neumann: You are offering the letter, too, are you?
Mr. Ransom: Well, the letter is the contract.

Mr. Neumann: Oh, yes, the letter is the contract. How about this little page that is on the back there, are you o*ff*ring that, too?

Q. Mr. Gawtry, is that a copy of a letter which you sent to the Lehigh and Wilkes-Barre Coal Company in reply to their letter of April 17th?
A. It is.
Q. It was signed by you?
A. Yes.
Q. And this bears your initials?
A. Yes.

The Master: I take it the two letters together make the contract; is that so?
The Witness: Yes.
Mr. Ransom: I offer in evidence the letter of the 17th and the reply.
Mr. Neumann: If the Court pleases, this is objected to on the ground that it is immaterial, irrelevant and incompetent, and not properly proven, nothing herein indicates that this relates to the supply of coal for the New York & Queens; the signature has not been proven, the reply sent to it has not been proven in proper order, and at best it is immaterial, so far as on its face it would indicate that it had anything to do with this company.
The Master: Objection overruled.
Mr. Neumann: Exception.

656 Mr. Tobin: Well: If your Honor please, there isn't the least bit of—there is no indication at all that it is any part of an arrangement or agreement with the New York & Queens Gas Company.

The Master: Yes, Mr. Gawtry has testified to the fact already.
Mr. Tobin: I know, but you haven't before you any agreement between the New York & Queens Gas Company or Consolidated Gas Company as to that.
The Master: I think Mr. Gawtry's sworn statement that that is the contract that affected the New York & Queens requirements is sufficient.
Mr. Ransom: And you have the testimony of Mr. Spear as to the manner in which the coal is purchased under this contract.
Mr. Tobin: I object to this contract because there is nothing in there to indicate that it is any part of this case.
The Master: Objection overruled.
Mr. Tobin: Exception.

Contract marked Complainant's Exhibit No. 80.

Q. Mr. Gawtry, subsequently and on or about the 27th day of June, 1919, did you receive a letter from the Lehigh & Wilkes-Barre Company with respect to an increase in the rate for rail transportation?
A. Yes.
Q. That was based upon Jersey City rather than Port Johnson delivery?

A. Change at piers.
Q. And that was the 5 cents change which you referred to?
A. It was.
Q. And thereafter that increase of 5 cents was in effect?

657 Mr. Neumann: I object to it as incompetent, irrelevant and immaterial. The correspondence, if anything, might be better than the witness' testimony.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. It was in effect.
Q. And this is the letter received by you (handing paper)?
A. It is.

Mr. Ransom: I offer it in evidence.
Mr. Neumann: You are offering this, of course, without the corrections here in pen and ink?
Mr. Tobin: There are some pen and ink corrections.
Mr. Ransom: I am not sure.

Q. Are these ink marks there in your handwriting?
A. Yes.

Mr. Ransom: I do not offer them.
Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, not properly proven, the letter is not signed by anyone, it is signed on the typewriting machine, and not the proper way of proving a letter of that kind.
The Master: Objection overruled.
Mr. Tobin: We offer the further objection that there is nothing to indicate that it has anything to do with the New York & Queens Gas Company.

The Master: That letter came to you by mail, I suppose?
The Witness: It did.
658 The Master: In the regular course of business?
The Witness: It did.
The Master: Following that you got bills for the increased prices?
The Witness: Yes.

The Master: Mark it in evidence.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Letter marked Complainant's Exhibit No. 81.

Q. Mr. Gawtry, the price fixed by this contract of April 17, 1919, with the Lehigh and Wilkes-Barre Coal Company represented the best and lowest price that you could get for anthracite coal for that coal year?

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial, calls for a conclusion, not the

proper way of proving it. He might say what he did, and the Master might draw his own inferences therefrom.

The Master: As I understand it, that was the Government price, wasn't it?

Mr. Ransom: Not as to the entire coal year 1919. It was 10 cents below the price fixed by the Government, but the Government control only ran—went out early in the calendar year 1919.

The Master: All right.

Mr. Tobin: In 1920.

Mr. Ransom: They had fixed a price, as I understand it, of $5.95, and then the Company, as soon as the Government relinquished control, was able to make a contract at $5.85.

659 The Master: While the form of the question is apparently in conflict with the rule, I think the objection is futile, in a way, because you can bring it out in another form. What was the price in this Lehigh Valley contract?

Mr. Ransom: $5.85 a gross ton at the mine.

The Master: What was the date of it?

Mr. Ransom: April 17, 1919.

The Master: Well, April 19th, were you in touch with the market conditions as to Anthracite broken coal?

The Witness: I was.

The Master: Did you know at that time of any place where you could get coal at a cheaper price than the coal referred to in this letter?

The Witness: We could not.

The Master: Well, tell us why you make that statement, on what you base that answer?

Mr. Tobin: Well, if your Honor please, we desire to object to the question by the Master; that is, we believe that the witness should be allowed to testify as to what he did.

The Master: I am asking him now what he did.

Mr. Tobin: But to say that was the best price obtainable——

The Master: I did not say that. I asked him if he knew any place where he could get it cheaper, and he said he could not, and I am going to ask him to supply the basis for his statement.

660 The Witness: I was in touch with every large coal-producing company, that is coal that we would use. There are coals that we cannot use for gas-manufacturing purposes. Most of those prices are the same, anthracite prices are made April 1st, and are practically the same in all the large companies, and we buy at the price that Burns Brothers and other dealers buy at, and they in turn add their commission and sell it to individuals, and we save that, we buy direct.

The Master: The point I wanted to bring out, Mr. Gawtry, was, that in April, 1919, you made a contract with the Lehigh & Wilkes-Barre Coal Company at $5.85 a ton. I want to know what information you had, and how you got it, that that was the wholesale price, and that you could not get it any cheaper?

The Witness: Because I got prices from probably twenty different anthracite people whose coal we would use, and no price near that.

Mr. Ransom: That is all.

The Master: Cross examination, Mr. Tobin?

Cross-examination.

By Mr. Tobin:

Q. Mr. Gawtry, you left the Consolidated Gas Company on March 1, 1920?

A. Yes, sir.

Q. What was the practice as concerns the Consolidated Gas Company and the New York & Queens Gas Company, as to the extent of coal desired or required by such company?

A. Mr. Spear gave me, prior to April 1st of each year, the approximate amount of broken coal that he would use during
661 that year, which was 5,000 tons, so far as he could tell, and we included it in the Consolidated contracts, this 5,000 tons, New York & Queens Gas Company.

Q. Was that letter directed to the Consolidated Gas Company by Mr. Spear; that is, was the letter sent by Mr. Spear?

A. No, word of mouth. I saw Mr. Spear every day or so, and telephoned him once or twice a day, probably.

Q. Well, who directed the deliveries—that is, who directed the deliveries when this contract was made, as you say, for the large amount of coal, who directed the deliveries of the New York & Queens Gas Company, just taking into account this particular company?

A. Mr. Spear would telephone to Mr. Franklin, who has charge of the coal distribution of the Consolidated Company, that his stock was running low, and he would need a cargo of coal, and Mr. Franklin would assign the first cargo available to him.

Q. There was no written order served by the New York & Queens Gas Company direct to the Consolidated Gas Company?

A. Not that I know of.

Q In other words, the practice was simply to give all orders, and there is no record, so far as you know, of a specified order from the New York & Queens Gas Company as to what they would need in the way of coal?

A. Not so far as I know.

Q. Can you tell us what was the practice after the coal was ordered by the Consolidated Gas Company as to the payment for the same by the New York & Queens Gas Company?

A. The bills were forwarded to the New York & Queens Gas Company, and paid by them direct.

662 Q. They did not go through the offices of the Consolidated Gas Company at all?

A. I do not think so. I think they went direct to the New York & Queens Company.

Q. In what manner was the New York & Queens Gas Company notified as to the price that they should pay for the coal?

A. I notified them after making the contract.

Q. After a contract was made by you for the coal, then you in turn notified the New York & Queens Gas Company—as to just what figures did you notify them?

A. As to the contract prices.

Q. As to the contract price at the mines?

A. The contract price delivered alongside.

Q. At the time that the contract was made, you could not tell as to the exact amount of freight to pay?

A. Yes, we could, because that freight price is fixed as a matter of record, public records, fixed by the United States Government.

Q. Well, the government did not have control entirely in the year 1919, as to the price of coal; it had something to do with the freight rate but not entirely the price of coal?

A. Not the price of coal, but the freight rate.

Q. The freight rate for the entire period of the coal year 1919?

A. Through the Interstate Commerce Commission.

Q. Was that by a written communication from the Consolidated Gas Company as to what they should pay?

A. Yes.

Q. By whom was that letter signed in behalf of the Consolidated Gas Company?

663 A. By me.

Q. By yourself?

A. Yes.

Q. In the handling of the coal, that is in the purchase of the coal by the Consolidated Gas Company, what was exacted or taken or charged for the handling of the coal and of the coal question or the coal problem by the Consolidated Gas Company?

Mr. Ransom: Objected to as vague and indefinite.

The Master: No, I think I understand what he means, and if Mr. Gawtry does not know he can say so.

Q. I would like to know what the Consolidated Gas Company received for handling the coal problem or the coal situation, as they took care of the coal problem for the New York and Queens?

The Master: I understand what you want.

A. Not one cent.

Q. Not one cent?

A. Not one cent.

Q. Did the New York & Queens Gas Company pay you anything at all for your services in connection with the handling of the coal problem?

A. Not one cent.

Q. In your opinion, Mr. Gawtry, if you were to purchase just the coal for the New York & Queens Gas Company, that is, I mean the quantity of coal needed, and that you stated here it would run about 5,000 tons, what would you be able to do in the way of a price for the same?

A. I do not think I could get as good a price as we got under this method, and that was the object of doing it this way.

664 Q. You feel satisfied that in a combined contract, or in one contract, you got a better price for the New York & Queens Gas Company?

A. I am very sure of it.

Q. Did you check that up as to what gas companies or other companies operating outside of the Consolidated Gas Company were able to do, as to whether they would be able to get a better price for coal?

A. I did not check it up, no.

Q. You did not, Mr. Gawtry?

A. I had no way of doing it. You mean companies outside, like New Jersey and Connecticut?

Q. Yes, wherever small quantities were desired or needed, as to whether they were buying coal cheaper. Take, for instance, the New York & Richmond Gas Company, did you check up as to what they were paying for coal as a small independently operated gas company?

A. No, I did not.

Q. So that your information as to the price obtained for the New York & Queens Gas Company is simply based upon what you did yourself, because you did not go outside your field as an officer of the Consolidated Gas Company?

A. I did not.

Q. Can you tell me again the name of the company that had the coal contract for the New York & Queens Gas Company?

A. The Lehigh & Wilkes-Barre Coal Company.

Q. Where are their offices, sir?

A. 143 Liberty Street.

Q. Is it a New York corporation or a Pennsylvania corporation?

A. I do not know.

Q. Do you know the personnel of the company, I mean the officers of the company?

665 A. Only the vice-president and general agent.

Q. What is his name?

A. Mr. Heilner.

Q. Do you know whether he is in any way connected with the Consolidated Gas Company?

A. I know that he is not.

Q. He is not?

A. He is not.

Q He is not a stockholder or officer in any way?

A. He is not an officer; I do not know whether he is a stockholder.

Q. You don't know whether he has any affiliations with the Consolidated Gas Company?

A. He has no affiliations except he may be a stockholder. That I do not know. We have some 6,000 stockholders.

Q. Well, do you know the other officers of the Lehigh company?

A. I do not.

Q. You do not know their names, sir?

A. No.

Q. Do not know any. Have you any knowledge at all as to whether the other officers of the Lehigh company are interested in

the Consolidated Gas Company or the New York & Queens Gas Company?

A. I have no knowledge.

Q. You have no knowledge of that at all?

A. No, sir.

Q. Was any part of this coal shipped—in making the arrangements for shipping to the New York & Queens Gas Company, did the Consolidated Gas Company have anything to say as to how it should be brought to the plant of the New York & Queens Gas Company? That is, I mean the arrangements for boats and
666 freight and things of that sort, was that all cared for by the Consolidated Gas Company?

A. By the coal company; they delivered alongside of docks of the various companies.

Q. The docks of the various companies?

A. Yes.

Q. And then their contract ended?

A. Yes, sir.

Q. Can you say whether in the delivery of coal to the docks of the various companies, that then there ended the interest or the supervision, as we might say, of the Consolidated Gas Company as to these coal contracts?

A. Except if the coal were bad, if it were not up to the standard, Mr. Spear would telephone me or come in or get into communication with me and say it had too much ash or not in good shape, or not well prepared, and I would then take it up with the coal companies.

Q. Did any responsibility rest on the Consolidated Gas Company in the furnishing of this coal to the New York & Queens Gas Company, that is we will say, it being a contract made by the Consolidated Gas Company and the coal was found faulty or lacking in the necessary qualities for gas-making purposes, what was the relationship then between the New York & Queens Gas Company and the Consolidated Gas Company?

A. The Consolidated Gas Company was merely an agent.

Q. Merely acted as an agent?

A. Not responsible for the coal.

Q. And is it so stated in the arrangement or agreement made between the New York & Queens Gas Company and the Consolidated Gas Company?

A. It is not.

667 Q. Well, how would that be understood or known to the New York & Queens Gas Company?

A. Because our relationship is close enough that Mr. Spear would soon communicate or make known to me, in all probability, if the coal was not satisfactory, and I would then take it up with the coal company.

The Master: No, Mr. Tobin's question was, How would the New York & Queens know that the Consolidated had no responsibility but was simply acting as an agent?

The Witness: We acted as buying agents for them.

Q. No, but the contract was made by you?

The Master: Mr. Tobin wants to know what knowledge the New York & Queens Company had as to your limited responsibility?

The Witness: I think in all probability we probably discussed it in conversation, nothing in writing about it.

Q. Between yourself and whom, sir?

A. Mr. Spear.

Q. And yourself?

A. Yes.

Q. The only contract in existence as to this coal was made by the Consolidated Gas Company, is that correct?

A. Yes, correct.

Q. And so if there were any defects at all, the Consolidated Gas Company would have to take it up with the coal company?

A. That is right.

Q. And that responsibility was with the Consolidated Gas Company?

A. To take it up with the coal company?

Q. Yes.

A. Yes.

668 Q. Or if any faulty coal were furnished to the New York & Queens Gas Company?

A. Coal is not made up to order, sir, it is mined, it is the product of a mine.

Q. I know, but you stated here there was no indicated contract or agreement, nothing in writing to indicate the relationship between the New York & Queens Gas Company and the Consolidated Gas Company. I so understood it?

A. That is right.

Q. That is was simply an oral arrangement?

A. For the convenience of the New York & Queens Gas Co.

Q. And then when the coal was delivered to the docks of the New York & Queens Gas Company, the responsibility of the Consolidated Gas Company ended?

A. Yes.

Q. Except as to the coal being found faulty?

A. Correct, except that the New York & Queens Gas Company haven't got their own dock, it is delivered alongside Flushing.

Q. Well, when delivered to the Flushing dock, apart from any fault with the coal, why then the Consolidated Gas Company ended its responsibility?

A. That is right.

Mr. Tobin: That is all.

The Master: Do you wish to ask any questions, Mr. Neumann?

Mr. Neumann: Yes.

The Master: I notice you did not ask Mr. Gawtry anything about the future course of prices. Did you do that deliberately, Mr. Ransom, or didn't you want to bring that out by him?

669 Mr. Ransom: Well, Mr. Gawtry has been out of the coal business for——

The Master: Three months. Well, go ahead, Mr. Neumann.

Cross-examination.

By Mr. Neumann:

Q. Mr. Gawtry, you recall the winter of 1919?

A. I do.

Q. It was rather a long and severe winter; in fact, we had more snow that winter than we have had any year that you can remember, isn't that true?

A. Very well, sir, yes.

Q. You cannot recall any winter where the street cars in New York City stopped running for several days at a time by reason of the failure to remove the snow?

A. They were.

Q. The harbor around New York was pretty well frozen over, and so was Flushing Bay, wasn't it?

A. It was.

Q. Flushing Bay, as a matter of fact, freezes over almost every year, doesn't it?

A. Yes.

Q. Isn't there a difference in price, Mr. Gawtry, between coal purchased in the winter months and coal purchased in the summer months?

A. There is, if you buy by retail, but buying it as we do there is no difference in price; the price made April 1st runs through until the following April 1st, unless the Government steps in and changes it, as they did during the war.

Q. Well, have you any knowledge outside of your own Consolidated System, of large contracts for the purchase of coal? I am not talking of your own system. I know that your system
670 is April 1st of every year. I mean, have you any knowledge outside of your own system of the placing of large orders?

A. That is the practice of the anthracite industry throughout the country, it is not our practice at all, it is the whole anthracite industry.

Q. Well, how do you know that?

A. By twenty years' experience in buying anthracite.

Q. For the Consolidated system only?

A. Yes.

Q. You don't know it any other way?

A. Except that the coal people have told me that several of the railroads and others who use anthracite make the same contracts from April to April.

Q. How do you know that the railroads make the contracts in April?

A. I have been told by the coal operators.

Q. And that is how you know it?

A. Yes ,sir. I have never bought for the railroads.

Q. Now, you mentioned that there were twenty different people that you obtained estimates from for coal. Will you mention some of them, if you can recall them, Mr. Gawtry?

A. Could I?

Q. Yes.

A. Yes. Lehigh & Wilkes-Barre Coal Company; Williams & Peters; Philadelphia & Reading Coal & Iron Company; D. L. & W. Coal Sales Company; Lehigh Valley Coal Company; Lehigh Coal & Navigation Company; Whitney & Kemmerer; Meeker & Co.; St. George Coal Company, and as many others as you please.

671 Q. Berwin & White?

A. No, they are bituminous operators.

Q. Did you mention Williams & Peters?

A. I did. The Consolidated bought from Williams & Peters.

Q. Now then——

The Master: What is your contention, Mr. Neumann, that the coal price was lower than Mr. Gawtry has testified to in 1919?

Mr. Neumann: Why, I think that I will be able to indicate, if I can lead up to it, that the trend was downward from the year prior thereto.

The Master: The years prior thereto?

Mr. Neumann: Yes.

The Master: No, I am talking now—Mr. Gawtry has testified that during the year 1919 certain prices had to be paid. Do you say the coal could have been bought for less than that?

Mr. Neumann: I don't know whether it could. I am trying to find that out.

The Master: Well, haven't you prepared your case for trial?

Mr. Neumann: Well, I have prepared a certain part of it.

The Master: Well, haven't you prepared on this branch of your case?

Mr. Neumann: I am trying to look over Mr. Gawtry's testimony this morning.

Q. Now, this contract, Exhibit 80, is an order for 100,000 tons of coal. That is a considerable portion more than the New York & Queens requirements, is it not?

A. It is.

672 Q. Well, what efforts did you make in behalf of the New York & Queens Company, solely and only?

A. I can buy 100,000 tons of coal cheaper than I can buy 5,000 tons.

The Master: That does not answer the question. You made no effort, did you, to buy 5,000 tons for the New York & Queens?

The Witness: Yes, sir.

The Master: Yes?

The Witness: No, I did not.

Q. You made no effort then at any time that you were making contracts for coal to make an individual contract on behalf of the New York & Queens?

A. I did not.

Q. Does this contract relate in any way to the quality of coal?

A. It does not.

Q. You have nothing in the contract with reference to quality?

A. We buy their coal and have used their coal for thirty or forty years, and we know it well.

Q. And you use it whether it is good, bad or indifferent?

A. You cannot buy coal specifying—you cannot buy anthracite coal specifying it should be such and such percentage of fixed carbon and such and such percentage of ash.

Q. You have to take it as it is?

A. You have to take it as it is.

Q. And is that the usual method, so far as you know, of purchasing coal?

A. It is; you select your coal and you have to stick to it. Some bituminous coal is bought otherwise, it is brought on the
673 B. T. U. basis, but that does not apply to this kind of coal.

Q. What did you find with reference to the coal that was delivered during the year 1919, as compared with prior years? Was it of a higher grade or a lower grade, or the same grade?

A. I do not think it was quite as good; I think the preparation was not quite as good; it was—the government and the whole nation was demanding coal, they turned out millions of tons more than ever before, and the shortage of labor, the quality of labor was not as good, and I do not think the preparation was as good in 1919 as in some other years. That applies to all coals.

Q. Do you know how the coal was delivered to the New York & Queens? Was it barge deliveries?

A. It was dumped from the railroad cars into boats, and the boats towed up.

Q. Where?

A. At Port Johnson, New Jersey, and Pier 18, Jersey City, both places; Port Johnson up to July 1st, and from July 1st on from Pier 18, Jersey City. It was then put in the boat and taken up the East River and Flushing Creek alongside of dock at Flushing.

Q. You are the same Mr. Gawtry who testified in the case of the Consolidated Gas Company against Newton and others?

A. Oh, yes, sir.

Q. Before this same Master?

A. I am.

Q. Do you recall what you testified as the price of coal in December, 1917?

Mr. Ransom: Objected to as immaterial, no connection with these present issues.

674 The Master: Objection sustained.

Mr. Neumann: Does the Master by that intend to rule that I may not show that prices were higher in prior years to 1919, and the tendency was downward?

The Master: Why, yes, I shall rule that the price in 1917 is not at all helpful in this case.

Mr. Neumann: Well, my questions would all be along the same line, and I think I have made a sufficient record that I won't waste any more time on it.

Mr. Ransom: I think he should ask his questions.

Mr. Neumann: You objected to it.

Mr. Ransom: I objected to the question now asked, yes.

The Master: I am not making any general ruling. Counsel has stated his view about it. You can ask Mr. Gawtry, if you like, what in his opinion is the trend since 1919, or what is his opinion as to what coal will sell for in the next two or three years.

Mr. Neumann: I think the way I wanted to bring it up is the proper way, because I have his testimony right here before me.

The Master: Well, I disagree with you.

Mr. Neumann: Sir?

The Master: I disagree with you in that, although Mr. Gawtry is anxious to answer.

The Witness: I would like very much to answer that.

Mr. Neumann: Well, I offer to prove by this line of testimony——

The Master: Well, you can't do it at this time. I will tell you what I will do——

675 Mr. Neumann: Yes.

The Master: Counsel for complainant having failed to do it, I will ask a couple of questions that will probably open the door for you to ask more.

Mr. Neumann: No, I object to it on the ground that it is incompetent, irrelevant and immaterial.

The Master: You don't know what I am going to do.

Mr. Neumann: May I have an exception?

Mr. Tobin: Exception.

The Master: I don't know what you are excepting to yet.

By the Master:

Q. Mr. Gawtry, you are in close touch with the coal market, or you were up to the time you left the Consolidated Gas Company on the first of March?

A. I was.

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial.

Q. Since that time I understand you have been an official of the Bank for Savings?

A. Yes.

Q. The Bank for Savings is a very large investor in securities, isn't it?

A. Yes.

Q. And in your connection have you anything to do with general market conditions, prices, &c.?

A. A great deal.

Q. And in your connection are you necessarily in touch with business conditions?

A. I am.

676 Q. Prices of material and labor conditions?

A. Yes.

Q. And the ability of manufacturers to produce?

A. Yes.

Q. And everything that enters into production and costs?

A. Right.

Q. And the possibility of concerns making a profit, whose securities are owned by the bank?

A. Yes.

Q. Are you able to say what in your opinion was the indication when you were with the Consolidated in March, as to whether the price of coal would be higher or lower during the balance of the year 1920?

Mr. Newmann: Objected to on the ground it is incompetent, irrelevant and immaterial, this witness is not competent to testify to that, and so far as it is concerned, it is a pure guess on his part.

The Master: Objection overruled.

Mr. Tobin: If the Master please, I do not think it is fair to attempt to bind the State by an answer that the witness might make here; that is, he is now entirely out of the coal business, he is in another line and he is not buying coal and he is not purchasing coal today.

The Master: Objection overruled.

Mr. Tobin: We take an exception.

Mr. Ransom: Your Honor's questions relate to anthracite coal?

The Master: Anthracite coal, just prior to the time he left.

677 The Witness: Anybody buying coal now is paying very much more than our contract prices, some places $1.05 more.

Mr. Tobin: I ask that the answer be stricken out.

The Master: The answer was not directly responsive. I asked you what in your opinion was the indication about the first of March, when you left the Consolidated Gas Company.

Mr. Neumann: How about the motion to strike out?

The Master: I will let it stand a minute, because it is bound to come in anyhow.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. (continuing): I asked you what in your opinion was the indication about the first of March, when you left the Gas Company, as to the probability, what the probability was of buying coal cheaper or dearer, when you left the Gas Company.

A. During the month of February, the end of February, I talked to as many people as I could reach, and the general impression was, and my impression was that coal would be very much higher this year; they had not then given the increase in wages to their employees which the bituminous people have now given, and which the anthracite people will have to give, they are now in negotiation.

Q. When you left the Gas Company on or about the first of March, what were the indications as to any reasonable length of time, a

year or two or three, as to what in your opinion would be the course of the coal prices, anthracite coal?

678 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, the witness not properly qualified.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Witness: I think it will be higher for three years to come.

Q. For at least three years to come?

A. Yes, because the arrangements with the laborers, with the unions are made for a period of three years, ordinarily.

Mr. Tobin: I ask that that answer be stricken out, it is pure speculation, he hasn't shown any qualification to testify.

The Master: Overruled.

Q. Now, you said something before which was not directly responsive to my question as to the prices now being paid. On what did you base that statement?

A. On the prices I have heard that coal is sold for now.

Q. Well, heard how?

A. What the Consolidated is paying.

Mr. Tobin: If the Master please, that is entirely hearsay, that answer should not be allowed.

The Master: I am going to find out whether it is hearsay.

Mr. Tobin: Well, we object to the Master asking these questions.

Q. What information have you?

A. Because I was told so.

The Master: I shall strike out all the witness' testimony as to what is now being paid for coal, and I shall let the witness' testi-
679 mony stand as to what the indications were to him less than three months ago, when he left the Consolidated Gas Company, and was in close touch with the situation.

Mr. Neumann: I except.

The Master: Now, if Mr. Neumann wants to cross-examine Mr. Gawtry as to the trend of prices and go back to 1917, I will let him.

Mr. Ransom: The complainant excepts to the striking out of the witness' statement.

Cross-examination.

By Mr. Neumann:

The Master: I shall say now that unless testimony is offered to contradict Mr. Gawtry, that I shall rely upon his sworn statement as to the indications and his opinion as of the first of March, less than three months ago.

Mr. Cummings: As to the future?

The Master: As to the trend being not less than it was when he left in the end of February.

Mr. Cummings: Had you better let him speculate on that?

The Master: No, I am taking his opinion as a matter of experience, and if there is any man you know of that has had equal experience, I am going to let him testify in contradiction to what Mr. Gawtry says.

Q. Now, Mr. Gawtry, within the last few months there have been strikes at the coal mines, have there not?

Mr. Ransom: I object to the question unless limited to anthracite.

The Master: Objection overruled.

680 A. Not that I know of.

Q. Well, for how far a period back do you recall a strike at the mines.

A. Anthracite mines, you refer to?

Q. Yes.

A. Some period, there has been a cessation of work.

Q. Well, there has been a cessation of work only——

A. (Interrupting.) Prior to the 1st of April.

Q. Prior to April 1, 1920?

A. Right.

Q. How far back did that run?

A. Just about the 1st of April, that is when their agreement ran out, the last day or so, about the end of March they ceased and did not work in the early part of April and the last few days at the end of March and the 1st of April.

Q. Are they working now?

A. To a certain extent.

Q. But not to their capacity?

A. No.

Q. At the present time there is considerable railroad congestion, is there not?

A. Yes.

Q. You read the announcement about the railroads asking the Government to take control again and issue priority orders?

A. I have.

Q. And both of those conditions would tend to affect the price of coal, wouldn't they?

A. They would.

Q. Do you recall testifying in the Consolidated Gas case, do you recall this question and this answer, "That is as of December 1, 1907, alongside price per gross ton was $6.62?"

681 Mr. Ransom: 1907 or 1917?

Q. (Continuing:) "A. December 1, 1918, not December 1, 1917." Is that correct?

A. I do not quite follow that, sir; which page?

Q. Right here (indicating).

Mr. Ransom: From what page of the Consolidated record are you reading these fragmentary questions and answers?

Mr. Neumann: 3388.

The Master: The question is, is that correct?

A. I cannot say from memory. I presume, I take it for granted that it is.

Q. I have just shown you the book, and you have looked it over, have you not?

A. Yes, I take it for granted that is correct. Here we are dealing with prices at the mines, and this is the alongside price. I would have to find out the railroad fare at that time, and the water freight.

Q. Did you give the alongside price in this case, the present case that you are testifying in, Mr. Gawtry?

A. I did.

Q. What did you figure that as?

A. January, February and March, 1919, $8.495; April, May and June, $8.395; July to December 31st, $8.445.

Q. That of course was the alongside price to all the Consolidated Companies?

A. That varies at different stations. That is the alongside price at Flushing, New York. That is what I am testifying to here now.

Q. And the difference in the alongside price between the various stations is accounted for by the towing charge?

A. It is.

682 Q. And what other charge?

A. The towing charge.

Q. That is the only one?

A. The tax is figured at 3 per cent on the amount of freight that you pay, both water freight and railroad freight. The towing charge during that period was 45 cents within towing limits, and 60 cents to Flushing. The tax would vary as to 3 per cent on 45 cents and on 60 cents.

Q. Otherwise it would be the same all over?

A. Yes, sir.

Q. Mr. Gawtry, did I understand your testimony to be that you had nothing to do with the deliveries at all at the New York & Queens, that that was solely under the control of Mr. Spear?

A. Just what do you mean by deliveries?

Q. Did you direct when, at what times and in what quantities deliveries should be made to the New York & Queens Gas Company?

A. Mr. Spear would call up the Consolidated Gas Company and say, "We need a cargo of coal, our stock is running low." Mr. Francklyn, who had charge of distribution of the 10 or 15 boats a day, would send a cargo up there as soon as he could. I didn't do it personally.

Q. It would be fair to say that Mr. Spear was the one who was in direction of when the coal should be delivered?

A. Absolutely.

Q. That is what you say?

A. Yes, sir, that is so.

Q. Mr. Gawtry, so far as you know, there is no contract existing between the New York & Queens Company and any coal company

for the supply of anthracite coal for the period covered by
683 Exhibit No. 80?
A. There is not.

By Mr. Tobin:

Q. You left the Consolidated Gas Company on March 1, 1920?
A. That is right.
Q. Can you state about what date was the last contract made by you, or last change in contract made by you for the Consolidated Gas Company and the companies that you were buying coal for, as a part of the Consolidated Gas Company's contract?
A. You are referring to anthracite?
Q. Anthracite? Yes, sir.
A. April, 1919.
Q. So that was the last contract you negotiated for the New York & Queens Gas Company, which was receiving its supply through the Consolidated Gas Company?
A. Yes, sir.

Mr. Tobin: I don't know whether the Master will permit this or not, but I would like to inquire from him as to whether Mr. Gawtry sat in or was a part of the arrangement made by the Government in the fixing of the price of coal?
The Master: You can ask him that.

Q. As you have stated, you purchased various supplies of coal during the period of the war. Were you called to Washington at any time to sit in with the Fuel Administration as to the price of coal to be charged?
A. I was called to Washington several times and sat with the Fuel Administration people, but not on the price; merely on de-
684 liveries?
Q. Merely on deliveries?
A. Shortage and distribution, and ways of delivering.
Q. But you were not a member of any board which had to do with the price of coal?
A. Never.
Q. Did you inquire into or make an analysis as to how the price was arrived at which the Government charged? You have stated here, I think, that the Government had fixed a price for the first quarter of the coal year, April, 1919, of $5.95—am I not right?
A. Yes, sir.
Q. Did you make an analysis at all as to how that price was arrived at?
A. I did not make analysis; Mr. Garfield did that.
Q. Did you inquire at Washington, or inquire of the board which sat in Washington who fixed that price, as to how it was arrived at?
A. I know how it was done, but merely by hearsay.
Q. What I am getting at is whether you made any protest whatever as against that price?
A. We did not.

Q. On behalf of the company of which you were an officer?
A. We did not.
Q. You made no protest?
A. No, sir.
Q. You simply accepted the price as fixed by the Government?
A. Yes, sir.
Q. And you don't know how that was done?
A. Merely by hearsay. Mr. Garfield sent his accountants
685 to the coal companies and got their costs, and he heard the labor people, and fixed the price.
Q. But you have no positive knowledge of how it was done?
A. No, sir
Q. And the Consolidated Gas Company made no objection to the price as fixed by the Fuel Administrator?
A. It did not.
Q. Did you make any contract for the New York Mutual Gas Light Company for anthracite coal?
A. What year?
Q. For the coal year 1919?
A. Yes, I have always consulted with them. When Mr. Galloway was alive I always consulted with him, and Mr. Parkhurst, I always consulted with him.
Q. What I would like to have you answer is whether you made contract for that company?
A. I did not.
Q. You stated this morning that where it was found by Mr. Spear that the coal was not up to the requirements, that is was not of the quality good for making gas, that he reported to you. Can you tell the Master what procedure you followed, that is what you did about that when Mr. Spear reported to you that the coal was not proper gas making coal, was not sufficient in the qualities necessary for making gas—what did you do then?
A. I would ordinarily take it up with the coal companies, they would send an inspector down——
Q. Tell us exactly what you did do?
A. I would have an analysis of every cargo of coal that is used——
686 Q. Who makes that analysis?
A. The chemists. If we found that the coal was not well prepared we would take it up with the coal company and ask them to inspect it. They might say our sample was not good, and might take other samples, and we would object and they would say the coal was not made by them, they gave us the best they could, etc. Anthracite coal has been running fairly well. Bituminous we had some trouble with.
Q. What rebate has been allowed to the Consolidated Gas Company because of the failure of the coal company to furnish the quality of coal which was called for in the contract?
A. I don't remember any rebate.
Q. That is, you cannot recall any moneys being paid back to the Consolidated Gas Company?

A. Not one cent.

Q. For poor coal, at least coal that was not sufficient in quality?

A. No.

Q. Well, taking the New York & Queens Gas Company, can you tell us of any rebates that were paid back to the Consolidated Gas Company for the benefit of the New York & Queens Gas Company because of the failure of the coal companies to deliver coal of a proper quality?

A. I cannot. I don't remember any complaints from Mr. Spear about the quality of the coal. I did not take up any question of the quality of his coal.

Q. You indicated that Mr. Spear at different times had complained?

A. No, I said that would be the procedure if the coal had not been up to the standard, but I don't remember any complaint.

687 Q. Then I misunderstood you. I understood you to say he had complained?

A. No, I don't remember that he ever did.

Q. So your testimony is that you don't remember Mr. Spear complaining at any time?

A. As to anthracite I do not.

Q. How long a period of time would you say that would cover?

A. Five or six or seven years.

Q. And no rebates have been paid back for poor coal?

A. Absolutely not.

Q. Have any adjustments or allowances been made at all for the benefit of the New York & Queens Gas Company covering the period of 1919, 1918?

A. None.

Q. None whatever?

A. No.

Q. So that the price fixed in the contract is the price that the New York & Queens was called upon to pay?

A. It is.

Q. And there has been no change whatsoever as to those terms?

A. Absolutely none.

Mr. Tobin: I don't like to prolong this testimony, but Mr. Gawtry indicted that there was the possibility of protesting, and of protests being made because of poor quality. If it was of no avail then there would be no purpose of making the protest.

Q. Has the Consolidated Gas Company on behalf of any of its companies, or on behalf of its own company, gained anything by those protests?

688 A. Merely demanding and asking for better preparation of the coal. We have frequently done that in my experience.

The Master: Does that avail you very much?

The Witness: Not very much, excepting asking for better quality.

The Master: Do they do any better?

The Witness: I think they do. We test every single cargo of coal

that comes to us. Most people put it in their boilers and let it go. We tear apart those ingredients on every ton of coal, and we are very particular. I think because the coal companies know we are particular we get better coal and better service.

The Master: But you don't get any rebates?

The Witness: No. Coal is not made to order. Coal comes from the ground ready made.

Q. Has it not at any time been so poor in quality that you deemed it advisable to turn to some other coal company to purchase coal?

A. Not with anthracite. I have with bituminous but not with anthracite.

Q. You only buy anthracite coal?

A. That is practically all the Queens Company uses. I have bought large quantities of bituminous coal for the Consolidated Company.

Q. So there was no complaint sufficient at any time to make it necessary for you to turn to some other companies to buy anthracite coal?

A. No.

689 (The following are copies of Complainant's Exhibits 80 and 81 referred to in Mr. Gawtry's testimony:)

COMPLAINANT'S EXHIBIT No. 80.

Lehigh and Wilkes Barre Coal Company, 143 Liberty St.

New York, April 17, 1919.

Mr. L. B. Gawtry, Vice President,
Consolidated Gas Company,
4 Irving Place, New York City.

DEAR SIR:

We have entered your order for 100,000 tons of Broken coal, equal monthly shipments, for delivery during the coal year April 1, 1919, to March 31, 1920. The price of this coal is $5.85 per gross ton at the mines. The rate of freight now in force is $1.85 per ton from the mines to Port Johnston, making the price f. o. b. $7.70 per gross ton. Should there be any increase or decrease in said freight rate, the price f. o. b. Port Johnston will be adjusted to correspond with such increase or decrease.

This sale is subject to the usual strike clause or any interference with operation or transportation beyond our control, and the price is subject to the Government tax of 3% on the railroad freight.

Yours truly,

P. B. HEILNER,
V. P. & G. A.

690 (Attached to foregoing:)

April 18th, 1919.

Mr. P. B. Heilner, Vice-President,
Lehigh & Wilkesbarre Coal Company,
143 Liberty Street,
New York.

My Dear Sir:

I beg to acknowledge receipt of your letter of the 17th instant, the terms of which are satisfactory and as agreed between us.

Very truly yours,

L. B. G.

Complainant's Exhibit No. 81.

Lehigh and Wilkes Barre Coal Company, 143 Liberty St.

New York, June 27, 1919.

Mr. Lewis Gawtry, Vice President,
Consolidated Gas Company,
3 Irving Place,
New York City.

Dear Sir:

On July 1st, 1919, we will leave Port Johnston as a shipping dock and move to Pier No. 18, Jersey City, N. J., a new modern up to date shipping plant.

As our rail transportation is 5c. per ton more to Jersey City than to Port Johnston, we will bill our coal at 5c. a ton more at the new dock than we ask at Port Johnston.

691 The water freight should be 5c. per ton less from Jersey City than it is now from Port Johnston, but I can not say at this writing what the towing rate will be.

Yours truly,

P. B. HEILNER,
V. P. & G. A.

Mr. Ransom: I offer in evidence Complainant's Exhibit 66 for Identification.

Mr. Neumann: In the first place I should like to protest against this method of introducing exhibits. They are introduced in all parts of the record without any continuity. It is difficult to find them after they get in there, we have got to wade all through testimony to determine where an exhibit is offered and where not offered.

The Master: Why did I hold that back?

Mr. Ransom: Because of the situation with respect to—I don't know, I suspected that it was on account of the situation with respect to mains, that the main books were not in evidence. Personally I did not think there was any valid reason at that time for holding it back. Subsequently of course we proved the main records and they are now in evidence.

The Master: Is there anything else?

Mr. Neumann: What is this?

Mr. Ransom: Miller's appraisal.

Mr. Neumann: It is objected to on the ground it is immaterial, irrelevant and incompetent. It is based on data not properly
692 proven. It is based on hearsay. It is based on statements made by other persons. It is also based, as the witness Miller's testimony will show, on records that do not indicate that they are properly kept, because the witness stated himself there were certain gaps, and he showed how he attempted to fill those gaps.

So far as the mains, meters and services are concerned, there is no competent or valid evidence on this record as to them at the present time.

It is secondary evidence and hearsay, if the Court please, and I think I can refer you to the question that I have in mind with reference to the speculation and guess as to the meters and services. I refer particularly to the answer given on printed page 176 of the record, folios 528, 529, 530 and 531.

I take it that your Honor is familiar with Judge Greenbaum's criticism of this witness and his testimony, particularly that part where he intended to testify as to mains, services and meters, the criticism which Judge Greenbaum made as to the taking of such testimony.

The Master: I am trying this case. Judge Greenbaum tried another case.

Mr. Neumann: I understand that and appreciate it.

The Master: I understand that the witness Miller undertakes to testify as to reproduction cost of this Gas Company's plant and distribution system. Is that right?

Mr. Ransom: That is correct.

The Master: I think that I have already put on the record the statement that I am not in accord with counsel's view that
693 the reproduction cost at this time is any basis upon which I shall find the value.

Mr. Ransom: That view has been stated at great length upon this record. Complainant has great respect for your Honor's view in that regard but feels under the necessity of offering proof of present reproduction costs.

Mr. Tobin: I wish to object first on the ground that there has been no proof as to the ownership of this property; second, there is no proof of the extent of the property or the condition of the property; third, there has been no appraisal made whatever of what is known as the plant and distribution system acquired by the company on August 1, 1904, and that there has been no appraisal or inventory or detail whatsoever of what is entitled as preliminary organization and development expenses, cost of financing, interest and taxes during construction; administrative, legal and miscellaneous general contractors' expenses and profits, co-ordination of service in consolidation of companies——

Mr. Ransom: May I just interrupt? Mr. Tobin is now reading a document which is not being offered. We are not offering——

Mr. Tobin: I understand that.

Mr. Ransom: We are not offering the tabulation which you are reading. There is no such thing in the document which we are offering.

Mr. Tobin: Yes, but the items I am reading are in this document that you are attempting to offer.

Mr. Ransom: You are reading from a tabulation showing the original cost of this property to the company. I am not now
694 offering the tabulation of original cost. The tabulation of original cost was furnished in pursuance of the direction of Judge Mayer and of the Master. What I am now offering is Mr. Miller's tabulation of the present reproduction cost.

Mr. Tobin: I wish the Judge would not interrupt me. I am endeavoring to say that there was no appraisal or complete inventory made as to these particular items, because it will be shown at another time that the record is very vague, and also as to any inclusion of franchise rights, which run to a large extent, there is no proof whatever.

The Master: I will overrule the objection.

Mr. Neumann: I want to make one other objection to some specific pages there irrespective of whether the exhibit goes into evidence, pages 2 to 14 should not go in evidence by reason of the fact that they contain a lot of matter that the witness should be questioned on question by question, and not put in this general form.

The Master: I do not believe it can do any harm to take it in this way. There is really no distinction drawn between the pages specified by Mr. Neumann and the other pages of the exhibit. This is intended to be a short way of putting in the testimony of Mr. Miller. I said on the occasion when this matter was under discussion, apropos of the matter now being discussed, that I should entertain motions to strike out any part of the testimony as if the witness had testified to it orally in answer to questions. I think that on the whole it is the best way to take a long statement by the witness. I think it worked very well in the Consolidated case, and we have it all
695 in concrete form on the record, and we haven't got a jury here, and the Court will disregard such matter as is not properly proved.

Mr. Tobin: I wish to say this, that there is no proof before you as to the ownership of this property; there is no proof of the extent of the property or the condition of the property; and also there is no proof as to any vouchers for a large part of what is attempted to be proved through this particular exhibit that is now handed to you.

The Master: I will take the exhibit, Mr. Tobin.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

The Master: I take it not as an exhibit but as the testimony of the witness on which he is to be cross-examined.

Mr. Neumann: According to your Honor's ruling, reproduction cost is clearly immaterial.

The Master: That may be, but, as I stated before, I am going to

take it. I expressed my views rather fully at page 190 of the printed record.

Mr. Neumann: There is this that I would like to call your Honor's attention to that now occurs to me, that you did say that you would not take this exhibit when originally offered for identification by reason of the fact that there were certain things that were not yet proven or that were not in evidence.

The Master: I said at page 191, "You had better hold the offer of that Exhibit 66, for identification in evidence, back for a while." I do not recall exactly what I had in mind at that time.

696 Mr. Tobin: You had in mind that there had been no proof as to the ownership or condition of this property whatever.

The Master: No.

Mr. Neumann: It was with reference to mains, meters and services, that there was no proof about that. I don't know that they have offered any proof since that time covering those subjects.

The Master: I think there is enough now. I will take it.

Mr. Ransom: May I ask whether these notes there, the details of certain items in the summary, comprising pages 2 to 14, whether that shall be copied into the record as Mr. Miller's testimony on those matters, or whether they shall remain as a part of the exhibit?

The Master: That whole document is taken in as Col. Miller's testimony.

Mr. Ransom: And will all be copied into the record?

The Master: All copied into the record.

Mr. Tobin: With this understanding, that you said we might attack any part of that upon cross-examination.

The Master: Yes. I am taking Exhibit 66, for Identification, as the direct testimony of Mr. Miller as if he were asked questions and gave the answers stated by him in this document.

Mr. Neumann: You are taking it in this form to save time?

The Master: Yes.

Mr. Tobin: Perhaps you have some idea of your own about it, but I venture to say that I don't know how we are going to get at the particular facts necessary as to the extent of the property of

697 this company or the condition of the property or the ownership of this property. We are handed this book as an appraisal. We don't know whether the stuff belongs to the New York & Queens Company or whether it belongs to the Consolidated Gas Company.

Mr. Neumann: Take for instance on any of these pages that you want to look at, one question will cover three or four pages. Some of it would be mighty difficult to cross-examine the witness on by reason of the fact of the way that it is put in.

The Master: I will take it.

Mr. Neumann: May we have an exception?

The Master: Yes.

Mr. Tobin: To the entire exhibit?

The Master: Yes.

Mr. Neumann: And also to the denial of the motion to omit pages 2 to 14?

The Master: Yes.

Mr. Ransom: It is understood that the entire contents of this Exhibit 66, for Identification, will be spread upon the record with the same force and effect as though it were Col. Miller's direct testimony?

Mr. Tobin: We do not like to have it put just that way. We are ready to follow what the Master dictated, but we are not going to take it just as counsel cares to have it put in.

The Master: I don't understand that there is any change.

Mr. Tobin: Except that you tied it up with this restriction, that it was subject to cross-examination the same as if the witness was on the stand.

The Master: Certainly. I am taking it as the testimony
698 of Mr. Miller. I asked him when he was on the stand whether, if interrogated particularly as to the matters spread in this paper he would give the answers stated in this paper, and he said he would. I did that for the purpose of laying a foundation for a charge of perjury if he perjured himself. That is the important thing, not to have things in the record that he will not be responsible for under oath. Instead of having him read all the statement into the record, he has sworn to every word that is set forth in it, as if he had repeated every word of it. I am taking it to that extent, subject to cross-examination and motions to strike out.

Mr. Neumann: And that deprives the defendants of their constitutional right to object to each question as framed.

The Master: What section of the Constitution and which constitution?

Mr. Neumann: Well, due process of law.

Mr. Tobin: We object to the form in which it is presented.

Mr. Neumann: I think if anything it should be introduced as an exhibit rather than as testimony.

The Master: I have made my ruling.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

(The statement referred to is as follows:)

699 COMPLAINANT'S EXHIBIT 66 FOR IDENTIFICATION.

Inventory of the Plant and Distribution System of the New York and Queens Gas Company as of January 1st, 1920.

700 *Index.*

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Distribution System, etc.	78-85

701 Summary.

Cost to Reproduce New York & Queens Gas Company.

January 1, 1920.

(References in parentheses are to account numbers in the Uniform System of Accounts as prescribed for Gas Corporations by the Public Service Commission for the First District.)

(I) Land (G110)	$55,000.00
(II) Buildings and Apparatus (G121, G122*a* and *c*, 221, 222, G141*a* and *b*, G143*b*, G145, G143*a*, 224 and 225)	505,969.00
(III) Street Mains (231)	1,071,139.00
(IV) Services (232)	175,563.00
(V) Meters (233 and 234)	174,163.00
(VI) Gas Appliances (236)	85,427.00
(VII) Arc Lamps (239)	3,173.00
(VIII) Tools and Implements (237)	1,002.00
(IX) Laboratory Equipment (238)	2,449.00
(X) Office Furniture and Fixtures (G122*a*)	6,023.00
(XI) Stable Equipment (G122*d*)	5,424.00
(XII) Omissions and Contingencies	25,298.00
(XIII) Organization and Development prior to Construction (101 and G102)	135,000.00
(XIV) Cost of Financing	150,000.00
(XV) Engineering, Superintendence and General Contractor's Expense and Profit (G281)	200,000.00
(XVI) Interest during Construction (G285)	101,096.00
(XVII) Taxes on land during Construction (G284)	345.00
(XVIII) Administrative, Legal and Misc. General Expense during Construction, G282, G283 & G286)	45,000.00
(XIX) Working Capital	165,000.00
Total	$2,907,062.00

702 Notes Concerning Structural Overhead Costs.

There are certain expenditures incident to the construction of a gas plant and system, all of which were made to some degree in constructing this property, under the costs and conditions from time to time prevailing, and all of which would have to be made under present costs and conditions, to the extent now shown in reproducing this property as of the present time, and yet which cannot be accurately apportioned among the various inventoried items. These elements of unavoidable expenditure include:

(1) Omissions and Contingencies;

(2) Organization and Development Prior to Construction;

(3) Cost of Financing;

(4) Engineering and Superintendence or General Contractor's Expense and Profit;

(5) Interest During Construction;

(6) Taxes During Construction; and

(7) Administration, Legal and Miscellaneous General Expense.

In preparing this inventory and appraisal of reproduction cost, I have considered separately what would probably be the expenditures for such of the several services named, taking into account all the available facts bearing on the conditions and cost of reproducing this plant and system.

In working out such an estimate of required outlays, I have taken the construction period as beginning when the sponsors or promoters of the project have secured the agreement of bankers to supply necessary funds.

It is my estimate that the period of the construction of the plant and system of this company might be confined to one year, and I have made my calculations of structural overhead costs on a one-year basis. Under present conditions, such an estimate as to time is extremely conservative, and I doubt if in fact the whole system would be completed and brought to good operating condition in twelve months.

503 Omissions and Contingencies:

In estimating the cost of reproducing a gas manufacturing plant and appurtenant structures and equipment, allowance has to be made, as a practical matter, for omissions and contingencies, covering the following:

(1) There is always a portion or percentage of the small units or items of machinery, tools, implements and other property which are invariably overlooked in the inventory, and their reproduction has to be provided for, nevertheless, in any present estimate.

(2) Small units of material, mechanism, and supplies are lost or destroyed during construction. As to many items of materials and supplies, a larger quantity has to be delivered and paid for than could ever be checked up now in the completed structures and equipment.

(3) Other contingencies arise; for example, strikes or labor difficulties, interruption or delaying of work from adverse weather, delay in shipments, or other conditions, unforeseen extra work, factors affecting the suitability or availability for use of materials, supplies,

machinery, parts, etc., as needed, and the like. Expense arises in all such connections, for which advance provision has to made in estimating cost to reproduce as of to-day.

Every contractor, builder, vendor of machinery, and every business man of experience knows that this item covering omissions from inventory, loss of small units during construction, unforeseen contingencies arising during construction, etc., is an actual factor, for which a practical provision must be made.

As to buildings and structures, I have shown the items for omissions and contingencies in conjunction with each building and structure and have brought these items together in the summary.

The sum of $25,298.00, which I have estimated as necessary for this item as to this company, amounts to about five per cent,
704 on the cost of reproducing the buildings, apparatus, equipment, etc., exclusive of the distributing system.

Organization and Development Expenses Prior to Construction (P. S. C. Accounts 101 and 0102):

This item covers the services and expenses necessary in the organization and development of the company from the time of the inception of the project to the time when the charter, franchises, local consents, permits, etc., have been procured, an agreement obtained for the furnishing of the requisite capital, and the project brought to a point where construction can be commenced.

The costs comprised under this heading cover the compensation, on a reasonable salary basis, for the services of the sponsors; the salaries of stenographers, clerks and other assistants; general expenses, such as rent and traveling expenses; the preparation and circulation of prospectuses and preliminary advertising; the expenses for obtaining the charter, including incorporation fee and the payment of the State on capital stock; expenses in connection with obtaining ordinances, franchises, permits and local consents, the cost of the many aspects of legal and engineering advice that is pre-requisite; other technical expenses; interest on expenditures incurred during this period, etc.

From the whole situation with respect to this company, I am of the opinion that a reasonable cost for organization and development prior to construction is $135,000.00 and that these expenses could not be met, as of the present time, with a small outlay.

Cost of Financing:

Taking into account the nature and status of this gas enterprise and the amount of securities necessary to be marketed to reproduce it, I am of the opinion that there is an additional element of cost, separate and distinct from bond discount, which has to be taken into account and considered as a cost for necessary service, and just
705 as much a part of the cost off reproduction of property as engineering or legal expenses.

The expense of assembling the necessary capital is ordinarily re-

flected in the difference between the actual sale price of the securities to the ultimate investors, and what the company itself realizes from such securities. One element in this difference represents the reasonable compensation for bankers' services in marketing the securities and forwarding the funds yielded. It covers individual and corporate expenses, and the expenses of examination, negotiation, advertising and selling through all the various stages until the sale to the ultimate investor is accomplished. Such an expense would be incurred even if the utility company dispensed with bankers and marketed its securities through its own salesmen and agents. In fact, this latter method undoubtedly would require more time, and cost more, than if recourse were had to an existing banking house with an established reputation and clientele.

Another element in the cost of financing arises out of the underwriting, under the conditions of hazard as to the launching of such an enterprise in such a community at this time. These two elements of necessary expense, comprehending the cost of the organization furnishing financing services to the company, seem to me to be in the same class with the cost of services furnished by the engineering, legal and administrating organization of the company, and therefore to constitute a part of the cost of reproduction. Every person who has had an active part in the flotation of a construction enterprise in the public utility field in recent years, knows that this element of cost is a very substantial factor and that the allowance of $150,000.00 which I have made, representing approximately six per cent on the project, is substantially below the figures for which this service could, in any probability, be procured under present conditions.

Engineering, Superintendence and General Contractor's Expense and Profit (G281):

706 Engineering work and superintendence during construction call for a kind of experience not generally possessed by the operating engineers connected with gas companies. In the case of this company there is every reason to suppose that it would be cheaper to secure the services of special constructing engineers than to undertake the work with a force headed by an operating engineer who would later have charge of the engineering end of the company's activities. The construction of the plant and laying of the mains can be done to greater advantage by a general contractor having both the organization and the construction plant necessary to complete the work in the least time and at a minimum cost. If the utility company organizes a construction department and buys the construction plant, the chances of saving anything in cost are slight, and on the other hand, the chances of material increase in cost due to the risk of working with a new and uncoordinated staff are very great. Almost every investor has knowledge of cases where enterprises have cost far more than the amount of the original estimates due either to those estimates having been improperly made by careless or incompetent engineers or to the placing of the construction work in the hands of company employes, or contractors

not qualified to handle it. The chance of the utility finding a man able and ready to organize a construction force and to assemble at a reasonable expense a construction plant is small, in fact the chances are all against the utility in this respect and a wise management would save money by putting the work into the hands of Engineers and contractors regularly organized for this class of work.

The work under this heading includes location surveys, general and detailed designs and drawings, preparation of specifications, providing a construction plant, securing and tabulating bids from sub-contractors and placing orders for buildings and apparatus, ordering and assembling material not included in sub-contractors' estimates and placing and erecting this material, checking material and sub-contractors' work and paying for same, coordinating the work of the sub-contractors and of the general contractor and taking all necessary steps to secure the delivery of the required materials and
707 parts of apparatus or buildings in such time and in such order as to insure the completion of each part of the plant and of the entire plant in the allotted time and to reduce as much as possible the delays due to lack of prompt delivery of materials and mutual interference of the various working forces.

It would require at least $200,000 to cover this cost at the present time.

Administrative, Legal, and Miscellaneous General Expense (P. S. C. G282 & G286):

Included in this category are the salaries and expenses of executive and general officers, auditor, bookkeepers, timekeepers, inspectors, and other employes of the company; the rent and expenses of the general office, insurance during construction, legal and court expenses including the printing of briefs, legal forms, testimony, reports, etc.; payment to referees or arbitrators for the settlement of disputed questions; cost of suits for other causes than injuries to persons, and payment of special fees, witness fees, etc.; the expenses of the taking of depositions; also all construction and equipment items of a special and incidental nature not provided for under any other heading in this inventory.

During the construction period the administrative officers and legal department must look after many details. Bookkeeping, auditing, and paymasters' departments must be organized to care for and account for the funds. Timekeepers and inspectors must check the delivery and quality of materials and the amount and progress of the work so that the contractor may be paid from time to time without danger of being overpaid. The development of satisfactory public relations require the attention of the general officers and as far as possible of everybody in the organization during this period. Negotiations and formalities incident to the issuance of securities have to be undertaken and completed. Permits from the municipal departments for opening the streets must be secured and questions relating thereto frequently require the attention of the higher
708 officials of the Company. The general officers should examine the bids from sub-contractors, advise as to the letting

of sub-contracts and keep themselves informed regarding the status of the sub-contracts until the work covered by them is completed and the bills paid. During this same period an operating organization should be perfected and plans made for securing the business as rapidly as possible after the plant is put in operation.

These services and expenses of the administrative officers and legal staff, and the miscellaneous general expenses, continue during the entire construction period.

For this item, my estimate of the present required expenditure aggregates $45,000.

Interest During Construction (P. S. Account G285):

Included in this category is the interest accruing upon the moneys (and credits available upon demand) acquired for use in connection with the construction and equipment of the property from the time of such acquisition until the construction is ready for use. This item also covers reasonable charges for interest during the construction period on the company's own funds used for construction purposes during such periods. Interest receivable accruing upon such moneys is taken into account as a credit, as are also such discounts as may be realized through the prompt payment of bills for materials and supplies used in construction, where such discounts have not been credited to the particular bills.

For the computation of interest during construction, the period of construction is defined to begin with the agreement of bankers to supply the funds necessary for construction, and to end when its operation begins.

It is estimated that the property would go into operation twelve months after the beginning of construction. All of the land would have to be purchased before beginning construction, and interest upon it should be figured for the year. An interest rate of
709 eight per cent is taken as required for the obtaining of the requisite new capital by a gas making company in this territory. As to cost of buildings, and apparatus and street mains, and the cost of engineering, superintendence, administrative and legal service, and miscellaneous general expense, interest should be calculated for half a year at the 8% rate. There is also to be included interest at 8% during the one year construction period on the organization and development expenses prior to the beginning of construction.

The proper provision for interest during construction is in my judgment $18,600.00.

Taxes During Construction (P. S. C. Account G284):

Included in this category are the various taxes and assessments levied by public authority and payable on property belonging to the corporation during the period of construction and before the plant is opened for commercial operation. Taxes incident to operation only are not included, nor are the special taxes assessed for street and other improvements, such as grading, paving, sidewalks,

guttering, etc., which are chargeable to the account to which is charged the particular property benefited.

Taking into account the period elapsing between a given construction expenditure and the first payment of taxes thereon, it is deemed proper to include taxes on land for a period of twelve months, at the 1920 rate and assessed valuation, and no taxes at all on construction expenditure.

On this basis, the required provision for taxes during construction is $345.

Working Capital (Uniform System of Accounts, Paragraph 25).

Working Capital may be defined as the total floating or mobile capital required in addition to the fixed capital. It may be in the form of cash requirements (called "current assets" under the Uniform System of Accounts) or in the form of materials and supplies (P. S. C. Account G. 10). For the efficient and economical
710 carrying on of the multitudinous transactions of daily operation, money has to be put into things which are not reflected in the fixed capital accounts as of any particular date of inventory, and a reservoir of cash has to be kept on hand, so as to handle current transactions promptly and economically. These elements of outlay and investment—representing property and assets actually and necessarily used in carrying on of the gas business—are grouped together as "working capital," to the end that they may be included in the property and investment upon which a rate yielding a fair return is to be computed.

The Uniform System of Accounts for Gas Corporations (Parag. 5) defines the capital of a gas corporation to be and mean all property devoted to the rendering of the services or the production of the commodities which are within the purposes of the corporation. Capital other than "fixed capital" is called "floating capital" (Parag. 5), and "floating capital" is divided into two major groups (Parag. 25) "Materials and Supplies" and "Current Assets." Current Assets are defined (Parag. 26) to mean "cash," "accounts receivable," "bills receivable," etc. Working capital may perhaps best be considered in relation to these two elements separately.

The first element covers general stores and supplies (P. S. C. Account G10)). It covers the cost, including transportation, of all materials and supplies acquired by the company for its gas operations.

The second element covers the funds necessary to meet payments incidental to the ordinary conduct of the business, for the prompt payment of bills in order to procure trade discounts, for advance payments which good business judgment makes necessary or desirable, and for the purchase of materials, advantageously, as to price, quantity and time. It also covers the moneys or floating assets into which the mobile capital of the company has gone, not yet reflected in fixed capital accounts or operating revenues. In this latter category are (1) accounts receivable, representing out-

lays for which moneys are due the company and have been
11 billed to consumers, purchasers and appliances and other
debtors; and (2) the sums which will later be billed to con-
mers for gas manufactured by the company and already used by
ch consumers, but which have not yet been billed. The Company
s already used and paid for oil, coal, other materials, and labor, in
aking this gas. On the average, about twenty days elapse between
e furnishing of gas to a consumer and the sending to him of the
ll which transfers the debt to the status of an account receivable.
less this element of gas furnished but not yet billed is allowed as
part of working capital, investors in the company will be denied a
turn on a quantity of assets for which they have had to provide
nds.

There is no inflexible rule, applicable to all companies, for de-
mining with exactness the amount of working capital required by
particular company. For this Company, under the conditions
der which it does business at the present time, I am of the opinion
at the following amounts for working capital are a conservative
tement of requirements:

terials and Supplies	$60,000.00
sh (in office and banks)	50,000.00
counts receivable	35,000.00
s furnished to consumers but not yet billed	20,000.00
	$165,000.00

This amount is more of working capital than the Company has
d, but it is no more than the Company needs and should have, in
w of the present prices of materials, supplies, labor, etc. The fact
t in other years the Company has struggled along under the pres-
statutory rate, with an amount less, from time to time, that the
ount now shown, should not control the amount properly to be al-
ed, in view of the present level of prices.

General Summary of Costs.

	Buildings.	Apparatus.
Generator House	$15,011.98	$25,059.00
Generator House	16,688.01	40,864.75
auster Room	756.97	2,217.00
er House	7,438.10	22,527.89
dition to Boiler House	702.53	5,762.44
ine House	4,187.74	4,587.00
p House	962.24	1,940.00
Story Coal Bin	7,771.79	.....
Story Coal Bin	2,202.83	.....
House	898.76	143.50
rnor House	6,919.71	2,995.00
ge	3,682.09	285.23
auster House for Purifi-	148.51	656.50

	Buildings.	Apparatus.	
Valve House (250 M. Holder)	548.89	.....	
Valve House (100 M. Holder)	432.34	.....	
Compressor House	2,419.05	6,562.36	
Hose House	63.12	213.00	
Tar Well	.....	760.75	
Store House	799.17	.....	
Paint House	221.53	.....	
Deep Well Pump House	342.99	1,300.88	
Gasoline House	91.86	285.00	
Drip Pump Shed	227.56	200.00	
Oil Tank Enclosure	4,114.85	.....	
Tar Storage	.....	15,236.71	
Open Coal Bins	2,145.52	.....	
Equipment for Shop	.....	1,025.44	
Apparatus in Yard	.....	234,982.87	
Gas Mains (Bldgs. & Yard)	.....	27,793.41	
Small Piping	.....	17,565.15	
Works Office & Dwelling	16,000.00	.....	
Miscellaneous	.....	2,117.52	
Pump House near Storage Holder	156.77	453.87	
	$94,934.91	$415,535.27	$510,470.18
Street Mains and Paving			1,071,138.77
Tools and Implements		1,002.08	
Laboratory Equipment		2,448.67	
Office Furniture & Fixtures		6,023.00	
Stable Equipment		5,424.06	
Services		175,563.08	
Meters		174,162.77	
Gas Appliances		85,426.56	
Arc Lamps		3,173.16	
			453,223.32
Total			$2,034,832.27

(Here follow tables marked pages 713-797.)

1 2137

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OLD GENERATOR HOUSE No. 1.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Tot Co:	
1	EXCAVATION					
1a	Shallow Earth	199	Cu.Yds.	$1.18	$234.82	
1e	Back Fill	52	"	.65	33.80	
2	CONCRETE					
2a	Plain Concrete	44	"	12.90	567.60	
3	RUBBLE MASONRY					
3a	Bluestone and Sandstone Footings	1,225	Cu.Ft.	.77	943.25	2138
4	BRICK WORK					
4a	Common Brick Walls	99,425	Bricks	65.88	6,550.12	
5	CUT STONE					
5a	Bluestone, Sills, etc	22	Cu.Ft.	5.29	116.38	
6	PAVING					
6c	2½" Concrete Floor	1,106	Sq.Ft.	.178	196.87	
6h	Cinder Fill	553	Cu.Ft.	.090	49.77	
7	LUMBER					
7b	Purlins, Framing, etc	180	Ft.B.M.	125.35	22.56	
7c	T&G Flooring, Sheathing, etc.	16	"	119.47	1.91	
7d	Wood Trim, Stairway, etc..	353	"	382.50	135.02	
				Carried Forward	$8,852.10	

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2140 2

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OLD GENERATOR HOUSE (Cont'd).

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward		$8,852.10
8	WINDOWS				
8a	D. H. Windows incl. Frame.	113	Sq.Ft.	$2.10	237.30
9	DOOR TRANSOMS				
9a	Wood Transoms	12	"	2.80	33.60
10	DOORS				
10a	Wood Panel Doors	46	"	2.45	112.70
10b	Batten Doors	61	"	.54	32.94
10f	Sliding Batten Doors	74	"	.96	71.04
12	PAINT				
12a	Cold Water Paint	3,657	"	.02¾	100.57
12b	Oil Paint	6,217	"	.04	248.68
13	ROOFING				
13b	Galv. Corrugated Iron	1,995	"	.21	418.95
14	FLASHING				
14a	Galv. Iron	119	"	.35	41.65
15	STEEL				
15a	Floor Beams, Lintels, etc..	8,271	Pounds	.083	686.49
15b	Architectural Steel	653	"	.171	111.66
15d	Roof Trusses, Columns, etc.	6,579	"	.10	657.90
			Carried Forward		$11,605.58

2141

2142

3 2143

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OLD GENERATOR HOUSE (Cont'd) No. 1.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward		$11,605.58
17	CAST IRON				
17a	Miscellaneous Small Castings	20	Lbs.	$.091	1.82
17b	Columns	2,187	"	.077	168.40
17c	Floor Plates	24,326	"	.091	2,213.67
21	GALV. IRON GUTTERS				
21a	6" Galv. Iron Gutter	48	Feet	.55	26.40
22	PIPE RAIL, ETC.				
22a	1¼ Dia. & 1½ Dia. Pipe, Fittgs., etc.	530	Lbs.	.30	159.00
	LIGHTING FIXTURES				
	Gas Burners	14		5.00	70.00
	Gas Burner Brackets	11		1.75	19.25
	Humphrey Arc Lights	3		11.00	33.00
					$14,297.12
	Omissions & Contingencies.		5%		714.86
	Total				$15,011.98

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2146 4

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OLD GENERATOR HOUSE No. 1.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	7′ 6″ Lowe Water Gas Set, Including Generator, Carburetter, Superheater Linings, etc., U. G. I. Contracting Co.	2	Sets		$23,981.00
	6′ 0″ Dia. x 16′ 0″ High Shaving Scrubber	1			1,078.00
2147	Total				$25,059.00

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5 **2149**

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—NEW GENERATOR HOUSE No. 2.

BUILDING.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
1	EXCAVATION				
1a	Shallow Earth	292	Cu.Yds.	1.18	$344.56
1e	Back Fill	68	"	.65	44.20
2	CONCRETE				
2a	Plaint Concrete	51	"	12.90	657.90
2d	2¼" Concrete Walls	183	Sq.Ft.	.81	148.23
2e	2¼" Concrete Roof Slab	121	"	.42	50.82
3	RUBBLE MASONRY				**2150**
3a	Bluestone & Sandstone Footings	1,208	Cu.Ft.	.77	930.16
4	BRICK WORK				
4a	Common Brick Walls	106,483	Bricks	65.88	7,015.10
4b	Brick Foundations for Apparatus	10,893	"	60.58	659.90
5	CUT STONE				
5a	Bluestone, Lintels, Sills, etc.	54	Cu.Ft.	5.29	285.66
6	PAVING				
6a	Brick on Edge	2,625	Bricks	37.15	97.52
6b	1½" Concrete Floor	444	Sq.Ft.	.169	75.04
6e	4" Concrete Floor	997	"	.231	230.31
6h	Cinder Fill	222	Cu.Ft.	.090	19.98
				Carried Forward	$10,559.38

2151

2152 6

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—NEW GENERATOR HOUSE (Cont'd) No. 2.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward		$10,559.38
	7 LUMBER				
	7a Roof Trusses	172	Ft.B.M.	151.83	26.11
	7b Purlins, Framing etc.	1,412	"	125.35	184.99
	7d Wood Trim, Stairway etc.	200	"	382.50	76.50
	8 WINDOWS				
	8a D. H. Windows, Incl. Frame	514	Sq.Ft.	2.10	1,079.40
2153	8b Circular Windows	16	"	2.25	36.00
	10 DOORS				
	10b Batten Doors	206	"	.54	111.24
	12 PAINT				
	12a Cold Water Paint	6,021	"	.02¾	165.58
	12b Oil Paint	6,139	"	.04	245.56
	13 ROOFING				
	13b Galv. Corrugated Iron	2,068	"	.21	434.28
	13e 3 Ply Tar Paper	476	"	.07	33.32
	14 FLASHING				
	14a Galv. Iron	130	"	.35	45.50
			Carried Forward		$12,997.86

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7 2155

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—NEW GENERATOR HOUSE (Cont'd) No. 2.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
			Brought Forward		$12,997.86	
15	STEEL					
15a	Floor Beams, Lintels, etc...	12,213	Pounds	.083	1,013.68	
15b	Architectural Steel	586	"	.171	100.21	
15d	Roof Trusses	8,406	"	.10	840.60	
15f	Tie Rods	106	"	.176	18.66	
16	DOWN SPOUTS					2156
16c	4" Wrought Iron Pipe incl. all connections	19	Feet	.95	18.05	
16f	4" Galv. Iron Pipe Incl. all connections	16	"	.45	7.20	
17	CAST IRON					
17a	Miscellaneous Small Castings	25	"	.091	2.28	
17c	Floor Plates	7,583	"	.091	690.05	
21	GALV. IRON GUTTERS					
21a	5" Galv. Iron Gutter.....	35	"	.55	19.25	
22	PIPE RAIL					
22a	1¼" Dia. Pipe Fittings etc.	135	Pounds	.30	40.50	
	LIGHTING FIXTURES					
	Gas Burners	14		5.00	70.00	
	Gas Burner Brackets.....	12		1.75	21.00	
	Humphrey Arc Lamps	2		11.00	22.90	
	Electric Light Fixtures	4		8.00	32.00	
					$15,893.34	
	Omissions & Contingencies.		5%		794.67	
	Total				$16,688.01	2157

2158 8

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—NEW GENERATOR HOUSE No. 2.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	8′ 6″ Lowe Water Gas Set, Including Generator, Carburetter, Superheater, Wash Box, Seal Pot, Linings, etc., U. G. I. Contracting Co.	1 Set.			$16,050.00
2159	8′ 6″ Dia. x 22′ 0″ high Condenser with Seal Pot.	1			7,325.00
	Wylie Proportional Meter, 180,000 Cu. Ft. Capacity, Equitable Meter Co.	1			2,200.00
	6′ 0″ Dia. Hinman Drum Station Meter, American Meter Co.	2			5,320.00
	4′ 0″ x 6′ 0″ x 3′ 2″ Wet Type Tar Washer, The Gas Machinery Co.	1			1,450.00
	Type B. Terry Steam Turbine Direct connected to No. 6 Sturtevant Blower	2 Sets.			3,940.00
	42″ P. & A. Dry Type Tar Extractor, The Gas Machinery Company	1			1,650.00
2160	No. 7 Roots Exhauster, Capacity 111,000 Cu. Ft. per day, P. H. & F. M. Roots Co., Driven by 7″ x 10″ N. Y. Safety Vertical Engine, New York Safety Power Co.	1 Set.			2,097.00
				Carried Forward	$40,032.00

9 **2161**

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—NEW GENERATOR HOUSE (Cont'd) No. 2.

EQUIPMENT.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Tot Cos*
			Brought Forward		$40,032.
	No. 3 Revivifying Machine, Connelly Iron Sponge & Governor Co.	1			85.00
	Belting for Engine, etc.				2.00
	1¼" Class "A" Governor, Pickering Governor Co.	1			33.00
	Class "D. B." Force Feed Lubricator, Manzel Bros.	1			15.00
	6" x 5" x 10" Force Pump, M. T. Davidson Co.	1			315.00
	6" x 4" x 6" Water Pump, Worthington	1			170.00
	¾" Control Governor, The Fisher Governor Co.	1			30.00
	Class "H. H." Force Feed Lubricator, Manzel Bros.	1			20.00
	Type C. Single Guide Hoist, John Deere Plow Co.	1			44.00
	Direct connected to 4½ H. P., A. C. Westinghouse Motor	1			118.75
	Total				$40,864.75

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—EXHAUSTER ROOM No. 3.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	11	Cu.Yds.	1.18	$12.98
1e	Backfill	3	"	.65	1.95
2	CONCRETE				
2a	Plain Concrete	4	"	12.90	51.60
3	RUBBLE MASONRY				
3a	Bluestone & Sandstone Footings	50	Cu.Ft.	.77	38.50
2165					
4	BRICK WORK				
4a	Common Brick Wall	3,287	Bricks	65.88	216.55
5	CUT STONE				
5a	Bluestone Sills	2	Cu.Ft.	5.29	10.58
6	PAVING				
6e	4" Concrete Floor	197	Sq.Ft.	.231	45.51
7	LUMBER				
7b	Purlins, Framing etc	262	Ft.B.M.	125.35	32.84
10	DOORS				
10b	Batten Doors	24	Sq.Ft.	.54	12.96
12	PAINT				
12b	Oil Paint	457	Sq.Ft.	.04	18.28
				Carried Forward	$441.75

2166

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—EXHAUSTER ROOM (Cont'd) No. 3.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
		Brought Forward			$441.75
13	ROOFING				
13b	Galv. Corrugated Iron.....	197	Sq.Ft.	.21	41.37
14	FLASHING				
14a	Galv. Iron	53	"	.35	18.55
15	STEEL				
15a	Floor Beams, Lintels, etc...	100	Pounds	.083	8.30
15d	Roof Trusses, etc.....	587	"	.10	58.70
18	MISCELLANEOUS				
18c	Skylight	55	Sq. Ft.	2.50	137.50
	LIGHTING FIXTURES				
	Gas Burners	1		5.00	5.00
	Gas Burner Brackets.....	1		1.75	1.75
	Electric Light Fixture.....	1		8.00	8.00
					$720.92
	Omissions & Contingencies.		5%		36.05
					$756.97

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2170 12

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—EXHAUSTER ROOM No. 3.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	No. 7 Roots Exhauster, P. H. & F. M. Roots Co., Driven by 7" x 10" N. Y. Safety Vertical Steam Engine, New York Safety Power Co.	1	Set.		$2,097.00
2171	No. 3 Revivifying Machine, Connelly Iron Sponge & Gov. Co.	1			85.00
	Belting for Engine				2.00
	1¼" Class "A" Governor, Pickering Governor Co.	1			33.00
	Total				$2,217.00

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13 **2173**

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—BOILER HOUSE No. 4.

BUILDING.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
1	EXCAVATION				
1a	Shallow Earth	87	Cu.Yds.	1.18	$102.66
1e	Backfill	42	"	.65	27.30
2	CONCRETE				
2a	Plain Concrete Footings	32	"	12.90	412.80
4	BRICK WORK				
4a	Common Brick Walls	55,283	Bricks	65.88	3,642.04
5	CUT STONE				
5a	Bluestone Sills	2	Cu.Ft.	5.29	10.58
6	PAVING				
6e	4" Concrete Floor	638	Sq.Ft.	.231	147.38
8	WINDOWS				
8a	S. H. Windows Incl. Frame.	134	"	2.10	281.40
10	DOORS				
10b	Batten Doors	100	"	.54	54.00
10c	Tin Clad Hinged Doors	21	"	1.25	26.25
12	PAINT				
12a	Cold Water Paint	2,260	"	.02¾	62.15
12b	Oil Paint	913	"	.04	36.52
			Carried Forward		$4,803.08

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—BOILER HOUSE (Cont'd) No. 4.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward		$4,803.08
	13 ROOFING				
	13c 3 Ply Tar Paper	114	Sq.Ft.	.07	7.98
	13g Asbestos Steel	1,363	"	.70	954.10
	15 STEEL				
	15a Floor Beams, Lintels, etc.	733	Pounds	.083	60.84
	15d Steel Trusses, Columns, etc.	6,939	"	.10	693.90
2177	16 DOWN SPOUTS				
	16d 5" W. I. Pipe, incl. all conn.	50	Feet	1.25	62.50
	18 MISCELLANEOUS				
	18b Copper Ventilators	3		110.00	330.00
	18g Tile Coping	75	Feet	.89	66.75
	18m Copper box for 5" W. I. Pipe	1		2.75	2.75
	LIGHTING FIXTURES				
	Gas Burners	10		5.00	50.00
	Gas Burner Brackets	8		1.75	14.00
	Humphrey Arc Lights	2		11.00	22.00
	Electric Light Fixtures	2		8.00	16.00
					$7,083.90
	Omissions & Contingencies		5%		354.20
	Total				$7,438.10

2178

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—BOILER HOUSE No. 4.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
	The Babcock and Wilcox Co. Boilers, two in one battery (Known as No. 1 and No. 2), Including brickwork, soot, cleaners, etc.....	2			$15,435.00	
	Foundation for boilers:					
1a	Excavation	39	Cu.Yds.	$1.18	46.02	
1e	Back Fill	14	"	.65	9.10	2180
2c	Reinforced Concrete	21	"	19.00	399.00	
	Steel Overflow Tank 20" Dia. x 55" high, Capacity 60 Gal.	1			68.28	
	Support for Tank:					
15d	Steel Brace	16	Lbs.	.10	1.60	
	6" x 4" x 6" Water Supply Pumps, Worthington	2			340.00	
	Class "H. A." Force Feed Lubricator, Manzel Brothers	1			20.00	
	Class "P. A." Force Feed Lubricator, Manzel Brothers	1			15.00	
	2" V. D. Empire Meter, National Meter Co.	1			165.00	
	No. 2 Oil Burners and Regulating Cocks, W. N. Best Company	2			85.00	2181
	No. A. Moore Steam Pump..	2			300.00	
	No. 435 Cochrane Feed Water Heater and Purifier..	1			25.00	
	Cunningham Boiler	1			404.36	
					5,214.53	
	Total				$22,527.89	

2182 16

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—ADDITION TO BOILER HOUSE No. 5.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	43	Cu.Yds.	1.18	$50.74
1c	Backfill	5	"	.65	3.25
6	PAVING				
6e	4" Concrete Floor	395	Sq.Ft.	.231	91.25
7	LUMBER				
7b	Purlins, Framing etc.	1,014	Ft.B.M.	125.35	127.10
2183					
8	WINDOWS				
8a	D. H. Windows, incl. Frame.	44	Sq.Ft.	2.10	92.40
10	DOORS				
10b	Batten Doors	29	"	.54	15.66
13	ROOFING				
13b	Galv. Corrugated Iron	1,293	"	.21	271.53
14	FLASHING				
14a	Galv. Iron	49	"	.35	17.15
					$669.08
	Omissions & Contingencies		5%		33.45
	Total				$702.53

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17 2185

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—ADDITION TO BOILER HOUSE No. 5.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
	No. 16 Improved Economic Boiler (Known as No. 4) Including setting, stack, etc., Erie City Iron Works	1			$5,649.00	
	Steel Blow Off Tank 3′ 0″ Dia. x 5′ 6″ Long.....	1			113.44	
	Total				$5,762.44	2186

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2188 18

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—ENGINE HOUSE No. 6.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	55	Cu.Yds.	$1.18	$64.90
1e	Back Fill	25	"	.65	16.25
2	CONCRETE				
2a	Plain Concrete	2	"	12.90	25.80
3	RUBBLE MASONRY				
3a	Bluestone & Sandstone Footings	577	Cu.Ft.	.77	444.29
4	BRICK WORK				
4a	Common Brick Walls	16,794	Bricks	65.88	1,106.39
4b	Brick Foundations for App.	2,182	"	60.58	132.19
5	CUT STONE				
5a	Bluestone Sills	2	Cu.Ft.	5.29	10.58
7	LUMBER				
7b	Floor Joists, Framing etc.	1,452	Ft.B.M.	125.35	182.01
7c	T&G Flooring, Sheating, etc.	919	"	119.47	109.79
7d	Wood Trim, Stairway, etc.	489	"	382.50	187.04
8	WINDOWS				
8a	D. H. Windows, incl. Frame	98	Sq.Ft.	2.10	205.80
				Carried Forward	$2,485.04

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—ENGINE HOUSE (Cont'd) No. 6.

BUILDING.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*	
			Brought Forward		$2,485.04	
10	DOORS					
10b	Batten Doors	62	Sq.Ft.	$.54	33.48	
10c	Tin Clad Hinged Doors	91	"	1.25	113.75	
10f	Sliding Batten Doors	34	"	.96	32.64	
12	PAINT					
12a	Cold Water Paint	996	"	.02¾	27.39	
12b	Oil Paint	4,141	"	.04	165.64	**2192**
13	ROOFING & SIDING					
13b	Galv. Corr. Iron	1,165	"	.21	244.65	
13h	Plain Galv. Iron	469	"	.165	77.39	
14	FLASHING					
14a	Galv. Iron	34	"	.35	11.90	
15	STEEL					
15a	Lintels, etc.	733	Pounds	.083	60.84	
15d	Roof Trusses, Columns, etc.	5,807	"	.10	580.70	
16	DOWN SPOUT					
16e	3" Galv. Iron Pipe incl. all connections	37	Feet	.40	14.80	
			Carried Forward		$3,848.22	

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2194 20

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—ENGINE HOUSE (Cont'd) No. 6.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward		$3,848.22
21	GALV. IRON GUTTER				
21a	4" Galv. Iron Gutter.....	41	Feet	$.55	22.55
22	PIPE RAIL				
22a	1¼ dia. Pipe, Fittings, etc..	226	Pounds	.30	67.80
	LIGHTING FIXTURES				
	Gas Burners	6		5.00	30.00
2195	Gas Burner Brackets.....	5		1.75	8.75
	Humphrey Arc Lights.....	1		11.00	11.00
					$3,988.32
	Omissions & Contingencies..		5%		199.42
	Total				$4,187.74

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—ENGINE ROOM No. 6.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	No. 7 Monogram Blower, B. F. Sturtevant Co.....	1			$428.00
	10" x 12" N. Y. Safety Steam Vertical Engine, New York Safety Power Co.	1			1,350.00
	Belting for Engine & Blower				170.00
	10½" x 10½" Horizontal Steam Engine, Macintosh & Seymour	1			Not included
	Class "H. B." Force feed Lubricator, Manzel Bros..	1			19.00
	Shafting Hangers & Pulleys				120.00
	Steam Hydraulic Plunger Type Elevator, Craig-Ridgeway Co.	1			2,500.00
	Total				$4,587.00

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2200 22

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—PUMP HOUSE No. 7.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	25	Cu.Yds.	$1.18	$29.50
1c	Back Fill	14	"	.65	9.10
2	CONCRETE				
2a	Plain Concrete	2	"	12.90	25.80
3	RUBBLE MASONRY				
3a	Bluestone & Sandstone Footings	207	Cu.Ft.	.77	159.39
2201					
4	BRICK WORK				
4a	Common Brick Walls	5,462	Bricks	65.88	359.84
4b	Brick Foundation for App...	263	"	60.58	15.93
5	CUT STONE				
5a	Bluestone Sills & Lintels	4	Cu.Ft.	5.29	21.16
6	PAVING				
6a	Brick on Edge	766	Bricks	42.72	32.72
7	LUMBER				
7d	Wood Trim, etc.	16	Ft.B.M.	382.50	6.12
8	WINDOWS				
8a	D. H. Windows, incl. Frame	11	Sq.Ft.	2.10	23.10
10	DOORS				
10b	Batten Doors	24	"	.54	12.96
				Carried Forward	$695.62

2202

23 2203

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—PUMP HOUSE (Cont'd) No. 7.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
		Brought Forward,			$695.62	
12	PAINT					
12a	Cold Water Paint	340	Sq.Ft.	$.02¾	9.35	
12b	Oil Paint	766	"	.04	30.64	
13	ROOFING					
13b	Galv. Corrugated Iron	196	"	.21	41.16	
14	FLASHING					
14a	Galv. Iron	13	"	.35	4.55	2204
15	STEEL					
15d	Roof Trusses, etc.	1,171	Pounds	.10	117.10	
18	MISCELLANEOUS					
18a	Galv. Iron Ventilators	1		10.00	10.00	
	LIGHTING FIXTURES					
	Electric Light Fixture	1		8.00	8.00	
					$916.42	
	Omissions & Contingencies..		5%		45.82	
	Total				$962.24	

2205

2206 24

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—PUMP HOUSE No. 7.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	4½"x4"x6" Oil Pump, M. T. Davidson Co.	2			$480.00
	4½"x2½"x6" Seal Pump, M. T. Davidson Co.	1			190.00
	4½"x2½"x6" Tar Pump, M. T. Davidson Co.	1			190.00
2207	4½"x2½"x6" Drip Pump, M. T. Davidson Co.	1			190.00
	6"x4"x8" Reserve and Drip, M. T. Davidson Co.	2			560.00
	C. I. Oil Heater, 22" Dia. x 40" Long, National Pipe Bending Co.	1			200.00
	Class "H. A." Force Feed Lubricator, Manzel Bros.	2			40.00
	Pint Brass Lubricators, Detroit Lubricator Co.	2			24.00
	1" Vertical Dial Empire Meter and Connection, National Meter Co.	1			66.00
	Total				$1,940.00

2208

25 2209

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—TWO STORY COAL BIN No. 8.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	106	Cu.Yds.	1.18	$125.08
1c	Back Fill	51	"	.65	33.15
2	CONCRETE				
2a	Plain Concrete Footings	27	"	12.90	348.30
6	PAVING				
6c	4" Concrete Floor	2,628	Sq.Ft.	.231	607.07
7	LUMBER				2210
7b	Floor Joists, Purlins, Framing, etc.	28,962	Ft.B.M.	125.35	3,630.39
7c	T&G Flooring, Sheathing, etc.	7,266	"	119.47	868.07
7d	Wood Trim, Stairway, etc.	358	"	382.50	136.94
7e	Novelty Siding	2,529	Sq.Ft.	.19	480.51
7f	Column	1		3.50	3.50
8	WINDOWS				
8a	D. H. Windows Incl. Frame	253	Sq.Ft.	2.10	531.30
10	DOORS				
10a	Wood Panel Doors	23	"	2.45	56.35
10b	Batten Doors	142	"	.54	76.68
				Carried Forward	$6,897.34

2211

2212 26

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—TWO STORY COAL BIN (Cont'd) No. 8.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward,		$6,897.34
12	PAINT				
12b	Oil Paint	2,716	Sq.Ft.	.04	108.64
13	ROOFING				
13f	Rubberoid	3,709	"	.08	296.72
	LIGHTING FIXTURES				
	Gas Burners	6		5.00	30.00
2213	Gas Burner Brackets	4		1.75	7.00
	Humphrey Arc Lights	2		11.00	22.00
	Electric Light Fixtures	5		8.00	40.00
					$7,401.70
	Omissions & Contingencies.		5%		370.09
	Total				$7,771.79

2214

27 **2215**

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—ONE STORY COAL BIN No. 9.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	57	Cu.Yds.	1.18	$67.26
1c	Back Fill	18	"	.65	11.70
2	CONCRETE				
2a	Plain Concrete Footings	13	"	12.90	167.70
6	PAVING				
6e	4" Concrete Floor	2,047	Sq.Ft.	.231	472.86
7	LUMBER				**2216**
7b	Purlins, Framing, etc	6,999	Ft.B.M.	125.35	877.32
7c	T&G Sheathing, etc	1,960	"	119.47	234.16
13	ROOFING				
13f	Rubberoid	2,298	Sq.Ft.	.08	183.84
15	STEEL				
15f	Tie Rods, etc	242	Pounds	.176	42.59
	LIGHTING FIXTURES				
	Gas Burners	6		5.00	30.00
	Gas Burner Brackets	6		1.75	10.50
					2,097.93
	Omissions & Contingencies.		5%		104.90
	Total				$2,202.83

2217

2218 28

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—Oil House No. 10.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	23	Cu.Yds.	1.18	$27.14
1e	Back Fill	14	"	.65	9.10
2	CONCRETE				
2a	Plain Concrete Footings ...	9	"	12.90	116.10
4	BRICK WORK				
4a	Common Brick Walls.....	5,601	Bricks	65.88	368.99
2219 5	CUT STONE				
5a	Bluestone, Sills, Lintels....	11	Cu.Ft.	5.29	58.19
6	PAVING				
6e	4" Concrete Floor	139	Sq.Ft.	.231	32.11
7	LUMBER				
7b	Purlins, Framing, etc.....	168	Ft.B.M.	125.35	21.05
7c	T&G Sheathing, etc.	87	"	119.47	10.39
8	WINDOWS				
8a	S. H. Windows, Incl. Frame	53	Sq.Ft.	2.10	111.30
				Carried Forward,	$754.37

2220

29 **2221**

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OIL HOUSE (Cont'd) No. 10.

BUILDING.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*	
			Brought Forward		$754.3	
10	DOORS					
10b	Batten Doors	28	Sq.Ft.	.54	15.12	
12	PAINT					
12a	Cold Water Paint	360	"	.02¾	9.90	
12b	Oil Paint	414	"	.04	16.56	
13	ROOFING					
13b	Galv. Corrugated Iron	221	Sq.Ft.	.21	46.41	**2222**
14	FLASHING					
14a	Galv. Iron	16	"	.35	5.60	
	LIGHTING FIXTURES					
	Electric Light Fixtures....	1		8.00	8.00	
					855.96	
	Omissions & Contingencies..		5%		42.80	
	Total				$898.76	

2223

2224 30

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OIL HOUSE No. 10.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	1 Ton Double Duplex Chain Hoist, Chisholm Moore Mfg. Co.	1			$40.00
	50 Gallon Galv. Iron Oil Cans	5			90.00
	Rumsey Handle Oil Pump	1			12.00
	Galv. Tin Spout Funnel 12″ Dia. top, 2′4″ Long	1			1.50
2225	Total				$143.50

2226

31 2227

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GOVERNOR HOUSE No. 11.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
1	EXCAVATION					
1a	Shallow Earth	152	Cu.Yds.	1.18	$179.36	
1b	Deep Excavation (6′ to 12′)	31	"	1.18	36.58	
1e	Back Fill	43	"	.65	27.95	
2	CONCRETE					
2a	Plain Concrete Footings...	28	"	12.90	361.20	
4	BRICK WORK					
4a	Common Brick Walls 35,790		Bricks	65.80	2,354.98	2228
4b	Brick Foundations for App.	208	"	60.58	12.60	
5	CUT STONE					
5a	Bluestone Sills, etc.....	85	Cu.Ft.	5.29	449.65	
6	PAVING					
6f	5″ Concrete Floor	468	Sq.Ft.	.266	124.49	
6h	Cinder Fill	252	Cu.Ft.	.090	22.68	
7	LUMBER					
7b	Floor Joists, Purlins, Framing, etc.	1,492	Ft.B.M.	125.35	187.02	
8	WINDOWS					
8a	S. H. Windows, Incl. Frame	239	Sq.Ft.	2.10	501.90	
10	DOORS					
10a	Wood Panel Door	25	"	2.45	61.25	
11	WIRE SCREENS					
11a	⅛″ Wire Window Guards.	218	"	1.90	414.20	
			Carried Forward		$4,733.86	

2229

2230 32

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GOVERNOR HOUSE (Cont'd) No. 11.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward,		$4,733.86
	12 PAINT				
	12b Oil Paint	3,768	Sq.Ft.	.04	150.72
	13 ROOFING				
	13d Gravel on 5 Ply Tar Paper	431	"	.15	64.65
	14 FLASHING				
	14b Copper	103	"	.75	77.25
2231	15 STEEL				
	15a Floor Beams, Lintels, etc.	6,271	Pounds	.083	520.49
	15b Architectural Steel	1,548	"	.171	264.71
	15c Steel Floor Plates	5,732	"	.111	636.25
	16 DOWN SPOUTS				
	16a 3" W. I. Pipe incl. all connections	22	Feet	.71	15.62
	17 CAST IRON				
	17b C. I. Posts	989	Pounds	.077	76.15
	22 PIPE RAIL				
	22a 1¼" & 1½" W. I. Pipe & Fittings	115	"	.30	34.50
	LIGHTING FIXTURES				
	Electric Light Fixtures	2		8.00	16.00
					$6,590.20
	Omissions & Contingencies		5%		329.51
	Total				$6,919.71

2232

33 2233

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GOVERNOR HOUSE No. 11.

EQUIPMENT.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
	12″ Balance Governor, Model 1904, Connelly Iron Sponge & Gov. Co.....	1			$585.00
	16″ Balance Governor, Model 1915, Connelly Iron Sponge & Gov. Co.....	1			775.00
	12″ Automatic Governor, Model 1904, Connelly Iron Sponge & Gov. Co.....	1			685.00
	16″ Automatic Governor, Model 1915, Connelly Iron Sponge & Gov. Co.....	1			950.00
	Total				$2,995.00

2234

2235

2236 34

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GARAGE No. 12.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	59	Cu.Yds.	1.18	$69.62
1e	Back Fill	44	"	.65	28.60
2	CONCRETE				
2a	Plain Concrete Footings	25	"	12.90	322.50
6	PAVING				
6e	4" Concrete Floor	1,518	Sq.Ft.	.231	350.66
2237 6h	Cinder Fill	822	Cu.Ft.	.090	73.98
7	LUMBER				
7b	Floor Joists, Purlins, Framing, etc.	5,831	Ft.B.M.	125.35	730.92
7c	T&G Flooring, Sheathing, etc.	1,327	"	119.47	158.54
7d	Wood Trim, etc.	19	"	382.50	7.27
7e	Clapboard	1,046	Sq.Ft.	.19	198.74
8	WINDOWS				
8a	D. H. Windows, incl. Frame	95	"	2.10	199.50
10	DOORS				
10b	Batten Doors	61	"	.54	32.94
10d	Sliding Tin Clad Door	62	"	2.00	124.00
10f	Sliding Batten Door	172	"	.96	165.12
				Carried Forward,	$2,462.39

2238

35 2239

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GARAGE (Cont'd) No. 12.

Item	Material	Quantity	Unit	Unit Price	Total Cost
				BUILDING.	
11	WIRE SCREENS		Brought Forward,		$2,462.39
11c	Wire Grills between Stalls..	36	Sq.Ft.	1.50	54.00
12	PAINT				
12b	Oil Paint	2,696	"	.04	107.84
13	ROOFING & SIDING				
13b	Galv. Corrugated Iron	810	"	.21	170.10
13c	Shingles	1,284	"	.18	231.12
13h	Plain Galv. Iron	1,323	"	.165	218.30
14	FLASHING				
14a	Galv. Iron	42	"	.35	14.70
15	STEEL				
15a	Floor Beams, etc.....	715	Pounds	.083	59.35
16	DOWN SPOUT				
16c	3" Galv. Iron Pipe, incl. all connections	25	Feet	.40	10.00
18	MISCELLANEOUS				
18c	Skylight	18	"	2.50	45.00
18d	Hay Racks	2		2.00	4.00
18e	Feed Boxes	2		2.00	4.00
			Carried Forward		$3,380.80

2240

2241

2242 36

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GARAGE (Cont'd) No. 12.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward		$3,380.80
21	GALV. IRON GUTTER				
21a	5" Galv. Iron Gutter.....	59	Feet	.55	32.45
	LIGHTING FIXTURES				
	Gas Burners	2		5.00	10.00
	Gas Burner Brackets	2		1.75	3.50
	Electric Light Fixtures	10		8.00	80.00
2243					$3,506.75
	Omissions & Contingencies..		5%		175.34
	Total				$3,682.09

2244

37 **2245**

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GARAGE No. 12.

EQUIPMENT.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*	
	Maxwell Roadster, Model 1914	1			$641.2	
	Maxwell Touring Car	1			973.44	
	Convertible Top for Car.....				232.80	
	Maxwell Coupe, Model 1916	1			881.75	
	Ford Runabout, Model 1912	1			546.50	
	Ford Special Body Delivery Wagons, Model 1916.....	3			1,397.02	
	Ford Engine	1			50.00	**2246**
	" Rear End	1			15.00	
	" Steering Post	1			2.00	
	" Front Axle	1			1.50	
	" Radiator	1			5.00	
	" Body	1			20.00	
	Yale-Towne 1½ ton Duplex Chain Hoist	1			48.40	
	½ Ton Brown Traveling Hoisting Pulley	1			9.25	
	Support for Hoist.....					
15d	Steel	375	Pounds	.07	26.25	
	1/3 H. P. G. E. Motor, 1,800 R. P. M. 110 V 5 Amp. 60 Cycles	1			60.00	
			Carried Forward		$4,910.16	

2247

2248 38

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GARAGE (Cont'd) No. 12.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward		$4,910.16
	250 Gall. Drip Wagon.....				150.00
	Single Horse Dray Wagon..	1			125.00
	Dump Cart	1			25.00
	Bay Horse	1			165.00
	Set Wagon Harness	1			35.00
	16 lb Blankets.....	2			10.00
2249	Set Cart Harness.....	1			40.00
	Wagon Jack	1			6.25
	Seneca Falls Lathe	1			100.00
	Union Emory Tool Grinder.	1			13.33
	Tire Pumps				40.00
	Decarbonizer				28.00
	Iron Cart				20.00
	Snow Plow				29.35
	Fire Extinguishers				12.20
	Total				$5,709 29

Garage Equipment $285.23
Stable Equipment 5,424.06

2250

39 2251

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—EXHAUSTER HOUSE FOR PURIFIERS No. 13.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
7	LUMBER				
7b	Purlins, Framing, etc.....	304	Ft.B.M.	125.35	$38.11
10	DOORS				
10g	Galv. Iron Hinged Doors...	16	Sq.Ft.	.88	14.08
12	PAINT				
12b	Oil Paint	330	"	.04	13.20
13	ROOFING AND SIDING				
13b	Galv. Corrugated Iron	330	"	.21	69.30
	LIGHTING FIXTURES				
	Gas Burners	1		5.00	5.00
	Gas Burner Bracket	1		1.75	1.75
					$141.44
	Omissions & Contingencies..		5%		7.07
	Total				$148.51

2252

2253

2254 40

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—EXHAUSTER HOUSE FOR PURIFIERS No. 13.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	No. 5 Monogram Blower, B. F. Sturevant Co.....	1			$237.50
	4″ x 5″ Payne Automatic Steam Vertical Engine, B. W. Payne Sons Chem. Co.	1			400.00
	Belting for Engine				7.00
2255	Lukenheimer Senior Brass Pint Lubricator	1			12.00
	Total				$656.50

2256

41 2257

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—VALVE HOUSE No. 14.

For 250,000 Cu. Ft. Holder. BUILDING.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
1	EXCAVATION				
1a	Shallow Earth	31	Cu.Yds.	$1.18	$36.58
1b	Deep Excavation (6′ to 12′)	4	"	1.18	4.72
1e	Back Fill	10	"	.65	6.50
4	BRICK WORK				
4a	Common Brick Walls	5,466	Bricks	65.88	360.10
7	LUMBER				
7b	Floor Joists, Purlins, Framing, etc.	209	Ft.B.M.	125.35	26.20
7c	T & G Flooring, etc	53	"	119.47	6.33
7d	Wood Trim, etc	16	"	382.50	6.12
8	WINDOWS				
8a	D. H. Windows, incl. Frame	9	Sq.Ft.	2.10	18.90
10	DOORS				
10b	Batten Doors	14	"	.54	7.56
12	PAINT				
12b	Oil Paint	298	"	.04	11.92
13	ROOFING				
13b	Galv. Corrugated Iron	142	"	.21	29.82
	LIGHTING FIXTURES				
	Electric Light Fixtures	1		8.00	8.00
					$522.75
	Omissions & Contingencies		5%		26.14
					$548.89

2258

2259

2260 42

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—VALVE HOUSE No. 15.

For 100,000 Cu. Ft. Holder. BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	19	Cu.Yds.	1.18	$22.42
1e	Back Fill	6	"	.65	3.90
4	BRICK WORK				
4a	Common Brick Walls	4,116	Bricks	65.88	271.16
5	CUT STONE				
5a	Bluestone, Sills, Lintels, etc.	3	Cu.Ft.	5.29	15.87
2261 7	LUMBER				
7b	Floor Joists, Purlins, Framing, etc.	160	Ft.B.M.	125.35	20.06
7c	T & G Flooring, etc.	33	"	119.47	3.94
7d	Wood Trim, etc.	9	"	382.50	3.44
8	WINDOWS				
8a	D. H. Windows incl. Frames	11	Sq.Ft.	2.10	23.10
10	DOORS				
10b	Batten Doors	20	"	.54	10.80
12	PAINT				
12b	Oil Paint	233	"	.04	9.32
13	ROOFING				
13b	Galv. Corrugated Iron	94	"	.21	19.74
	LIGHTING FIXTURES				
	Electric Light Fixtures	1		8.00	8.00
					$411.75
	Omissions & Contingencies		5%		20.59
2262					$432.34

43 2263

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—COMPRESSOR HOUSE No. 16.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
1	EXCAVATION					
1a	Shallow Earth	61.5	Cu.Yds.	$1.18	$72.57	
1e	Back Fill	30.5	"	.65	19.83	
2	CONCRETE					
2a	Plain Concrete	7	"	12.90	90.30	
3	RUBBLE MASONRY					
3a	Bluestone and Sandstone Footings	231	Cu.Ft.	.77	177.87	2264
4	BRICK WORK					
4a	Common Brick Walls	13,736	Bricks	65.88	904.93	
4b	Brick Foundation for App..	3,192	"	60.58	193.37	
5	CUT STONE					
5a	Bluestone Sills	3	Cu.Ft.	5.29	15.87	
6	PAVING					
6a	Brick Floor	825	Bricks	42.72	35.24	
6d	3″ Concrete Floor	93	Sq.Ft.	.196	18.23	
7	LUMBER					
7b	Purlins, Framing, etc	1,085	Ft.B.M.	125.35	136.00	
7g	Cornice	44	Feet	2.50	110.00	
8	WINDOWS					
8a	D. H. Windows incl. Frames	70	Sq.Ft.	2.10	147.00	
			Carried Forward		$1,921.21	

2265

2266 44

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—COMPRESSOR HOUSE (Cont'd) No. 16.

BUILDING.

	Item	Material	Quantity	Unit	Unit Price	Total Cost
			Brought Forward			$1,921.21
	10	DOORS				
	10b	Batten Doors	20	Sq.Ft.	.54	10.80
	11	WIRE SCREENS				
	11b	Window Guards	76	"	.70	53.20
	12	PAINT				
	12a	Cold Water Paint	444	"	.02¾	12.21
2267	12b	Oil Paint	1,661	"	.04	66.44
	13	ROOFING				
	13a	Tin Roof	504	"	.30	151.20
	16	DOWN SPOUT				
	16e	3" Galv. Iron Pipe incl. all connections	37	Feet	.40	14.80
	18	MISCELLANEOUS				
	18a	Galv. Iron Ventilators	2		25.00	50.00
		LIGHTING FIXTURES				
		Electric Light Fixtures	3		8.00	24.00
						$2,303.86
		Omissions & Contingencies		5%		115.19
		Total				$2,419.05

2268

45 2269

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—COMPRESSOR HOUSE No. 16.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
	12″x16″x12″ Steam Driven Air Compressor, Worthing. Pump & Mach. Corp.	1			$3,850.00	
	8″x12″x8″ Steam Driven Air Compressor, Worthington Pump & Mach. Corp.....	1			2,000.00	
	Class "D" Sterling Force Feed Lubricator, Inner-State Machine Prod. Co..	2			70.00	2270
	Steel H. P. Air Tank 3′0″ Dia. x 6′0″ High.....	1			119.58	
	Kings Arch Pressure Gauge 0′6″, American Meter Co.	1			67.00	
	Bristol Recording Pressure Gauge 12″	1			45.08	
	0lb-60lb Foxboro Pressure Recording Gauge	1			37.00	
	0lb-120lb Steam Gauge.....	1			8.50	
	Kennedy Telemetric Gauge complete	1			350.00	
	4″ U Gauges.....	2			5.20	
	Total				$6,562.36	

2271

2272 46

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—HOSE HOUSE No. 17.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
7	LUMBER				
7b	Floor Joists, Purlins, Framing, etc.	254	Ft.B.M.	125.35	$31.84
7c	T. & G. Flooring	25	"	119.47	2.99
10	DOORS				
10b	Batten Doors	15	Sq.Ft.	.54	8.10
12	PAINT				
2273 12b	Oil Paint	160	"	.04	6.40
13	ROOFING AND SIDINGS				
13e	3 Ply Tar Paper	154	"	.07	10.78
					$60.11
	Omissions & Contingencies		5%		3.01
	Total				$63.12

2274

47 2275

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—HOSE HOUSE No. 17.

EQUIPMENT.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
	Hose Cart	1			$45.00
	2″ Hose	200	Feet		168.00
	Total				$213.00

2276

2277

2278 48

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—TAR WELL No. 18.

APPARATUS.

	Item	Material	Quantity	Unit	Unit Price	Total Cost
	1	EXCAVATION				
	1a	Shallow Earth	57	Cu.Yds.	$1.18	$67.26
	1b	Deep Excavation (6′0″ to 12′0″)	21	"	1.18	24.78
	1c	Back Fill	28	"	.65	18.20
	2	CONCRETE				
	2a	Plain Concrete	4	"	12.90	51.60
2279	4	BRICK WORK				
	4a	Common Brick Wall	8,541	Bricks	65.88	562.68
						$724.52
		Omissions & Contingencies..		5%		36.23
		Total				$760.75

2280

49 **2281**

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—STORE HOUSE No. 19.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Tot Cos	
7	LUMBER					
7b	Purlins, Framing, etc.....	2,125	Ft.B.M.	125.35	$266.37	
7c	T. & G. Sheathing.....	1,668	"	119.47	199.28	
7f	Circular Columns	8		3.50	28.00	
8a	S. H. Windows, incl. Frame	16	Sq.Ft.	2.10	33.60	
8	WINDOWS					
10b	Batten Doors	143	"	.54	77.22	**2282**
10	DOORS					
13b	Galv. Corrugated Iron	50	"	.21	10.50	
13f	Rubberoid	923	"	.08	73.84	
13	ROOFING & SIDING					
22b	2" Dia. Pipe.....	241	Pounds	.30	72.30	
22	PIPE RACK					
	Omissions & Contingencies..		5%		$761.11 72.30	
	Total				$799.17	

2283

2284 50

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—PAINT HOUSE No. 20.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
7	LUMBER				
7b	Floor Joists, Purlins, Framing, etc.	299	Ft.B.M.	125.35	$37.48
7c	T.&G. Flooring & Sheathing	600	"	119.47	71.68
8	WINDOWS				
8a	S. H. Windows, incl. Frame	16	Sq.Ft.	2.10	33.60
10	DOORS				
2285 10b	Batten Doors	21	"	.54	11.34
11	WIRE SCREENS				
11b	Window Guards	16	"	.70	11.20
12	PAINT				
12b	Oil Paint	832	"	.04	33.28
13	ROOFING				
13f	Rubberoid	155	"	.08	12.40
					$210.98
	Omissions & Contingencies..		5%		10.55
	Total				$221.53

2286

51 2287

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DEEP WELL PUMP HOUSE No. 21.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
1	EXCAVATION					
1a	Shallow Earth	1	Cu.Yds.	1.18	$1.18	
2	CONCRETE					
2a	Plain Concrete	1	"	12.90	12.90	
6	PAVING					
6e	4" Concrete Floor	122	Sq.Ft.	.231	28.18	
7	LUMBER					
7b	Purlins, Framing, etc.....	697	Ft.B.M.	125.35	87.37	2288
7e	Novelty Siding	392	Sq.Ft.	.19	74.48	
8	WINDOWS					
8a	D. H. Windows, incl. Frame	38	"	2.10	79.80	
10	DOORS					
10b	Batten Doors	15	"	.54	8.10	
12	PAINT					
12b	Oil Paint	392	"	.04	15.68	
13	ROOFING					
13f	Rubberoid	237	"	.08	18.96	
					326.65	
	Omissions & Contingencies..		5%		16.34	
	Total				$342.99	

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DEEP WELL PUMP SHED No. 21.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	7½"x7½"x6" Snow Steam Pump	1			$450.00
	Class "H. A." Force Feed Lubricator, Manzel Bros.	1			20.00
	0-30lb Water Pressure Gauge	1			5.98
	Deep Water Well, 8" Casing, 53 0" Deep	1			825.00
2291	Total				$1,300.88

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GASOLINE HOUSE No. 22.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	4	Cu.Yds.	1.18	$4.72
1e	Back Fill	3	"	.65	1.95
2	CONCRETE				
2a	Plain Concrete	3	"	12.90	3.87
6	PAVING				
6d	3" Concrete Floor	28	Sq.Ft.	.196	5.49
6e	4" " "	12	"	.231	2.77
7	LUMBER				
7b	Purlins, Framing, etc.	130	Ft.B.M.	125.35	16.30
10	DOORS				
10g	Galv. Corr. Iron Hinged Door	13	Sq.Ft.	.88	11.44
13	ROOFING & SIDING				
13b	Galv. Corrugated Iron	195	"	.21	40.95
	Omissions & Contingencies		5%		$87.49 4.37
	Total				$91.86

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GASOLINE HOUSE No. 22.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	Bowser Underground Storage Outfit with Pump — 280 Gallon Capacity	1			$285.00

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DRIP PUMP SHED No. 23.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
8	WINDOWS				
8a	S. H. Windows	6.7	Sq.Ft.	$2.10	$14.07
10	DOORS				
10g	Corrugated Iron Doors	23.6	"	.88	20.77
12	PAINT				
12b	Oil Paint	483.2	"	.05	24.16
13	ROOFING				
13b	Corrugated Iron Roofing and Siding	218.0	"	.21	45.78
15	STEEL				
15b	Angle Iron Framing	718.0	Pounds	.171	122.78
	Total				$227.56

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DRIP PUMP SHED No. 23.

EQUIPMENT.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
	4x4x7 Cameron Pump, Holder Oil	1			$200.00

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OIL TANK ENCLOSURE No. 24.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	64	Cu.Yds.	1.18	$75.52
1f	Earth Embankment	631	"	1.20	757.20
2	CONCRETE				
2b	Reinforced Concrete	73	"	12.90	941.70
2c	" " incl. Forms	65	"	19.00	1,235.00
7	LUMBER				
7b	Framing, etc.	97	Ft.B.M.	125.35	12.16
17	CAST IRON				
17a	Small Castings	120	Pounds	.091	10.92
18	MISCELLANEOUS				
18k	Lawn Sodding	3,028	Sq.Ft.	.05	151.40
23	PILES				
23a	12"Wood Piles 35'0" Long.	21		35.00	735.00
	Omissions & Contingencies..		5%		3,918.90
	Total				195.95
					$4,114.85

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—TAR STORAGE Nos. 27 & 28.

APPARATUS.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	1 EXCAVATION				
	1a Shallow Earth	1,047	Cu.Yds.	1.18	$1,235.46
	1b Deep Excavation (6′ to 12′ Deep)	875	"	1.18	1,032.50
	1c Deep Excavation (12′ to 18′ Deep	335	"	1.47	492.45
	1d T. & G. Sheet Piling	2,591	Sq.Ft.	.85	2,202.35
2309	1e Back Fill	506	Cu.Yds.	.65	328.90
	2 CONCRETE				
	2a Plain Concrete	71	"	12.90	915.90
	4 BRICK WORK				
	4a Common Brick Walls	109,775	Bricks	65.88	7,231.98
	5 CUT STONE				
	5a Bluestone Coping	139	Cu.Ft.	5.29	735.31
	22 PIPE RAIL				
	22a 1½″ Dia. Pipe & Fittings.	1,121	Pounds	.30	336.30
					$14,511.15
	Omissions & Contingencies..		5%		725.56
	Total				$15,236.71

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OPEN COAL BINS No. 40.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	57	Cu.Yds.	1.18	$67.26
1e	Back Fill	65	"	.65	42.25
2	CONCRETE				
2a	Plain Concrete Footings	26	"	12.90	335.40
3	RUBBLE MASONRY				
3a	Bluestone & Sandstone Footings	171	Cu.Ft.	.77	131.67
6	PAVING				
6g	6" Concrete Floor	2,655	Sq.Ft.	.301	799.16
7	LUMBER				
7b	Framing, etc.	5,326	Ft.B.M.	125.35	667.61
					$2,043.35
	Omissions & Contingencies		5%		102.17
	Total				$2,145.52

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—EQUIPMENT FOR MACHINE SHOP.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	No. 14 Heavy Duty Vulcan Blacksmith Forge Buffalo Forg Co.	1			$40.50
	Drill Press, Aurora Tool Works	1			150.00
	Steel Lathe, Putnam Machine Co.	1			500.00
2315	18″x2″ Grindstone & Stand, W. & B. Douglas	1			80.00
	Steel Range Boiler Tub, 34″ x54″x42″	1			104.94
	Shafting & Pulleys				150.00
	Total				$1,025.44

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—YARD.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	1,000,000 Cu. Ft. Storage Holder in Steel Tank 123′0″ Dia. x 31′0″, The Bartlett Hayward Co. No. 38.....	1			$112,252.85
	Foundation for Holder.....				13,742.87
	250,000 Cu. Ft. Holder in Steel Tank 76′4″ Dia. x 28′4″, Logan Iron Works No. 25	1			39,837.00
	Foundation for Holder.....				6,078.04
	100,000 Cu. Ft. Holder in Steel Tank, 55′4″ Dia. x 25′1″, Logan Iron Works, No. 26	1			25,728.99
	Foundation for Holder.....				3,582.88
	150,000 Gal. Oil Storage Tank 30′0″ Dia. x 30′0″, No. 36	1			4,466.61
	Foundation for Oil Tank 25′ Piles, 12″ Butt, 6″ Point	69	Piles	$35.00	2,415.00
1a	Excavation	65	Cu. Yds.	1.18	76.70
			Carried Forward,		$208,180.94

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2320 62

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—YARD (Cont'd).

EQUIPMENT.

	Item	Material	Quantity	Unit	Unit Price	Total Cost
		Brought Forward				$208,180.94
		30,000 Gal. Oil Storage Tank 16′0″ Dia. x 20′0″, The Bartlett Hayward Co. No. 39	1			1,244.97
		Foundation for Oil Tank...				
	1a	Excavation	16	Cu.Yds.	1.18	18.88
2321	2a	Concrete	14	"	15.38	215.32
		Steel Oil Tank, 53½″ Dia. x 16′6″ Long	1			Not included
		Steel Tar Tank, 5′6″ x 6′0″ x12′0″, No. 32	1			234.00
		Foundation for Steel Tar Tank				
	1a	Excavation	6	Cu.Yds.	1.18	7.08
	1e	Backfill	2	"	.65	1.30
	2a	Concrete	6	"	12.90	77.40
		100′4″ high Brick Smoke Stack, M. W. Kellogg Co.	1			2,890.00
		Foundation for Stack				
	1a	Excavation	55	Cu.Yds.	1.18	64.90
	1e	Back Fill	18	"	.65	11.70
	2a	Concrete	37	"	15.38	569.06
		Carried Forward				$213,515.55

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—YARD (Col. 'd).

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	Brought Forward				$213,515.55
	Steel Purifier Boxes 30′0″ x 12′0″ x 12′0″, The Bartlett Hayward Co. No. 34.	1	Set		6,915.90
	Steel Purifier Boxes 48′0″x 12′0″x12′0″, Quintard Iron Works No. 35.....	1	Set		9,300.47
	Foundation for Boxes:				
1a	Excavation	47	Cu.Yds.	1.18	55.46
2a	Concrete	56	"	15.38	861.28
	Fairbanks 5 Ton Wagon Scale Pit, etc., for Scale No. 29..	1			200.00
	Steel and Wire Fence.....				248.50
	18″x20′ Flight Conveyor and Electric line to coal shed for conveyor, National Conveyor & Equipment Co...	1			3,013.71
	Foxboro Recording Thermometer 8″, 30 to 150°..	1			814.01
					57.99
	Total				$234,982.87

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GAS MAINS (BUILDING & YARD).

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	Bell & Spigot Pipe	143,475	Pounds	5.46c	$7,833.74
	Flange Pipe (3′ to 6′ lengths)	26,183	"	9.75	2,552.84
	Flange Pipe (6′ to 9′ lengths)	1,759	"	8.75	153.91
	Bell Fittings	39,289	"	8.50	3,339.57
	Flange Fittings	43,144	"	11.25	4,853.70
2327	Blast Mains	3,394	"	22.50	763.65
	Lead	6,338	"	7.50	475.35
	Hemp	298	"	7.50	22.35
	Bolts	1,084	"	7.00	75.88
	24″ Gate Screw Valves	12		$239.60	2,875.20
	16″ " " "	6		139.47	836.82
	12″ " " "	36		97.10	3,495.60
	8″ " " "	9		57.20	514.80
	Total				$27,793.41

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—SMALL PIPING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	STANDARD STEEL PIPE				
	¼″ Diameter	1	Lin.Ft.	$.10	$.
	⅜″ "	26	"	.11	2.86
	½″ "	279	"	.15	41.85
	¾″ "	496	"	.20	99.20
	1″ "	1,111	"	.29	322.19
	1¼″ "	2,178	"	.39	849.42
	1½″ "	669	"	.47	314.43
	2″ "	2,915	"	.63	1,836.45
	2½″ "	117	"	1.01	118.17
	3″ "	163	"	1.31	213.53
	4″ "	694	"	2.02	1,401.88
	5″ "	45	"	2.75	123.75
	6″ "	2,466	"	3.56	8,778.96
	Total				$14,102.79
	TILE DRAIN PIPE				
	3″ Diameter	79	Lin.Ft.	.682	$53.88
	4″ "	751	"	.682	512.18
	6″ "	213	"	.763	162.52
	Total				$728.58
	LEAD PIPE				
	2″ Diameter	38	Lin.Ft.	.87	$33.06

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—SMALL PIPING (Cont'd).

Item	Material	Quantity	Unit	Unit Price	Total Cost
	STANDARD GALV. IRON PIPE				
	⅜" Diameter	53	Lin.Ft.	$.18	$9.54
	½" "	73	"	.22	16.06
	¾" "	72	"	.29	20.88
	1" "	213	"	.42	89.46
	1¼" "	72	"	.56	40.32
	1½" "	31	"	.67	20.77
2333	2" "	1,097	"	.94	1,031.18
	3" "	91	"	1.90	172.90
	4" "	98	"	2.54	248.92
	5" "	3	"	3.84	11.52
	Total				$1,661.55
	PIPE COVERING				
	¾" Diameter	117	Lin.Ft.	.30	$35.10
	1" "	303	"	.33	99.99
	1¼" "	123	"	.37	45.51
	1½" "	139	"	.41	56.99
	2" "	553	"	.45	248.85
	2½" "	50	"	.50	25.00
	4" "	679	"	.75	509.25
	5" "	21	"	.88	18.48
	Total				$1,039.17

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—SMALL PIPING (Cont'd).

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*	
	SUMMARY.					
	Standard Steel Pipe				$14,102.79	
	Tile Drain Pipe				728.58	
	Lead Pipe				33.06	
	Standard Galvanized Iron Pipe				1,661.55	
	Pipe Covering				1,039.17	
	Total				$17,565.15	2336 42

2337 43

2338 68

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OFFICE AND DWELLING.

BUILDING.

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
	Two story brick office building with one story frame extension				$10,400.00
	Two story Superintendent's frame cottage, with cellar, attic, etc.				5,600.00
2339	Total				$16,000.00

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—MISCELLANEOUS.

PAVING, ETC.

Item	Material	Quantity	Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	6	Cu.Yds.	$1.18	$7.08
6	PAVING				
6a	Brick	610	Bricks	42.72	26.06
6g	6" Concrete	220	Sq.Ft.	.301	73.70
6j	Blue Stone Flagging	66	"	.60	39.60
6k	Oxide or Tar & Cinder Paving	11,435	"	.15	1,715.25
6m	Bluestone Curbing	44	Feet	2.50	110.00
18	MISCELLANEOUS				
18f	Wood Flag Pole	1		45.00	45.00
					$2,016.69
	Omissions and Contingencies		5%		100.83
	Total				$2,117.52

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—PUMP HOUSE NEAR STORAGE HOLDER.

BUILDING.

Item	Material	Quantity	Unit	Unit Price	Total Cost
6	PAVING				
6g	Concrete 6″ Thick	67	Sq.Ft.	.301	$20.18
7	LUMBER				
7b	Purling, Framing, etc.....	177	Ft.B.M.	125.35	22.19
8	WINDOWS				
8a	D. H. Windows including Frame	13.2	Sq.Ft.	2.10	27.72
10	DOORS				
10g	Corrugate Iron, Hinged, Doors	14.0	Sq.Ft.	.88	12.32
13	ROOFING & SIDING				
13b	Galvanized Corrugated Iron.	318.5	"	.21	66.89
					$149.30
	Omissions & Contingencies..		5%		7.47
	Total				$156.77

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—PUMP HOUSE NEAR STORAGE HOLDER.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	7″ x 7″ x 10″ Davidson Pump (Drip Oil).....				$450.00
	Foundation for Pump:				
2	CONCRETE				
2a	Plain Concrete Foundation..	.3	Cu.Yds.	$12.90	3.87
					$453.87

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—TOOLS & IMPLEMENTS.

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	36" Trimo Pipe Wrenches..	2		4.73	$9.46
	24" " " " ..	2		2.63	5.26
	18" " " " ..	2		1.75	3.50
	12" " " " ..	1		1.23	1.23
	10" " " " ..	1		.88	.88
	8" " " " ..	2		.79	1.58
	18" Monkey Wrench.....	1		2.40	2.40
2351	12" " "	2		1.35	2.70
	8" " "	1		.90	.90
	18" Screw Drivers.....	4		1.50	6.00
	18" Levels	2		1.75	3.50
	Hatchet	1		1.25	1.25
	Machinists' Hammers	3		.90	2.70
	Hammer	1		1.50	1.50
	Sledge Hammer	1		2.00	2.00
	Axe	1		2.00	2.00
	1" Cold Chisels.....	12		.75	9.00
	Mason's Large Towel.....	1		1.25	1.25
	Hack Saw Frames.....	2		.50	1.00
			Carried Forward		$58.11

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—TOOLS & IMPLEMENTS (Cont'd).

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
		Brought Forward			$58.
	Hand Cross Cut Saw.....	1		2.40	2.40
	Cross Cut Saw	1		2.60	2.60
	Hack Saw Blades	1	Gross	6.00	6.00
	Gas Plyers	3	Pair	.75	2.25
	4' 0" Chain Tongs.....	2	"	9.00	18.00
	5' 0" " "	3	"	13.50	40.50
	4' 0" Pinch Bars.....	2		1.92	3.84 2354
	Leather Mallet 2½"	1		1.75	1.75
	Machinist Vise	1		13.75	13.75
	Pipe Vise	1		9.00	9.00
	Hand Drill	1		3.75	3.75
	Breast Drill	2		6.75	13.50
	Brace	1		2.50	2.50
	Rackets	2		2.00	4.00
	Old Man	2		8.50	17.00
	No. 3 Pipe Cutter.....	1		4.75	4.75
	Favorite Socket Wrench.....	1		10.00	10.00
	8" Hose	2		1.50	3.00
	Wheel Barrows	5		8.00	40.00
	Steel Coal Scoops	12		1.75	21.00
		Carried Forward			$277.70

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—TOOLS & IMPLEMENTS (Cont'd).

EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost
		Brought Forward			$277.70
	Coke Forks	6		1.75	10.50
	Rachet Stock & Dies, 2" to 4"	1		80.00	80.00
	Armstrong No. 2 Stock & Dies	1		6.48	6.48
2357	Armstrong No. 1 Stock & Dies	1		4.96	4.96
	¾" Pipe Tap	1		.48	.48
	½" " "	1		.60	.60
	½" Bolt Tap	1		.35	.35
	1¼", 1½" & 2" Pipe Dies and Rings	1	Set ea.	18.00	18.00
	¼" & ½" Taps and Dies, ⅛", ⅜", ½", ¾" & 1" Dies and Rings	1	"	43.75	43.75
	⅛", ⅜", ½", ⅝", ¾" & ⅞" Bolt Dies & Rings	1	"	40.60	40.60
	Pipe Locater	1			65.00
	Respirator	1			40.00
	Cyclone Cleaner	1			132.90
	Pump Liner Tools	1			35.00
	Hose	20	Feet		15.40
	Service Pumps	2			30.36
	Pipe Threading Machine	1			150.00
	Thawing Outfit				50.90
2358					
	Total				$1,002.08

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—LABORATORY EQUIPMENT.

Item	Material	Quantity	Unit	Unit Price	Total Cost	
	No. 408 Hinman-Junker's Calorimeter, complete	2			$902 00	
	100″ Bar Photometer, completely equipped	1			481.00	
	60″ Bar Photometer, completely equipped	1			448.00	
	5′ Dia. Meter Prover	2			320.00	
	Pulmotor and Mask	1			200.00	
	Mercury Barometer with vernier	1			60.00	2360
	8″ Bristol Recording Pressure Gauge	1			37.67	
	Total				$2,448.67	

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OFFICE FURNITURE AND FIXTURES.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	Safes	5			$1,775.00
	Strong Box	1			150.00
	Burroughs Adding Machines	2			850.00
	Adding Machine Stand	1			20.00
	Calculating Machine	1			175.00
	Coin Counter	1			150.00
	Stamp Machine	1			45.00
	Addressograph	1			225.00
	Typewriters, Underwood	2			225.00
2363	Bookkeepers' Desks	5			250.00
	Oak Roll Top Desk	1			50.00
	6' Standing Desk	1			70.00
	Mahogany Desk and Chair	1			75.00
	Mahogany Flat Top Desk	1			50.00
	Mahogany Arm Chairs	3			40.00
	Mahogany Revolving Chair	1			25.00
	Typewriter Desk, Oak	2			85.00
	Roll Top Desk, Oak	1			50.00
	Straight Back Chairs	7			49.00
	Stools	5			20.00
	Oak Table	1			40.00
	Small Oak Roll Top Desks	2			30.00
				Carried Forward	$4,449.00

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OFFICE FURNITURE AND FIXTURES (Cont'd).

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
		Brought Forward			$4,449.0
	Oak Hat Trees	2			14.0
	Filing Cabinets	8			735.0
	Book Cases	2			80.00
	Petty Cash Tube	1			140.00
	Brass Rail	1			150.00
	Sign	1			40.00
	Lamp Post	1			68.00
	Wax Figures	2			50.00
	Electric Fans	3			72.00
	Fire Extinguishers	4			50.00
	Underwood Duplicator	1			40.00
	Boiler, Bryant	1			135.00
	Total				$6,023.00

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	CAST IRON MAINS				
	8″ Dia. Pipe	62,929	Feet	$1.202	$75,640.66
	4″ " "	139,476	"	1.452	202,519.15
	6″ " "	83,056	"	2.014	167,274.78
	8″ " "	48,944	"	2.673	130,827.31
	10″ " "	19,288	"	3.634	70,092.59
	12″ " "	9,262	"	4.553	42,169.89
	16″ " "	9,928	"	7.183	71,312.82
	20″ " "	36	"	9.755	351.18
2369	24″ " "	222	"	13.082	2,904.20
		373.141			$763,092.58
	Piling under 12″ Diameter Main to College Point:				
	25′ Piles, 12″ Butts	500	Piles	20.00	10,000.00
	Lumber	48,000	B.M.	135.00	6,380.00
	Total				$779,472.58

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM (Cont'd).

Item	Material	Quantity	Unit	Unit Price	Total Cost
	STEEL MAINS				
	1½" Diameter Pipe	567	Feet	$.58	$328.86
	2" " "	12,621	"	.628	7,925.99
	4" " "	218,401	"	1.057	230,849.86
	Totals	231,589			$239,104.71
	WELDED H. P. PIPE				
	2" Diameter Pipe	17,676	"	.678	11,984.33
	3" " "	7,190	"	.93	6,686.70
	4" " "	29,131	"	1.127	32,830.64
	Totals	285,586			$290,606.38

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM (Cont'd).

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*
	PAVING				
	Estimated Cost of Paving laid by Gas Company over Mains and Services				$1,059.81

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM (Cont'd).

Item	Material	Quantity	Unit	Unit Price	Total Cost
	HOUSE SERVICES				
	¾" Service	570		19.227	$10,959.
	1" "	6,359		20.478	130,219.[illegible]
	1¼" "	358		21.856	7,824.45
	1½" "	254		23.129	5,874.77
	2" "	101		25.533	2,578.83
	4" "	2		54.828	109.66
		7,644			$157,566.70
	BRANCH SERVICES				
	¾" Service	2		14.199	28.40
	1" "	316		14.980	4,733.68
	1¼" "	5		16.108	80.54
		323			$4,842.62
	STUB SERVICES				
	1" Service	31		13.603	421.69
	Estimated additional cost of services off of 4" Steel Mains, due to use of service clamps	2,622		1.00	2,622.00
	Municipal Inspection 374,447		Feet	.027	10,110.07

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

DISTRIBUTION SYSTEM (Cont'd).

METERS ON DISTRICT.

Size	Number	Unit Cost of Meter	Unit Cost of Material	Total Unit Cost	Total Cost
3-Lt. Regular	1,028	$8.00	$1.835	$9.835	$10,110.38
3-Lt. Prepayment..	502	11.75	1.835	13.585	6,819.67
5-Lt. Regular	5,851	9.60	2.316	11.916	69,720.52
5-Lt. Prepayment..	2,671	13.35	2.316	15.666	43,253.83
10-Lt. Regular	194	12.80	3.447	16.247	3,151.92
10-Lt. Prepayment..	4	16.60	3.447	20.047	80.19
20-Lt. Regular	59	21.60	5.145	26.745	1,577.95
2381 30-Lt. "	219	32.00	7.060	39.060	8,554.14
45-Lt. "	120	50.00	7.365	57.365	6,883.80
60-Lt. "	8	64.00	7.526	71.526	572.21
80-Lt. "	1	90.00	8.341	98.341	98.34
100-Lt. "	12	100.00	12.380	112.380	1,348.56
400-Lt. "	1	400.00	27.467	427.467	427.47
	10,670				$152,598.98
Transportation & Setting in Flushing 196 Meters.....		@	$1.214		237.94
Setting in Flushing 5491 Meters		@	1.00		5,491.00
Transportation & Setting in Outlying Districts 4983 Meters..		@	1.547		7,708.70
Total Meters on District.....					$166,036.62

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM (Cont'd).

Item	*Material*	*Quantity*	*Unit*	*Unit Price*	*Total Cost*	
	METERS IN STOCK					
	3 Lt. Prepayment	90		$11.75	$1,057.50	
	3 Lt. Regular	20		8.00	160.00	
	5 Lt. Prepayment	331		13.35	4,418.85	
	5 Lt. Regular	127		9.60	1,219.20	
	10 Lt. Prepayment	3		16.60	49.80	
	10 Lt. Regular	9		12.80	115.20	
	20 Lt. Regular	1		21.60	21.60	
	30 Lt. Regular	12		32.00	384.00	2384
	45 Lt. Regular	6		50.00	300.00	
	100 Lt. Regular	4		100.00	400.00	
	Totals	603			$8,126.15	

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GAS APPLIANCES & ARC LAMPS.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	GAS APPLIANCES				
	20th Century Cookers.....	3		$13.50	$40.50
	Wolff Cookers	11		13.50	148.50
	Vulcan Junior Cookers	746		16.05	11,973.30
	Peerless Junior Cookers....	1,890		20.16	38,120.40
	Peerless Cabinet Ranges....	498		39.10	19,471.80
	Water Heaters	1,306		12.00	15,672.00
	Total				$85,426.50
2387					
	ARC LAMPS				
	No. 30 Humphrey Lamps...	372		8.53	$3,173.16

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THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM.

Item	Material	Quantity	Unit	Unit Price	Total Cost
	SUMMARY.				
	STREET MAINS				
	Cast Iron Maine				$779,472.58
	Steel Mains				290,606.38
	Paving				1,059.81
	Total				$1,071,138.77
	SERVICES				
	House Services				157,566.70
	Branch Services				4,842.62
	Stub Services				421.69
	Additional for Service Clamps				2,622.00
	Municipal Inspection				10,110.07
	Total				$175,563.08
	METERS				
	Meters on District				$166,036.62
	Meter in Stock				8,126.15
	Total				$174,162.77
	GAS APPLIANCES				85,426.50
	ARC LAMPS				3,173.16

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798 MARTIN MORRISON, called as a witness on behalf of the complainant and being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Morrison, you are the Superintendent of the New York & Queens Gas Company works at Flushing?
A. I am.
Q. Where do you live?
A. Flushing, L. I.
Q. Do you live in a dwelling on the premises of the gas company adjacent to the works?
A. I do.
Q. How old are you?
A. Forty-four.
Q. What has been your experience in the gas business? When did you first start to work in that line of business?
A. In 1904 I started at Yonkers with the Westchester Lighting Company, as a fitter's helper.
Q. How long were you with the Westchester Lighting Company?
A. Until April 17, 1916.
Q. Tell briefly the various positions that you held while you were with the Westchester Lighting Company—or first, is the Westchester Lighting Company a gas company?
A. A gas company.

Mr. Neumann: One moment, before you go any further.
The Master: What kind of gas does that company make?
The Witness: Carburetted water gas.

799 Mr. Neumann: May I ask whether Judge Ransom has produced here the daily works sheets reports, or whatever name they are known by, for the years 1918 and 1919?
Mr. Ransom: Some of them are here.
Mr. Newman: 1918 and 1919—I took it up with Mr. Davidson personally yesterday, and he said he would have them in court when this man was on the stand.
Mr. Ransom: 1919 and 1920 are here. If there is any good reason we can get 1918.
Mr. Neumann: There is.
Mr. Ransom: I don't see what 1918 has to do with the issues in this case.
The Master: Go ahead.
Mr. Neumann: May I ask the Master to make a direction with reference to it? You will compel us to cross examine this witness, and part of it will be based on those records.
Mr. Ransom: I do not intend to interrogate this witness with respect to 1918.
The Master: They may have some questions on 1918 as compared with 1919. Mr. Spear, telephone over to send those down.

Mr. Ransom: I think they are up at 15th Street.
The Master: Telephone up and get them right down.

Q. The Westchester Lighting Company makes carburetted water gas?
A. It does.
Q. And did during the 12 years that you were connected with that company?
A. Yes.
Q. Tell the various positions that you held while you were with that company?
800 A. Fitter, indexer, collecter——
Q. What do you mean by "indexter?"
A. Indexing consumers' meters.
Q. And collector?
A. Collector.
Q. What were your duties there?
A. Collecting the gas bills from consumers in different districts.
Q. Then what next?
A. Draftsman.
Q. What were your duties there?
A. Drafting in the gas-engineering department at Mt. Vernon.
Q. That is working on the drawings for construction work?
A. Drawings for construction work and street mains.
Q Then what next?
A. Candlepower and calorimeter inspector; inspector of mains and services; cadet engineer at the Pelham works. Later I became superintendent of the White Plains works for a short period.
Q What is that? In these various capacities have you made gas yourself?
A. I have.

The Master: Not in all of these capacities?
The Witness: No.
Mr. Ransom: I did not say in all of them.
The Master: You said in these various capacities.
Mr. Ransom: In various of these capacities I should have said.
The Witness: I have.

Q. What if any study have you made of the gas business outside of your practical experience?

801 Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial and not the proper way of proving it.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. I took a 4-years' course of home study offered by the Trustees of the Gas Institute.
Q. That is the American Gas Institute?
A. American Gas Institute. Also attended Yonkers High School during the evening sessions for one year.

Q. As superintendent of the Flushing works are you in direct personal charge of the operation of the works and the manufacture of gas?
A. I am.
Q. Do you devote your entire time to that business?
A. I do.
Q. Are you on the job 24 hours in the day?
A. Exactly.

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The records would indicate that.
The Master: Objection overuled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Q. Are you from time to time called on with respect to matters arising during the evening and night at the plant?

Mr. Neumann: I object to that as incompetent, immaterial and irrelevant.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Yes.
802 Q. Now, will you please describe what if anything is done by you with reference to the receipt of coal at the Flushing works?
A. When a cargo of coal arrives I generally go down and look it over——

Mr. Neumann: I move to strike that answer out, "generally go down."
The Master: Motion denied.
Mr. Neumann: Exception.

A. (continued.) I am present when the coal is hauled into the plant. We pay for the coal on the railroad's bill of lading. When the coal has been delivered I notify Mr. Spear of its receipt by signing my name on the back of the invoice.
Q. That is, you usually and generally see the coal at the barge?
A. I do.

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.

Q. And are you present when the coal is brought into the works?
A. I am.

By the Master:

Q. How does it get from the barge to the works?
A. By truck.
Q. Whose trucks?

A. A contractor's.
Q. Who is the contractor?
A. Peace Brothers.

By Mr. Ransom:

Q. What check is kept of the amount of coal received and used at the works?

803 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial; improper in form and substance, both.
The Master: Overruled.
Mr. Neumann: Exception.

A. We make monthly periodical inventories of the coal pile by measurement. We also keep track of the coal that is used; that is, we check it against the receipts.
The Master: Do you weigh the coal when it comes in?
The Witness: No.
Q. That is, you make a check of the coal pile monthly by measurement?
A. I do.
Q. You do that yourself?
A. I do.
Q. So that if there were any considerable discrepancies between the amount of coal billed and the amount of coal received your inventory would show it?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. That is a conclusion for the Master to draw from the witness' testimony, not for the witness to testify to.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. Yes.

By the Master:

Q. You said something about keeping track of the coal used, did you not?
A. Yes.
Q. How do you do that?

804 A. We keep an account of the number of buggies as they are dumped into the machine, and the gas-maker puts it on his sheet, and we add those buggies up each day and compute the weight of coal from those buggies.
Q. How much does a buggy contain?
A. From eleven to thirteen hundred pounds.
Q. Do your buggies vary in size?
A. No, they are all the same size.
Q. Do you weigh each buggy?
A. No.

Q. How do you say from eleven to thirteen hundred pounds?
A. We have weighed them to check up on the weights.
Q. How do you figure them, 11 or 13?
A. We use 13.
Q. You use 13 as the quantity that goes into the manufacture?
A. Yes.
Q. Why do you do that when some of it runs as low as 11?
A. Using it in that way and checking up with our inventory at the end of the month, our coal pile comes out nearer to what we have used using 1,300 pounds to the buggy.

Mr. Neumann: I move to strike that out, as to how much he used, as a pure guess, based on his conception.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

By Mr. Ransom:

Q. Do you personally watch the filling of the buggies?
A. Yes.
805 Q. Describe the method by which oil is received and the quantity checked and the quantity reported to Mr. Spear?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, nothing shown yet that he reports any oil to Mr. Spear.
The Master: Overruled.
Mr. Neumann: Exception.

A. The oil is pumped into the tanks at the works from the barge, through a pipe-line leading down to the dock, and we measure the tanks at the time the pumping is started at the barge, and again afterwards, and a report of the receipt of the oil is made to Mr. Spear, as of coal and other materials.

Mr. Neumann: I move to strike the witness' answer out, because he says "we measure." That does not mean anything.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Q. What are the methods of measurement used?
A. By a scale on the outside of the tank and by a plumb-bob.
Q. That is, you use both methods of measurement as a check one against the other?
A. We do.

Mr. Neumann: One moment. I object to that. The witness stated that "we measure," he did not say "I measure" at all, and counsel has now said "I measure."
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

806 Q. What is done by you after a cargo of oil has been received and it has been measured in the tanks in the method which you have described?

A. They report to Mr. Spear the receipt of it.

Q. You receive at the works other materials besides coal and oil?

A. Yes, oxide, pipe and fittings, lubricating oils and so forth.

Q. Those are received by you personally?

A. Those are received by me and reported to the management the same as other materials.

Q. And you make a certificate to Mr. Spear of its receipt?

A. I do.

Q. Do you keep a daily manufacturing record?

A. I do.

Q. Of the operations of the company at the works?

A. I do.

Q. Is this record kept on a large sheet covering an entire month?

A. It is.

Q. Are the entries thereon made daily showing the results of operations for each day?

A. They are.

Q. Who makes the entries on this record?

A. The clerk, when I have one. When I have not I do it myself personally.

Q. When the record has been made up, either by yourself or by a clerk, do you personally check the accuracy of the entries and the computations?

A. I do.

Q. That is, you always go over both the computations and the entries?

807 Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial and a conclusion.

The Master: Overruled.

Mr. Neumann: Exception.

The Master: What is your answer, Mr. Morrison?

A. I do.

Q. What is done with this report at the end of the month?

A. It is totaled and sent to Mr. Spear.

Q. Is it certified to by you?

A. It is certified to and signed by me.

By the Master:

Q. How do you determine how much oil is used in the course of a day's manufacture, Mr. Morrison?

A. By measurement, both by tank measurement and meter measurement at the gas machines.

Q. And oil meter?

A. And oil meter.

Q. The amount of oil that is used in the course of a day is determined by those measurements?

A. Yes, sir.

Q. And the amount of gas made in the course of the day is determined by meter measurements of some kind?

A. Meter measurements and holder measurements.

Q. And holder measurements?

A. Yes.

Q. So that you can determine every day the amount of oil used for the quantity of gas produced?

A. Yes, sir.

808 Q. And do you do that every day?

A. Every day.

By Mr. Ransom:

Q. Have you produced in court the monthly report sheets for the months of 1919 and 1920 to date?

A. Yes, sir.

By the Master:

Q. Let me ask you this, Mr. Morrison: You say that you take these buggy quantities at 1,300 pounds, then you check it up with your inventory at the end of the month. What quantity of coal used do you report at the end of the month, the amount shown as the result of your inventories or the amount of the computation of the buggies?

A. The computation of the buggies.

Q. Suppose that is less than the amount shown by your inventory check, do you still stick to your buggies?

A. No, we change the weight of the buggies to meet that.

Q. Suppose it is more than indicated for your inventory check?

A. Then we would increase the weight of the buggies.

Q. Then you take the result of your inventory check rather than your 1,300 pounds per buggy, don't you, as the total used in the course of a month?

A. In that way, yes.

Q. What?

A. In that way, yes.

Q. In what way don't you? What I am trying to get at

809 is this, Mr. Morrison: You use a certain quantity of coal in the course of a month, do you not?

A. Yes.

Q. How do you determine that?

A. By the number of buggies and the weight per buggy.

Q. Suppose the number of buggies in the course of a month indicates that you have used 500 tons.

A. Yes.

Q. When you check it back with your inventory you found you only used 400 tons?

A. Well, that never happens; we are very much closer than that.

Q. What?

A. We are within ten tons of our inventory.

Q. Always?
A. Most always.
Q. Then you would stand by your buggies' weights?
A. We would stand by our buggy weights.
Q. And you disregard the variance of the ten tons?
A. Yes. Take the standard weight of the buggy against the tape measurement of the coal pile.
Q. Then you rely on your buggy weights of 1,300 pounds?
A. Yes.

By Mr. Ransom:

Q. You from time to time measure and have measured the weight of the quantity of coal contained in one of these standard buggies?
A. Yes, we have.

Mr. Ransom: You may cross-examine.

810 Mr. Neumann: Where are your exhibits? You identified them and you have not introduced them yet.

Mr. Ransom: You may cross-examine.

Mr. Neumann: The position here is this: He puts a witness on the stand to identify certain records, and then wants us to introduce them in evidence. I think that is manifestly unfair.

Mr. Ransom: I do not want you to offer them in evidence.

Mr. Neumann: This witness has stated that he makes these records. The records are part of this case and they ought to be introduced by the complainant.

The Master: The witness' testimony in substance is that he is in charge of the plant at Flushing, that they use coal and oil; that he measured the amount of coal and oil used and reported it to the management.

Mr. Neumann: And makes a daily record of it.

The Master: And keeps a daily record of it.

Mr. Neumann: Yes, and those daily records are here in court.

The Master: Yes. Counsel for the complainant does not see fit to offer them as part of his case. If there is anything you want to cross-examine this witness about, I will take it.

Cross-examination.

By Mr. Neumann:

Q. Where did you say you resided, Mr. Morrison?

811 The Master: I will not allow a question of that kind.

Mr. Neumann: On what ground, please?

The Master: On the ground that he has already told us he lives at this house at the Flushing works, at Flushing, Long Island.

Mr. Neumann: No, he said adjacent to the works. It is not adjacent to the works, it is right in the works.

Mr. Ransom: He said he lived in a frame dwelling on the premises of the company.

The Master: I will not allow the question. I do not care whether Mr. Morrison lives in the gas holder or down in Douglaston somewhere.

Mr. Neumann: I am going to try to make my record, if the Court pleases.

Q. The dwelling that you reside in is within the confines of the works?

The Master: The question is not allowed. The Master, using his discretion, believes that it is a useless waste of time.

Mr. Neumann: Exception.

Q. Immediately opposite from your works is there any vacant land?

A. There is.

Mr. Ransom: Objected to as immaterial.

The Master: The witness has answered it. If the witness had not answered it so quickly, the Master would have ruled it out as being a useless question. It is already in evidence. There is lots of vacant land around there.

Q. When you were at the Yonkers High School what course did you take there so far as gas making was concerned?

A. None.

812 Q. You testified that the coal is trucked in buggies, did you not?

A. From the coal pile to the generating floor.

Q. How is the coal taken from the barge?

A. By auto trucks and horse-drawn trucks.

Q. And are those the buggies that you were talking of?

A. No.

Q. Those are different?

A. They are different.

Q. How many buggies do you generally consider necessary to truck a day's supply of coal?

A. Where from, the boats to the works, or the coal pile to the generating floor?

Q. As I understood your testimony, and I wish you would clear it up——

A. I will if your answer is clear—your question is clear.

Q. Yes, but as I understood your testimony it related to the buggies taking the coal from the barge. Now you say it is automobile trucks?

A. I did not say anything about buggies taking the coal from the barge.

Q. Take it from the coal pile to the works, how many buggy loads do you estimate are required in a given day?

A. According to the make.

Q. Take your maximum make.

A. About thirty buggies from the coal pile to the generating floor.

Q. Now take your minimum make.
A. That may run twenty—twenty or twenty-five.
Q. The fair average would be about twenty-five for a fair average day's send-out?
A. Twenty-five or thirty.
813 Q. You just testified that thirty was the maximum, did you not?
A. Yes.
Q. Then how do you make thirty the average?
A. I say twenty-five to thirty.
Q. In a general way will you just describe these buggies?
A. A large steel buggy on two wheels that has a funnel at the end. As they tip this buggy, it is dumped into the generator.
Q. It runs on tracks?
A. We run them, not on tracks, but on channel irons, from the bin to the elevator.
Q. What is the motive power?
A. Man.
Q. How many?
A. Two. Two from the coal bin to the elevator, one after they get on the floor or where it is level pulling.

Mr. Neumann: May I have those work sheets reports?
(The Master hands counsel papers.)

Q. Mr. Morrison, I now show you paper marked Daily Record of Manufacture of New York & Queens Gas Company for the month of January, 1919, which was produced by counsel for the complainant, and I will ask you to state whether that was the record that you had in mind when you testified as to the materials received and used (indicating)?
A. It is.
Q. And is this signature "M. Morrison, Works Superintendent," your signature?
A. It is.
Q. You testified, did you not, that this was correct?
814 A. I did.
Q. You testified that you had added up the columns and found them correct?
A. I did.
Q. I now direct your attention to the column marked "Oil Used," the figure in red *nik* at the bottom of that column; 146,964 is intended to be the sum total of that column, is it not?
A. It is.
Q. Will you add that and see if it is not incorrect, or I will say to the witness fairly that we have added it up and it is 149,964.

The Master: What does he make it?
Mr. Neumann: 146,964.
The Master: Add it up, Mr. Morrison, and see what you make it. What is the answer, Mr. Morrison?
A. (Making computation.) 149,964.

By the Master:

Q. 149,964 is right?
A. Yes.
Q. So there is an error there?
A. There is an error.

By Mr. Neumann:

Q. An error of 3,000?
A. Right.

The Master: What is that, in oil, Mr. Neumann?
Mr. Neumann: Yes.

Q. Directing your attention to the bottom here, to the words "Used in Manufacture," you have copied down this incorrect total of 146,964?
A. Yes.
Q. Whoever did it. And that figure there should be 815 149,964?
The Master: What was the total gas manufactured that month?

Mr. Neumann: I do not think that has anything to do with it, if the Court pleases, at the present time.
The Master: I would like to know.
Mr. Neumann: What I am trying to develop at this time is this fact that the record is incorrect.

The Master: How much gas was manufactured during the month?
The Witness: 32,903,000.

Mr. Neumann: If the Master please, I object to that.

The Master: How much?
The Witness: 32,903,000.
The Master: What difference would it make, the 3,000 gallons of oil, in the quantity of oil used per thousand?
The Witness: Very little.

Mr. Neumann: I object to that.

Q. Mr Morrison, I will direct your attention to the 18th of January. Part of this 3,000 is accounted for by the fact that you have made an error there of 1,000, or whoever made this record. Do you want to verify that? I have verified it.
The Master: Ask your question, Mr. Neumann. Is that correct, on the 18th?
The Witness: On the 18th.
The Master: Is that correct?
The Witness: That is correct.
Q. And similarly 2,000 is accounted for on the 22nd?
A. Right.

Q. Which is correct, the quantity on hand or the quantity used on the 15th, or taking, for instance, the 16th?

816 A. What was that question, now?

Q. Which is correct, the quantity on hand on the 16th, or the quantity used on the 15th?

A. According to the record here they are both correct.

Q. The next day there is an error, two days later there is an error there, is there not?

A. On the 18th, yes.

Q. Yes; of a thousand gallons. Then, Mr. Morrison, this record is the record that you testified you handed to Mr. Spear, is it not?

A. Yes.

Q. You do not know what becomes of it after that, do you?

A. No.

Q. This record also contains a record of the City's *best* at the works?

A. It does.

Mr. Ransom: Objected to.

The Master: At the works?

The Witness: At the works? No.

Q. Is it at the works, or is it at the testing station?

A. At the testing station.

Q. Yes. And this record also indicates what machines were in operation and what machines were not in operation, does it not?

A. No, it shows the machines that were in operation.

Q. I mean this record would indicate what machines were and what machines were not in operation?

A. No, what machines were in operation.

The Master: Well, by exclusion it would show what machines were not?

817 The Witness: Yes, that column shows the machines that were running.

Q. The column marked "Machine" will indicate which were running?

A. Right.

Q. Take, for example, January 1st, the column "Machine" would indicate that No. 3 machine was in operation?

A. Right.

Q. Does that indicate that machines Nos. 1 and 2 were not in operation on that day?

A. It would.

Q. And that would be through the entire column?

A. Yes.

Q So that where the column indicates that machines 1 and were in operation, machine No. 3 was idle?

A. Right.

Mr. Neumann: Now I offer this sheet in evidence.
The Master: Mark it.

Marked Defendants' Exhibit A in evidence.

Q. Directing your attention now, Mr. Morrison, to Defendants' Exhibit A, column here marked "Index of station meters, 7 A. M.," columns Nos. 1, 2 and 3, will you please state what those columns indicate?
A. The index of the station meter on the date that they are read, at seven o'clock.
Q. How many meters have you?
A. Three.
Q. And where there are no figures in the column it would indicate there was no meter reading at that time?
A. Right.
518 Q. Are there meters attached to each machine?
A. What kind of a machine?

Mr. Tobin: What is that?
The Witness: What kind of meter?

Q. This index of station meters.
A. No.
Q. What are they attached to, these meters?
A. Gas meters.
Q. What would that indicate where there are no figures in the column under the particular numbers?
A. It would indicate that the meter is not there.
Q. You mean taken out?
A. Taken out for repairs.
Q. At that time there was not any indexing?
A. Right on that one meter.

By the Master:

Q. Where would it be shown? In other words, would the other meters function while that was out?
A. Yes.
Q. Would the gas going through show on other meters instead of the one taken out?
A. The gas passes through all three meters, and if one is taken out the gas that is registered passes through the two.

By Mr. Neumann:

Q. I now show you, Mr. Morrison, daily record of manufacture of the New York & Queens Gas Company for the month of February, 1919, which was produced by counsel for the complainant, and will ask you to state whether that is one of the papers either kept by you or under your direction?
A. It is.
Q. And the signature thereon, "M. Morrison, Works Superintendent," is your signature?

819 A. It is.

Q. And that appears immediately under the words "I certify the figures on this report to be correct"?

A. Yes.

Q. And you believe this report to be correct?

A. Yes.

Q. Now I direct your attention to February 2nd and February 3rd, to the column marked "Gallons Received," and I will ask you to follow me on these figures. February 2nd, on hand 48,089; is that correct?

A. That is correct.

Q. Less used on February 2nd, 5,067?

A. Right.

Q. That is correct?

A It is correct.

Q. The balance is 43,022, is that correct?

A. Yes.

Q. That was the balance on hand on the 3rd, was it not?

A. Yes.

Q. On that day you received 118,539?

A. Right.

Q. Making a total of 161,561?

A. (Making computation.) 161,561 is right.

Q. And you used on the 3rd 2,955?

A 2,955.

Q. That would leave a balance of how many, or how much?

A. (Making computation.) 158,606.

Q. What is the figure that you have there?

A. 158,378.

Q. That is a difference of 228?

A. Right.

Q. Your figure, then, as the balance on hand on the 4th at 7 A.M. is incorrect?

820 A. According to that it is.

Q. Is there any doubt in your mind that your figure is incorrect?

A. Well, the figures are correct there.

Q. The figures are correct on the sheet?

A. Yes.

Q. Despite what I have shown to the contrary?

A Yes.

Q. Explain, then, how you figure out 158,606 should be on hand on the 4th?

A. Wait a minute, this figure is correct, 158,606.

Q. That is correct?

A. It is correct.

Q. And there is a difference of 228?

A. Yes.

Mr. Neumann: These are all on the question of their correctness, that is what I am endeavoring to demonstrate.

The Master: I am letting you show it. I do not see how it will help us any.

Mr. Neumann: Here is a man who has sworn these figures are correct and they go into the books.

The Master: And the other answer to them is that except for the errors you show you are putting them up.

Mr. Neumann: All right, I am taking a chance on that.

Mr. Ransom: And Mr. Teele's exhibits are made up on a basis which this does not in any way challenge.

Mr. Neumann: Mr. Teele says that he took these and checked them. If Mr. Teele's figures are wrong, this is wrong.

821 The Master: I am indicating to you, Mr. Neumann, the impression that you are making on my mind, that the moment you prove that error on the sheet you prove up the sheet. You show the amount of coal used and the quantity of oil used. I think you are helping the complainant's case.

Mr. Neumann: And in view of the state of the record I have offered it, and I do not think that any reviewing court will determine from that that it had been proven.

The Master: Very well, go ahead.

Mr. Neumann: These are intended solely and wholly to impeach this witness' testimony.

The Master: But you are making other evidence while you are doing it.

Q. Mr. Morrison, let me direct your attention to this, the entry dated the 3rd, the "Gallons Received" originally indicated 118,311, and there was a line drawn through that; is that correct?

A. Yes.

Q. And thereafter there was written over it 118,539; is that correct?

A. That is correct.

Q. Now bringing you down again to the bottom here, under the word "Bought," you have the figure 118,311; is that correct?

A. That is correct.

Q. And in the next column 118,539?

A. That is correct.

Q. Which amount did you get, 118,311 or 118,539?

A. 118,539.

The Master: Isn't that the variance that you pointed out before?

The Witness: Yes.

822 Mr. Neumann: That makes the difference. It shows that the records are not correctly kept.

Mr. Ransom: It shows that errors are caught and that the records are correct.

Mr. Neumann: That will be determined later on.

Now I offer this sheet in evidence.

The Master: It is received. Mark it.

Marked Defendants' Exhibit B.

The Master: Don't you see, Mr. Neumann, that the minute you point out this one error out of the great mass of figures on this February sheet, you leave an impression in my mind, that must be there, that if there were any other errors on it you would have pointed them out?

Mr. Neumann: Well, the fact is that we have not had time to check all these figures up, by reason of the fact, as your Honor well knows, that Mr. Frank, who was working on these, left us. I am trying to do the best I can, as I indicated last week, to be ready and be prepared on these cross examinations.

The Master: I know, but Mr. Frank has taken the last—you are pointing out errors in the last few columns here, which would indicate to me that there were no errors in the preceding columns.

Mr. Tobin: That does not follow, your Honor.

The Master: That is the impression I get.

Mr. Tobin: We cannot help what impression you get.

823 Mr. Neumann: The mere fact that they declined to introduce these in evidence speaks volumes for the whole thing.

The Master: Yes, it speaks volumes for the cleverness with which it was done, putting the burden on you to put them in, making it your evidence, not theirs.

Mr. Neumann: And no court reviewing it will take it to be our evidence.

The Master: Proceed.

Q. How do you ascertain the quantities on hand at 7 a. m., Mr. Morrison?

A. By measurement.

Q. What do you mean by that?

A. By a scale on the outside of the tank or by plumb-bob.

Q. Who takes those measurements?

A. The engineer, as a rule. Sometimes I take them myself.

Q. Who is the engineer?

A. One of three; whoever happens to be on the shift.

Q. I now direct your attention to Daily Record of Manufacture of the New York & Queens Gas Company for the Month of June, 1919, after the column "Oil used." There is a red ink figure there of 500?

A. That is right.

Q. Which is immediately underneath a red ink figure of 110,264?

A. Yes.

Q. And then there is a red ink figure of 110,764?

A. That is right.

Q. That is an addition of 500 gallons?

A. Right.

Q. To the oil used, is it not?

A. It is.

824 Q. The column "Oil Used" is intended to indicate the daily quantity of oil used, is it not?

A. It is.

Q. So that at the end of the month you have added on 500 gallons to what had already been used; is that correct?

A. We did; that is right.
Q. Why was that?
A. To make up some of the discrepancies we had.
Q. What do you mean by discrepancies?
A. Discrepancies that appear in the oil received and the oil that was billed for.
Q. And there was 500 gallons discrepancy that month?
A. It may not have been in that month.
Q. Well, it is so from the record, is it not?
A. Yes.

Mr. Neumann: I offer that in evidence.

Marked Defendants' Exhibit C.

Q. I direct your attention, Mr. Morrison, to Daily Record of Manufacture of the New York & Queens Gas Company for the month of November, 1919, and particularly to the column "Oil Used," the first total in red ink there is 152,647; is that right?
A. That is right.
Q. And there is added in red figures 2,000?
A. Right.
Q. Making a total of 154,647?
A. Right.
Q. Is that correct?
A. That is correct.
Q. Will you please explain that?
Mr. Tobin: 2,000 gallons.
A. 2,000 gallons, the same as on the previous 500 gallons.
825 Q. What is that?
A. A discrepancy between the bill of lading and the oil received.
Q. The column "Oil Used" indicates the daily oil used each day, does it not?
A. It does.

Mr. Neumann: I offer that sheet in evidence.
The Master: Mark it.

Marked Defendants' Exhibit D.

Q. Mr. Morrison, I now show you Daily Record of Manufacture of the New York & Queens Gas Company for the month of December, 1919, produced by counsel for the complainant, and direct your attention to the column "Oil Used." The first total for the entire month reads 181,736, in red ink, does it not?
A. It does.
Q. And then there is added in red figures 1,000?
A. Right.
Q. And then the total 182,736?
A. Right.
Q. Will you explain that 1,000 red ink addition?

A. For the same reason as the others, a difference between the bill of lading and the oil received.

Mr. Neumann: I offer that sheet in evidence.

Marked Defendants' Exhibit E.

Q. I now show you Daily Record of Manufacture for the Month of July, 1919, and direct your attention to the 3rd of that month. By the way, Mr. Morrison, the figures there would indicate that they have been erased and changed; at some time or other, I do not mean just now?

826 A. Yes.

Q. Directing your attention to the 3rd, the quantity of oil on hand at 7 a. m. was how much?

A. 193,065.

Q. During the preceding day there must have been some amount higher than that on hand, was there not?

A. We received some the day previous, which would indicate a higher amount on hand.

Q. Were you here the day Mr. Alrich testified to your oil storage capacity as of 180,000 gallons?

A. I believe I was, yes.

Q. How do you reconcile the fact that you had more than 193,000 gallons on hand at one time?

A. We figure that the pipe line from the dock to the works contains a certain amount of oil, which they are unable to pump out as each barge comes in.

Q. How long a pipe line is that?

A. About a half a mile, I should think.

Q. And do you think that would contain 13,000 gallons?

A. It might. I don't know anything about the figures.

Q. You don't know anything about it, do you?

A. No.

Mr. Neumann: Now, that is as far as I can go, unless the 1918 records are here.

Mr. Ransom: The 1918 records are here.

The Master: Hand them to Mr. Neumann.

Q. I now show you daily record of manufacture of the New York & Queens Gas Company for the month of January, 1918. Do you recognize that as one of the records that you have marked as correct?

827 Mr. Ransom: Objected to as immaterial.

The Master: Objection overruled.

A. I do.

Q. That is one of the records that you keep daily?

A. It is.

Q. And the signature "M. Morrison, Works Superintendent" over the words, "I certify the figures in this report to be correct," is your certification?

A. Yes.

Q. Referred to in your testimony?
A. It is.
Q. Now, I direct attention to the column, "Boiler Fuel, Soft Coal Tons," the total of that column is 615,120, is that correct?

Mr. Ransom: Objected to as incompetent, immaterial and irrelevant, not within any issues of this case, not within the scope of cross-examination of the witness, he has not been interrogated regarding January, 1918, or any part of 1918.
The Master: I will take it.
Mr. Ransom: Exception.

A. Yes.
Q. Now, where there are no figures set out in your column opposite each day, it would indicate that there was no material used on that day, would it not?
A. It would indicate that, yes.
Q. Well, now, I direct your attention to the 30th, 31st and apparently the next one is the 1st, being the 1st of February; those three days, apparently, there was no boiler fuel used?
A. Apparently.
828 Q. Now, I direct your attention to the bottom of this exhibit, "Used in Manufacture."

Mr. Ransom: That is not an exhibit.
Mr. Neumann: Well, this paper.
Mr. Ransom: Objected to as not within the issues of this case.
The Master: Overruled.

Q. Alongside of the words, "Used in Manufacture" there is the amount 426,960?
A. Yes.
Q. Well, should not that amount agree with 615,120?
A. Yes, plus the dust used. Go over here and you will see a set of figures there covering those three days.
Q. So that on those three days you used dust?
A. That is right.
Q. Is that correct?
A. That is correct.
Q. Where did you get that dust from?
A. Generator screenings.
Q. Now, how do you take your inventory of coal?
A. By measurment.
Q. How?
A. Measure it with a steel tape.
Q. When?
A. Around the first of the month.
Q. How do you arrive at the daily amount on hand?
A. That is brought down from a sheet each day, on a sheet each day.
Q. So that if these figures here are incorrect, there would be some discrepancy, wouldn't there?
A. We catch them at the end of the month.

Q. Yes, but you would not catch them until the end of the month?

A. If I had time to look it over, and keep my eye on the
829 coal pile during the month.

Q. But during the month you have no means of definitely telling whether these figures on this sheet are correct or not?

A. Only from the sheet itself.

Q. Only from the sheet itself?

A. Yes.

Q. Mr. Morrison, I now show you Daily Record of Manufacture of New York & Queens Gas Company for the month of February, 1918, and direct your attention to the column, "Gas Oil Used." Your total there is how much?

A. 121,447.

Q. There is apparently an adjustment there in red ink figures?

A. Of 1,000 gallons.

Q. Yes. The total amount above that is 120,447?

A. That is right.

Q. Now, will you please study that column and see if you find you have not made a mistake in that figure of 124,447?

The Master: What do you say is the fact?

Mr. Neumann: 120,495—50 gallons and then a thousand.

The Master: Well, we will take that and admit that there is that error. I am not going to waste time checking it.

Mr. Neumann: The sheet of March, 1918.

The Master: What is the error in March, 1918?

Mr. Neumann: The error in March, 1918, in dust used, their records indicate, was 708,700, and the correct figure is 508,700.

The Master: Just show that to the witness.

830 Mr. Ransom: This is all over my objection.

The Master: Yes. I am going to sustain the objection in a minute. I just want to let Mr. Neumann develop his theory here. Is that in error?

The Witness: That is in error.

The Master: An error of how much?

The Witness: 200,000 pounds.

The Master: How could that error get by to such an extent? Let's understand something about it? How does a big error like that creep in?

The Witness: Due to the labor conditions and other troubles up at the plant, I did not check these underlying figures here but checked the summaries and took the clerk's figures here.

The Master: Well, 200,000 pounds makes a good deal of difference in the cost.

The Witness: It does, yes, but we catch that on the measurement of the coal pile.

The Master: Well, how could it? It shows up there, does it? Does the error show on there?

The Witness: No, the error does not show here, but the error is gradually taken up, so that it is taken care of as we go on.

Mr. Ransom: What month was that?

Mr. Neumann: I move to strike out that last answer as a mere conclusion.

The Master: Yes, I will grant that motion.

Mr. Ransom: Exception.

Mr. Neumann: Now, I want the next one, April, 1918.

Q. I show you the sheet for the month of April, 1918, and direct your attention to "Oil Used."

831 The Master: What is the error there?

Mr. Neumann: There is an adjustment at the end of a month of a thousand gallons.

The Master: I suppose that is the same kind of an adjustment we have had before, Mr. Morrison?

The Witness: Exactly.

Q. The same is true of July and the same is true of September, 1918?

The Master: I will take his statement. These adjustments are always in various instances the same.

The Witness: Yes.

Mr. Neumann: There is something else I would like explained here, perhaps Mr. Morrison can explain it to us.

Q. You said that you took the coal dust from the coal, did you not? Did I understand you to say that?

A. I said we took it from the coal, yes, where screened, the screenings.

Q. Yes, and then you used it?

A. Yes.

Q. Now, from June to November, 1918, your records would indicate that there was no dust transferred from the generator coal. Now, where did you get your dust from for the months of June to November, 1918?

A. What is the question again, now?

(Question read by the stenographer.)

A. From the generator coal pile.

Q. From the month of June to November, 1918?

A. Yes.

Q. Well, now will you just indicate that to me on this paper, daily record of manufacture for the month of June, 1918,

832 that is the dust used, is it?

A. Yes.

Q. But there is nothing there to indicate where you got it from?

A. No, there is not.

Q. It is indicated on the other ones, isn't it, or you got it from the generator coal?

A. Well, dust, in a general term, is from the generator coal; that is what that heading implies.

Q. The point I am trying to get at is, Mr. Morrison, in the other reports you indicate that the dust came from the generator coal,

but in this from June to November you did not so indicate. Take, "transferred from generator coal," there is a cipher there, isn't there?

A. Yes.

Q. Well, now, take the whole six months, or whatever these sheets are, from June to November?

A. That is right, nothing indicated there.

Q. Where did you get the coal dust from that you used?

A. From the generator coal.

Q. But you did not indicate it on these sheets?

A. No.

Mr. Ransom: I object to the line of inquiry. This counsel for the Commission is dragging back into the conditions of 1918 when every one knows what those conditions were, not within the issues of this year.

The Master: Well, I will let him answer.

Q. But in previous months you did indicate that you got the coal dust from the generator coal?

A. In previous months?

833 Q. Yes, of that year. Do you want to look at them?

A. Yes.

The Master: You did in subsequent months, did you?

Mr. Neumann: Did not in any subsequent month.

A. Under the heading of buckwheat coal, I think you will find——

Q. (Interrupting.) You are speaking now of January, 1918?

A. Yes.

Q. Yes?

A. You apply that to the buckwheat column.

Q. Apply that to the buckwheat column. Did you do that in June, 1918?

A. Yes. It gives the total of buckwheat used 39,711; we put it under the head of "Buckwheat."

Q. Well, now, how about dust 60,700 in June, 1918, where is that accounted for, 60,700 pounds?

A. That is not indicated here.

Q. What is that?

A. That is not indicated here.

Q. And the same is true of July, August, September, October and November is it not?

A. Yes.

Q. And that is different than it was in the other months of 1918 and 1919, is that true?

A. That is true.

Mr. Tobin: We would like to resume with this witness after lunch, if we may.

The Master: I thought Mr. Neumann had something on his mind he wanted to get off.

Mr. Neumann: One minute. Have you Exhibits 58 and 59?

834 The Master: Well, we will take it up after lunch.

Recess.

Afternoon Session.

MARTIN MORRISON, resumed.

Cross-examination continued:

Mr. Neumann: Have you here your manufacturer's book that has been introduced in evidence? I have forgotten what the number of it is. It is a gray book. You introduced it in evidence yourself.

Mr. Ransom: You mean the mains record?

Mr. Neumann: The mains record—is that it? Let me have that.

Mr. Ransom: This witness has not been interrogated regarding anything on the mains record.

By Mr. Neumann:

Q. Mr. Morrison, you have described the method whereby the oil is pumped into the holder from the barges?

A. Yes.

Q. You said it was through a pipe line?

A. Yes.

Q. The barges come right alongside of the dock?

A. They do.

Q. And then you couple on a flexible hose to your pipe?

A. That is right.

835 Q. What is the size of that pipe, I mean the diameter?

A. Six inches.

Q. A six-inch pipe?

A. Right.

Q. Now, you supply Douglaston with gas, do you not, your company?

Q. Yes.

Q. Do you recall when the extension to Douglaston was built when it was commenced and when it was completed?

Mr. Ransom: Objected to as not cross-examination of this witness and not in his department.

Mr. Neumann: He is superintendent of the works.

Mr. Ransom: Mr. Spear, who is the Vice-President and General Manager of the company, and who has testified regarding the Douglaston extension, will be on the stand in a few moments.

The Master: What is the purpose?

Mr. Neumann: Why, the purpose of it is, I want to get on the record the date when the Douglaston extension was started and when it was completed.

Mr. Ransom: That assumes that it is completed.

The Master: I will sustain the objection that it is not proper cross-examination.

Mr. Neumann: I have not finished yet, if the Court please. For this reason: There is a particular question affecting this Douglaston extension——

The Master: What is *is?*

836 Mr. Neumann: And that is with reference to the time when they commenced to build it with reference to the date of the order.

The Master: What has that to do with this case?

Mr. Neumann: It has this to do with this case, that they cannot delay the extension for five years and then charge the consumers with the price that now exists, or existed at that time, of all these things. That is the point I am trying to drive at.

The Master: The objection is sustained as not cross-examination. It is new matter that you can prove in some other way.

Mr. Neumann: Exception.

Q. I now show you Complainant's Exhibit- 58 and 59. Have you ever seen them before?

A. No.

Q. Did you have anything to do with the preparation of them?

A. No.

Mr. Neumann: Now, if the Court please, my position is this, as I have stated before: Mr. Frank, who has prepared a lot of data on this, has left us. I have a new man there, and I am not able to proceed with this witness at the present time. In view of the Master's criticism that he would assume that every other item was correct by reason of the fact that we pointed out certain errors, I think it is only fair to us that we should have a further opportunity to check up and go over the work that Mr. Frank left undone. I would like to have about a week or ten days for some one to go over these records for me, at which time I would conclude

837 whether there would be any further questions of Mr. Morrison on my part. I think I have shown that I have tried to be diligent.

The Master: Well, have you any objection to suspending this cross-examination?

Mr. Ransom: I do not see any reason for suspending it. They have had access to these records now for over a year. They did their first work on the records of this company in preparation for this case late in February or early in March, 1919. That is considerably over a year ago. All of these records were placed at their disposal then, and they examined such of them as they wished at that time. Mr. Frank, it is true, as I understand it, has resigned within a few days, but I judge from the development of the morning that he has done a very large quantity of work upon these manufacturing records. I think that the matter might be left at least that if any very substantial and sufficient reason appeared to your Honor later that they might have the right to recall Mr. Morrison but I am about to close the complainant's case, and I do not want that closing delayed by any such application as Mr. Neumann has now made.

The Master: Have you anything to ask, Mr. Tobin?
Mr. Tobin: I have, and I also urge the same thing.
The Master: Go ahead and ask anything that you are prepared on now.
Mr. Neumann: Will your Honor pass on my application later, then?
The Master: Yes.
838 Mr. Tobin: If the Master please, I have had no opportunity to make a real analysis of these daily record sheets.

By Mr. Tobin:

Q. Mr. Morrison, you stated that the coal is trucked or brought from the barges to the storage bins or piles on the complainant's premises?
A. Yes, by auto trucks and horse-drawn trucks.
Q. Is that cared for by a particular contract?
A. It is.
Q. Is the contract made for the period of a year, for a month's period, or just how is that arrangement made?
A. I don't know.
Q. In whose charge would that be?
A. Mr. Spear.
Q. Mr. Spear would have entire charge of that contract?
A. He would.
Q. Both as to the arrangements made and as to the price to be paid?
A. He would.
Q. What is the title of the person or employee who checks the coal used at the works?
A. The coal used in the generator?
Q. Yes.
A. I do.
Q. Yourself personally?
A. Myself personally.
Q. Will you indicate just how you check the coal at the works, that is, as to the time of day?

Mr. Ransom: I object to that on the ground that it has been fully covered.
Mr. Tobin: It is not covered at all.
The Master: Objection overruled.
Mr. Ransom: Exception.

839 A. In the morning when we are making up our work sheet for the day previous we add up the number of barrows or buggies that appear on the gas-maker's sheet, and thereby we get our weight used the day previous.
Q. I have in mind particularly the coal as it comes into the plant from these wagons and automobile trucks. As you said before, they are brought over from the barge to the works by trucks. Who checks it as it is received there?

A. There is no check on it as it is received.
Q. No check on it as it is received at the plant?
A. No.
Q. So that there is no check on the coal used until it goes into the manufacture of gas, until it actually goes into the manufacture of gas?
A. Other than the monthly periodical measurement of the coal-pockets.
Q. Who makes that?
A. I do.
Q. Yourself personally?
A. Yes.
Q. And that is noted where?
A. I make a memorandum. Those memorandums are not kept.
Q. Are they here, are they put down on any report?
A. Yes.
Q. Are they on these?
A. The measurements will not appear in there, no.
Q. They will not?
A. No.
Q. How many buggies—you stated about 20 to 25 buggies of coal used each day in the manufacture of gas?
A. Yes.
840 Q. Did I also understand you to have said that you personally watch the filling of those buggies?
A. At times, yes.
Q. Is that part of your task, or your job at this plant, to watch these buggies as they are filled?
A. It is part of my work, yes.
Q. How much time would it take to fill a buggy?
A. One man about 15 minutes.
Q. And you would be right there present when they were being filled?
A. Not the entire time, I might not, but I see the buggies as they go on the elevator and on to the generator floor.
Q. All the buggies?
A. No, not all.
Q. Well, how many of them?
A. Well, I might observe a dozen a day.
Q. So you do not really know whether they contain 1,300 pounds of coal, or 1,200 pounds of coal or 1,000 pounds of coal?
A. I would know that by the amount of coal that is on the buggy from previous weights that I have taken.
Q. It would simply be mere guesswork, would it not?
A. It would—a pretty good guess, though.

Mr. Tobin: I ask that the last part of the answer be stricken out.
The Master: Motion denied.
Mr. Tobin: Exception.

Q. Does the company keep a record of tests of the gas each day?
A. Where?

Q. At the works?
A. Yes.
841 Q. Where is that record made a part of the records of the office?
A. It is on this sheet, Works Candlepower.
Q. On the sheets which are known as Daily Records of Manufacture?
A. It is on here; also on a separate candlepower sheet that we maintain at the works.
Q. Referring particularly to the Daily Record of Manufacture for the month of March, 1919—Is that your signature, Mr. Morrison?
A. Yes.
Q. Do you identify this as a daily record sheet for the month of March, 1919?
A. Yes.

Mr. Tobin: I offer that in evidence.
The Master: You can offer all these sheets in evidence. I don't think the gas company will object.

Sheet received in evidence, marked Defendant's Exhibit F.

Q. Does the City make tests of the gas each day?

Mr. Ransom: I object to that as not within the sphere of this witness' duties or experience.
The Master: I will allow that question.
Mr. Ransom: Exception.

A. Yes.
Q. Referring to Defendants' Exhibit F, in what is known as the Remarks column—will you tell us just what these headings are?
A. Yes, City Test and Time of Test.
Q. How do these reports of the City tests come to you?

Mr. Ransom: I object to that as immaterial and incompetent and not the proper method of proving City tests.
842 The Master: I will allow it.
Mr. Ransom: Exception.

A. By telephone from the office. The office receives a card from the City inspector.
Q. The office receives a card?
A. Yes.
Q. Who is that card handed to?
A. Mr. Spear's secretary, Miss Mold.
Q. Who places it upon this record?
A. The works clerk, or I do if we haven't got a clerk.
Q. Can you tell why it is that for several of the days—take on the 2d of March, on the 9th, on the 16th, on the 23d and 30th there is no record?

Mr. Ransom: I object to that as immaterial.
The Master: Objection overruled.

A. They are Sundays.

Q. Will you kindly tell us from this record as to what the tes show on March 3rd.

Mr. Ransom: I object to that as incompetent and not the metho of proving any city tests, and not within the scope of this witnes cross examination.

The Master: I will overrule that objection.

Mr. Ransom: If the paper has any force at all, it is in evidenc as a defendants' exhibit and not as a complainant's exhibit.

The Master: I will overrule that objection.

Mr. Ransom: Exception.

A. 20.89.

Q. And on the 19th of March?

A. 20.66.

The Master: I am not going to permit this as to every day. He has already answered that. Go on to the next question.

843 Mr. Ransom: It is the worst part of hearsay as a method o proving city tests.

Q. On the 24th——

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Tobin: If the Court please——

The Master: You have got the paper in evidence. You are simply having him read what appears on the paper. I thought you had some other question to follow up. If all you want to do is to bring out what the record shows, the exhibit shows it.

Q. I show you daily record of manufacture for the month of April 1919. Is that certified to by you as works superintendent?

A. It is.

Mr. Tobin: I offer that in evidence.

Paper received in evidence and marked Defendants' Exhibit G.

Mr. Tobin: I offer in evidence daily record of manufacture fo the month of July, 1919.

Paper received in evidence and marked Defendants' exhibit H.

Q. Taking this Exhibit H for July, 1919, Mr. Morrison, can you tell us as speedily as you can the exact meaning of "Index to Station Meters," 7 A. M., Nos. 1, 2 and 3."

A. That is the index of the station meter taken at seven o'clock in the morning, whatever day it might be.

Q. No. 2 meter is attached to what particular part of the works, the tank, or just what?

A. It is attached to the gas mains between the outlet between the purifiers and the inlet to the storage holder.

844 Q. And Meter No. 3?

A. The same thing.

By Mr. Ransom:

Q. On No. 1 the same thing?
A. All the same.

Mr. Tobin: There isn't any No. 1 here.
Mr. Ransom: Perhaps that was covered while you were out of the om. No. 1 is temporarily out of use.

By Mr. Tobin:

Q. "Gas Registered, Uncorrected," what does that indicate?
A. That indicates the gas registered by the meters uncorrected, as e index shows.
Q. As the index shows?
A. Yes.
Q. And "Gas on Hand at 7 A. M.," those are at the different lders?
A. Different holders.
Q. And the last column in that particular space gives the total nount of gas on hand?
A. It does.
Q. And the next, "Gas Made," that indicates the amount of gas ade each day?
A. That is right.
Q. And "Gas Sent Out"?
A. That is right.
Q. Will you be good enough to explain this change at the head the column which read, "Dust, Pounds Used"—what change has en made there?
A. That is the amount of tar that we burn under the boilers each y, the percentage of gas oil, rather, that is formed into tar.
Q. Do these records show all of the gas oil received by the company?
A. Yes.
Q. And they also show all the coal received by the company?
A. Yes.
Q. And all of the tar used by the company?
A. Yes.
Q. When I referred to coal I had in mind the different kinds of l that go into the manufacture of gas. Your answer covers thracite as well as bituminous coal?
A. Yes, sir.

Mr. Tobin: Now, if the Master please, I only had a chance to look se up yesterday——
The Master: Is that all you have?
Mr. Tobin: That is all I have now.
The Master: Have you anything else, Mr. Neumann?
Mr. Neumann: Why, if Mr. Cummings wants to go on. I haven't thing else along the lines that I indicated. I have something on se exhibits, if the Master permits me.

The Master: The witness is here for cross examination. Go ahead with anything you have.

By Mr. Neumann:

Q. Mr. Morrison, I call your attention to Defendants' Exhibit E under "General Coal Bought." There is a sub-heading there "Sold" 24,680 pounds, 11,017 gross tons, net tons, 12,340—is that right?

A. That is right.

Q. When was that coal sold?

A. On the dates indicated here in the sold column.

846 Q. To whom?

A. To employees of the company.

Q. And is that true of every item of coal sold on these exhibits that it was sold to employees of the company?

A. It is.

Q. And is the price indicated anywhere?

A. No.

Q. Now, calling your attention to Defendants' Exhibit E under "Soft Coal Bought," the fourth subheading, the word "Sold" is stricken out and the words "Adjustment" is written in there—is that correct?

A. That is correct.

Q. And then the figures in pounds, 17,920 under gross tons plus 8, and under net tons plus 8,960. What is that, what adjustment is that?

A. I don't recall.

Q. Now, going over further on the sheet under "Oil Bought" there is a column of figures there that have been crossed out with a lead pencil?

A. That is right.

Q. The total was 117,747?

A. That is right.

Q. And some of the figures there were erased and changed, is that true?

A. That is true.

Q. Then there is another column with the figures totalling 117,555?

A. That is right.

Q. Can you explain that?

I call your attention to the third item to account for in the first the amount is 300,483, and in the second 300,291.

A. I don't recall what that correction is for. It must be the bill of lading.

847 Q. Now, just above that under "Oil Bought" the first item is December 5, 1919, gallons, 128,419?

A. Right.

Q. And the next item, December 22d, 1919, 106,794?

A. Right.

Q. There is a line crossed through that, and underneath that written the figures 106,602?

A. Up here you will find billed 106,602.

Q. So that was corrected to conform to your bill?
A. Right.
Q. What was the original amount, what you received?
A. What we received.
Q. So you were billed for less than you received?
A. A little bit.
Q. And you didn't pay for what you received, but what you were billed for?
A. That is right.
Q. Now, directing your attention to November, 1919, Defendants' Exhibit D, under "Generator Coal Bought" you have the subdivision "Sold," the fourth item. Those amounts were sold to the persons whose names appear under Generator Fuel?
A. Yes.
Q. And they are all employees of your company?
A. Every one of them.

By Mr. Tobin:

Q. The oil used in the manufacture is accounted for by meters, is it?

A. By meters and tank measurements.

548 Q. How do you make certain of the measurements by meters as far as a slow meter or fast meter is concerned? How often do you have those meters sent to be inspected?
A. When they show a discrepancy.
Q. How do you discover that discrepancy?
A. By reading them every day, every morning at 7 o'clock.
Q. When you speak of a discrepancy——
A. Between the tank measurement and the meter reading.
Q. You then send the meter for inspection?
A. Yes.
Q. If you find it seems to be running differently from your tank measurement?
A. Yes.
Q. Have you anything to do with the payrolls, the works payroll?
A. Yes.
Q. What part do you have to do with the works payroll?
A. I make it up.
Q. You make it up each week?
A. Each week.
Q. That is, you certify to the works payroll?
A. No, I make it up and certify to it as well.
Q. Then you turn that payroll over to whom?
A. To Mr. Raynor.
Q. Is that the only payroll that you make up, the works payroll?
A. That is all.

By the Master:

Q. Do you carry anybody on that payroll that is not actually employed?

A. Absolutely not.

849 Q. Do you carry any amount in there that is not actually paid?

A. No, sir.

Q. Do you carry any man that you don't actually need?

A. We can't get all we need.

By Mr. Tobin:

Q. Does your position as superintendent extend beyond the actual manufacture of gas?

A. No.

Q. The work in the office is in charge of some one else?

A. Yes, sir.

Q. Your work is entirely that of the works?

A. Entirely.

Mr. Tobin: We would like, if the Master please, an opportunity to——

The Master: Have you asked everything you are prepared to ask?

Mr. Tobin: At this moment, yes.

Q. Who makes up the shop payroll?

A. I don't know anything about the shop.

Q. You don't know who makes that payroll?

A. No, I do not.

The Master: Now, are you all through?

Mr. Tobin: As far as I can at this time determine.

The Master: Have you anything else to ask now?

Mr. Tobin: No, sir.

The Master: Have you, Mr. Neumann?

Mr. Neumann: Not at the present time.

The Master: The cross examination is ended. I shall permit you, however, to recall Mr. Morrison for further cross examination

850 before I permit counsel to rest his case. I want to protect the complainant against anything happening, that is all.

Mr. Neumann: All we want is a reasonable opportunity to take this up in view of Mr. Frank's situation.

The Master: I am protecting the party that called the witness and I am going to give you an opportunity to recall him if you find you have any more questions to ask him. For the record his cross examination is ended now.

Redirect examination.

By Mr. Ransom:

Mr. Ransom: I offer in evidence the daily record of manufacture for the month of May, 1919.

The Master: Was any question asked with reference to it?

Mr. Neumann: Not a question.

Mr. Ransom: Except as I had him identify them and certify to his signature.

The Master: Who did?
Mr. Ransom: Mr. Morrison. He identified these.
Mr. Neumann: Yes, and you compelled us to introduce the others.
The Master: I will take it. Are you going to offer the rest of these that were not offered?
Mr. Ransom: Yes.

Paper received in evidence and marked Complainant's Exhibit No. 82.

Mr. Ransom: I offer in evidence daily record of manufacture for the month of August, 1919.
851 Mr. Neumann: I object to it as incompetent, irrelevant and immaterial and upon the further ground that so far as the examination of this witness is concerned, based on the others offered in evidence, they are shown to be incorrect.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit No. 83.

Mr. Ransom: I offer in evidence daily record of manufacture for the month of September, 1919.
Mr. Neumann: I make the same objection as last urged by me.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit No. 84.

Mr. Ransom: I offer in evidence daily record of manufacture for the month of October, 1919.
Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit No. 85.

Mr. Ransom: I offer in evidence daily record of manufacture for the month of January, 1920.
Mr. Neumann: I make the same objection.
The Master: That has not been identified by the witness, has it?
Mr. Ransom: Yes, it was produced and identified by him.
852 The Master: When? You had better make sure, because I don't recall that at all.

Q. Mr. Morrison, I show you these daily records of manufacture for April, 1920; March, 1920; February, 1920, and January, 1920.

Are these the daily records of manufacture as kept by you during those months?

A. They are.

Mr. Ransom: I offer them in evidence.

The Master: They are offered as one exhibit.

Mr. Neumann: I object to them upon the same grounds as before stated, and upon the additional ground that no finding can be based on part of a year. Upon the additional ground that at least one of them contains no certification by Mr. Morrison.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Four sheets received in evidence and marked Complainant's Exhibit No. 86.

Q. Mr. Morrison, does the gas oil vary in volume according to the temperature?

A. It does.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: On the further ground that this witness has not qualified in reference to this particular subject.

The Master: Same ruling.

Q. After you have measured the gas oil received and in your tank, after you have measured it according to the tank scale and
853 according to the plumb-bob, do you make any readjustments based upon temperature or the variations in the temperature?

A. No.

Mr. Neumann: One moment. I object to it on the ground it is incompetent, irrelevant and immaterial; it must be purely a guess, if anything.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: I understood him to say he does not make any adjustment.

The Witness: I don't.

Q. The oil as measured on the bill of lading weights, do you know whether that is based upon the adjustments according to temperature?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. The question itself indicates that the witness may not have any knowledge of it.

The Master: Overruled.

Mr. Neumann: Exception.

A. It is.

Mr. Ransom: That is all.
The Master: Anything else, Mr. Neumann?
Mr. Neumann: Yes, in a moment.

Cross-examination.

By Mr. Neumann:

Q. What do you mean when you say you know it is based on an adjusted measurement?
A. I pass the bills for the oil and see the figures that it is adjusted to.
854 Q. Who adjusts those figures?
A. The Standard Oil Company.
Q. Have you anything to do with it?
A. No.
Q. Do you know what basis it is adjusted on?
A. No.
Q. All you know is that it is adjusted?
A. Yes.
Q. You have no knowledge how it is arrived at, or anything else?
A. No.
Q. Then these figures on the reports, or any of the adjustment figures that you speak of, are not based on your knowledge?

Mr. Ransom: I object to the question. It appears on the face of the Produce Exchange certificate that the Produce Exchange inspector makes the——
Mr. Neumann: Where are the Produce Exchange certificates? They are not here in evidence.
Mr. Ransom: Yes, they are in evidence.
Mr. Neumann: They are not.
Mr. Ransom: You have not followed the record then.
Mr. Neumann: I have followed it as closely as you have.
The Master: Overruled.

A. What is the question, please?

Q. (Read by the stenographer.)

A. Not the actual figures, figuring the quantities myself.
Q. You did not do that?
A. No.
Q. You just took the figure that was given to you?
A. Yes.
855 Q. By whom?
A. By the Standard Oil Company and Marton & Co., inspectors for the Standard Oil.
Q. You mentioned something about the change in temperature having something to do with the oil.
A. Yes.
Q. Just what did you mean by that?

A. I mean if the oil in our tank is of a higher temperature than we are billed for, our tanks may show a little more. If it is less than we are billed for, it will show less.

Q. Does that have anything to do with atmospheric conditions at the time of delivery?

A. It does.

Q. It would vary in the summer as against the winter?

A. Yes.

Q. Which way would it vary in the summer?

A. It would show a tendency to be a plus correction.

Q. A plus?

The Master: A tendency to be.

The Witness: A tendency to be.

Q. And in the winter?

A. A minus.

Q. What would you call June, the month of June, a summer month or a winter month?

A. Summer month.

Q. What would you call November?

A. A winter month.

Q. And December?

A. A winter month.

Q. And yet on your work sheets reports those three months contain oil adjustments all plus. How do you explain that?

856 A. Do they show a plus?

Q. That is what the testimony indicates.

A. I don't know.

Q. You have made an adjustment at the end of the month by adding to each month?

A. Yes.

Q. In some instances a thousand and in other instances two thousand gallons?

A. Yes, for a discrepancy that ap*ep*ars between the oil received and the oil billed for.

Q. Is that what your original explanation was?

A. Yes.

Q. And that has nothing to do with this adjustment at all that you are talking about now?

A. Yes.

Q. What has it to do with it?

A. The temperature, it changes the volume.

Q. You do not get my point, Mr. Morrison. If I understood your testimony correctly, the work sheets, the daily reports of manufacture, indicated that there were adjustments made at certain times, at the end of the month.

A. That is right.

Q. And that ran through both winter and summer months?

A. Yes.

Q. And there was always an amount added to the amount of oil used; is that right?

A. That is right.
Q. Whether it was winter or summer?
A. Yes.
Q. What do you say those adjustments were based on?
A. The difference between the tank measurements and the bill of lading.
857 Q. Why should there be a difference between the tank measurement and the bill of lading?
A. A difference due to temperature. Some times——
Q. What temperature?
A. The temperature of the gas oil as billed to us and when we receive it.
Q. How long after it is billed to you do you receive it or how soon after it is billed to you do you receive it?
A. I do not know.
Q. And you have not any knowledge of that at all?
A. No.
Q. What is the usual time?
A. I do not know.
Q. It does not run from winter to summer, does it?
A. No.
Q. You do not mean, or you do not want this Court to understand, that these adjustments are based on the difference in temperature by reason of the fact that they are billed to you at different times, and that, for instance, you receive a delivery in June and that it is not billed to you until November?
A. No.

Mr. Ransom: Objected to as absurd.
The Master: Overruled.

The Witness: No, I would not want the Court to understand that.
Q. Ordinarily you receive your bill shortly after you receive your cargo, do you not?

Mr. Ransom: Objected to on the ground that it appears in the exhibits in evidence that the Produce Exchange measurements
858 are readjusted as to temperature, according to the oil as it was at the time it was tested and certified by the Produce Exchange inspector.
The Master: Overruled.
Mr. Neumann: There is no such thing in the record.

A. We receive the bill anywhere from two to three weeks after the oil has been received.
Q. Take, for instance, a shipment in June, you get your bill, even if it were the latter part of June—you would get it the third week in July, would you not?
A. Yes.
Q. Do you think there would be any change due to temperature between the 30th of June and the 31st of July?
A. It would not enter into it at all.
Q. Of course not.

A. Not that date. We are billed according to the temperature of the oil on the date it was shipped.

Q. And you want this court to infer from what you have said that the difference in temperature is due to the fact that you get your delivery on June 30th and the bill on July 31st?

A. No.

Mr. Ransom: He has not said anything of the sort.

The Witness: Nothing of the sort.

Mr. Ransom: You ought to understand that.

Mr. Neumann: Coming from you, I think it is a compliment.

Mr. Ransom: It is, I will admit it, very complimentary.

Q. Is that as full an explanation as you can make of that?

859 A. There may be a discrepancy in the price, as I have explained before.

Q. This is another discrepancy you are talking about. Just tell us how the discrepancy in the prices would affect it to such an extent—to the extent at least of 2,000 gallons a month?

A. Suppose the barge pulls in on high tide and he hooks up to our oil line and starts to pump, and he has 130,000 in, and something goes wrong with his pump, he has to stop his pump, and he wants to get out on that tide, and if he is not quite through he will not take the time to purge his line as he should; sometimes he takes oil back with him. Then the question arises as to the bill of lading and the amount received.

Q. Then you would not be getting the full cargo of oil?

A. No, we would not.

Q. How would you know that?

A. By measurement.

Q. How would that be indicated on the record, on the daily works record?

A. It is not indicated.

Q. There is not anything, then, to indicate it?

A. Not there.

Mr. Neuman: That is all.

Mr. Ransom: That is all.

By the Master:

Q. Mr. Morrison, I notice by these work sheets for 1920 that your average gallons of oil used per thousand cubic feet was 4.54 for the month of February, for instance; is that right (indicating paper)?

A. That is right, yes, sir.

Q. And you would run as high as 5.25, I see.

A. That is right.

860 Q. How do you account for such a high quantity of oil per thousand cubic feet?

A. During the extremely cold weather we had to use the oil to try to get the candle power.

The Master: Let me see your 1919 sheets, will you?

Mr. Neumann: Mr. Morrison, in the summer time you would use less, would you not?

The Master: Wait a minute, I am not through. (Master takes papers.)

Q. And in September, 1919, your average was 4.91, and you went as high as 6.53—no, I beg your pardon, 4.33 and you went as high as 5.80 in September?

A. Yes.

Q. Why?

A. Here is our city candle power over here (indicating).

Q. I do not care anything about that.

A. We have to run our oil, if our candlepower is reported low by the city; we have to get it up, and in order to get it up we have to use the oil.

Q. Why does it get so low?

A. Sometimes the grade of fuel enters into it. We strike some coal that we cannot produce the candle power with as readily as we can with others. The condition of the machine may enter into it; a dirty machine cannot produce as good a candle power as a clean machine.

Q. When you find your machine is dirty do you not clean it up?

A. Switch over to a small machine and clean the big one.

Q. What?

A. Yes.

861 Q. I see in February, 1919, your average was 4.49?

A. Yes.

Q. In March it was 4.29?

A. Yes.

Q. In April it was 4.35?

A. Yes.

Q. Doesn't that indicate a dirty machine?

A. No.

Q. It was pretty high, was it not?

A. No, not for that time of the year.

Q. As late as April?

A. Yes.

Q. Well, in May you only got down to 4.20?

A. Yes.

Q. It is pretty high, isn't it?

A. No, not for our works.

Mr. Ransom: 4.20 is pretty low.

The Master: Well, Mr. Woods testified that 4.20 was what it ought to do.

Mr. Ransom: On the average.

Mr. Vilas: 4.2.

Mr. Neumann: No, he said in good operating condition it ought to do 4.2 for a plant of that size.

Mr. Ransom: 4.2 on the average.

The Master: Anything else, Mr. Neumann?

By Mr. Neumann:

Q. Wouldn't that indicate, Mr. Morrison, that the machines needed repairing of some kind?

Mr. Ransom: Wouldn't what indicate that?

Mr. Neumann: What we have been questioning about.

The Master: You are simply going over what I have already asked him.

A. Not so much repairing as cleaning.

862 Q. You cannot get the same efficiency out of an old machine that you can out of a new one, can you?

A. Yes.

By the Master:

Q. You ought to; isn't that so, Mr. Morrison?

A. Yes.

Q. You ought to, if you keep it clean?

A. Yes.

By Mr. Neumann:

Q. Would you say that was true, irrespective of the age of the machine?

A. Yes.

Q. Take a machine 60 years old, would it do as good work as a machine a year old?

A. With the other apparatus considered.

Q. What do you mean by that?

A. When we are building a machine today we do not build it the same as we did sixty years ago.

Q. Take as an ordinary proposition, irrespective of any improvement in the arts, a machine sixty years old and a machine one year old, which would be of the greater efficiency?

Mr. Ransom: Objected to on the ground that Mr. Neumann is confusing the situation and the fact. The machine is not sixty years old in the sense of all of the parts of it, the wearing parts being sixty years old. A machine may have been originally installed sixty years before.

The Master: That is what Mr. Neumann means. Take a machine originally installed sixty years ago, producing gas and being

863 run today, is there any difference in the efficiency of that than there would be in a machine a year or two old?

Mr. Neumann: That is irrespective of the improvements in the arts.

A. Considering the blowing apparatus and steam, yes.

Q. It would be just as good, is that your idea?

A. Yes, if all the conditions were the same, the blowing and the same amount of steam, the method of introducing the steam into the machine, yes.

Q. I am talking irrespective of any improvements in the art of manufacture at all. Do you get the point I mean?

A. You mean if the machine is hooked up today the same as it was sixty years ago would it give the same results?

Q. Certainly.

A. Yes.

Q. Yes, a machine one year old as one sixty years old?

A. Yes.

Q. There would not be any difference at all?

A. There had not ought to be.

Mr. Neumann: That is all.

The Master: That is all, Mr. Morrison.

Cross examination closed.

Mr. Neumann: With the reservation that——

The Master: Cross examination is closed.

Mr. Neumann: Yes, but with the understanding——

The Master: There is not any understanding. I have granted your application.

Mr. Neumann: Yes, and that is what I mean.

864 The Master: To recall him if you find there is something else.

Mr. Neumann: Yes, but I did not want that statement to appear afterwards, which would make it appear that there had been a change in the Master's ruling.

MAYNARD H. SPEAR, recalled by the complainant.

Direct examination.

By Mr. Ransom:

Mr. Ransom: I offer in evidence a certified copy of an indenture made April 10, 1901, by and between the Long Island Illuminating Company, party of the first part, and the Flushing Gas Company, party of the second part, which was Exhibit 30 for Identification, certified by the Acting Secretary of the Public Service Commission for the First District, this being that lease——

Mr. Neumann: Is that one of those from Exhibit- 1 to 46, offered for identification?

Mr. Vilas: It was the last one in the first volume which we held back as not identified.

Mr. Neumann: There was some other exhibit that was dependent upon that.

Mr. Ransom: There is a consent of stockholders that that does not cover.

Mr. Neumann: If the Court pleases, I would like to read this over before making objection. (Examines paper.) If the Court

please, this is objected to on the ground it is incompetent,
865 irrelevant and immaterial, not properly proven, and on the further ground, as I recall it—I do not remember the number of the exhibit——

Mr. Ransom: Exhibit 30 for Identification.

Mr. Neumann (continuing): There was a preceding exhibit to this one, which was dependent upon this one being proven, and the one this one was dependent upon has not as yet been proven.

Mr. Ransom: The subsequent one might be deemed to depend on this one.

Mr. Neumann: Well, whichever way you want to put it.

The Master: What is this certificate of the Public Service Commission; what does it certify to?

Mr. Neumann: It certifies that this is a copy on file with us, that is all.

The Master: Does that sufficiently prove it?

Mr. Ransom: Under the provisions of law the Public Service Commission require leases of public utility property to be evidenced to the defendant Commission in a certain way.

Mr. Neumann: That is a new one on me, that you can prove a certified copy of an instrument by proving it is on file in our office.

Mr. Ransom: I think that is the way the law contemplates. I think that is one of the purposes of that provision of the Public Service Law.

Mr. Neumann: I am afraid you have forgotten the provision of the Code.

The Master: I do not think I can do that. You have certified to the Public Service Commission that what you have given them
866 is a copy of a lease, and then you want them to certify that this is a copy of what you have given them; and then you want me to assume from that that this is a correct copy of what you have. I do not think I can do that. I will sustain the objection.

Mr. Ransom: I have the original.

Q. Mr. Spear, have you produced from your files the original of this lease just referred to?

A. Yes, I have.

Q. And is this such original (handing witness)?

A. It is.

Mr. Ransom: I offer it in evidence. May I have this marked for identification, this copy; and allow me an exception to your Honor's ruling.

The Master: Why do you want that marked for identification if you have the original here?

Mr. Ransom: Because I personally am of the opinion that that is a competent method of proof, and——

The Master: I will not mark it for identification; we have the original of the document here. I do not see any percentage in marking that for identification.

Mr. Ransom: You will allow me an exception to your Honor's ruling with regard to this method of proof.

The Master: Yes. I do not get the point of it at all, when you have the original paper.

Mr. Ransom: I offer in evidence the original document.

Mr. Neumann: Yes, we want to formulate objections.

The Master: Now let me hear any objections to this original document.

867 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not properly proven, taken out of the clear skies and introduced here without any foundation laid for it at all; no signatures proven or anything else.

The Master: What do you mean, it is not properly proven now?

Mr. Tobin: The signatures attached to that have not been proven in any way.

The Master: Why, Mr. Tobin, I am surprised at you.

Mr. Neumann: Who knows what the Long Island Illuminating Company was or that that is their instrument? There is nothing to show that.

The Master: What are you talking about; here is a notarial acknowledgment.

Mr. Tobin: We are talking about this particular company, the Long Island Illuminating Company.

The Master: But here is an acknowledgment under the seal of a notary, with his signature. Do you mean to tell me that that does not prove this paper?

Mr. Neumann: Without anybody coming here to prove that the signature of the Illuminating Company is correct?

The Master: I have a notary's certificate that it is.

Mr. Neumann: If your Honor thinks that is competent evidence I will simply take my exception to it.

The Master: I would like to know on what theory it is not.

868 Since when is a notary's certificate not proof of the fact? Overruled.

Mr. Neumann: Exception.

Mr. Tobin: There is no foundation as to where the Long Island Illuminating Company enters into this particular case.

The Master: Mark it Exhibit No. 30 to take the place of the exhibit for identification.

Marked Complainant's Exhibit 30 in evidence.

Q. Mr. Spear, have you produced here from the files of your company the original coal vouchers of the New York & Queens Gas Company for the year 1920 to date?

A. I have.

Q. Are these such vouchers and are they all of them (indicating to witness)?

A. And there are some in this——

Q. Coal?

A. Yes, there are some for the coal bought in April.

Q. Let me have any additional vouchers which relate to coal.

A. (Witness hands counsel papers.)

Mr. Ransom: I offer in evidence 1920 coal vouchers produced by this witness.

The Master: Can we identify them any more closely than that? Is this one voucher?

The Witness: No, that is the voucher of the Lehigh & Wilkes-Barre, and for the handling of it.

The Master: We have got one voucher of the Lehigh & Wilkes-Barre Coal Company, dated January 15, 1920, for $5,251.27, attached to which is the bill of Peace Brothers for handling
869 $710.77. Another one of Peace Brothers for handling of $26. Lehigh & Wilkes-Barre Coal Company, March 11, 1920, for $5,362.74, and Peace Brothers, for handling, $771.69. New York Edison Company, February 3rd, 1920, for $3,864.13, Peace Brothers for handling, two sheets——

Mr. Neumann: Is your Honor reading the prices or the totals of those bills?

The Master: The totals.

Mr. Neumann: I must object to that.

The Master: Just wait a minute. (Continuing) Two sheets, $724.85. Bill of Astoria Light, Heat & Power Company, April 30th, 1920, for $7,310. Another one, use of scow, $72; another one, towing, $30.

Mr. Neumann: I must object to the Master reading into the record from those bills.

The Master: Another one, towing, $77. Another one for New Amsterdam Gas Company, labor loading, $16.50; another one, New Amsterdam, labor, $39.10; Peace Brothers, $399.97. Another one, Peace Brothers, $549.59. That is what you are offering as on exhibit?

Mr. Ransom: I am offering it as on- exhibit.

Mr. Neumann: Prior to formulating an objection, may I ask the witness some questions on these?

The Master: Yes.

By Mr. Neumann:

Q. Mr. Spear, this bill dated April 1st, 1920, from the New Amsterdam Gas Company, what does that mean?

A. That is for handling, loading the coal on trucks at the yard which they delivered to us when we had to get some coal
870 in an emergency from them.

Q. And that was during the week ending March 20, 1920?

A. Yes, if that is the bill; I cannot see from here. What the bill reads.

Q. Yes. And that was due to the fact that you ran out of coal?

A. Ran short of coal, yes.

Q. The next one for the week ending March 13th, 1920, is the same?

A. Yes.

Q. This bill of Peace Brothers, have you a contract with them?

A. No.

Q. You just pay them by each job?
A. Yes.
Q. From your office who supervises this work?
A. Mr. Morrison.
Q. Do you check it?.
A. Yes, certify to it on the back.
Q. Certify to the quality?
A. The quality of the work performed, yes.
Q. He does not certify to the amount?
A. Certifies to the amount of labor put on the bill, yes.
Q. Isn't that signature "M. Morrison" after the word "Quality O. K.?"
A. It is.
Q. Where do you see anything about labor?
A. Well, that is always considered by us in signing there, that it is a check of quality and quantity.
Q. Notwithstanding the fact that the stamp says, "Quality," you considered it covered everything?
871 A. Everything as to quantity and quality, yes.
Q. And that is true of all these certifications?
A. Yes.
Q. Now, these bills for the Astoria Light, Heat & Power Company, they are also for coal sent to you from that company?
A. Yes, because we could not get any coal from the Lehigh & Wilkes-Barre Coal Company or any other dealer.

Mr. Neumann: I move to strike that out as irresponsive.
The Master: Motion denied.
Mr. Neumann: Exception. Now, then I object to this as incompetent, irrelevant and immaterial, not properly proven, and upon the additional ground that a part of a year is no part upon which to base any finding as to whether a statute is confiscatory or not, and upon the further ground that the proof here should be limited as to some date.
The Master: Objection overruled.
Mr. Neumann: One minute, please, may I finish?
The Master: I thought you had finished.
Mr. Neumann: No. If this is permitted to continue and the case continues on, they could at the very last moment put in prices——
The Master (interrupting): Yes.
Mr. Neumann: There must be some limit as to when the prices—when their proof must stop.
The Master: It will when they rest their case, that is when it will stop.
Mr. Tobin: If your Honor please, we also urge a further objection in this way, there is no proof before you as to any contract
872 price or any price whatever as between the New York & Queens Gas Company and the Lehigh & Wilkes-Barre Coal Company; and also the further objection as to these particular batch of bills, that there is nothing here to indicate that the bills have been paid, they are simply marked as bills received, they are uncomplete vouchers.

Mr. Neumann: They are not paid.

Mr. Tobin: And they are not paid, and we deem that they should not be offered in evidence until paid, because they are not proper proof as to what was an actual expenditure until they are paid.

The Master: Objection overruled.

Mr. Tobin: Exception.

The Master: That batch of papers will be considered as *one* exhibit.

Mr. Tobin: We would like a special exception to that part of the vouchers which are not paid yet.

The Master: Call it any kind of exception you like.

Mr. Tobin: All right.

The Master: Special or general.

By Mr. Ransom:

Q. Mr. Spear, the voucher of the Lehigh & Wilkes-Barre Coal Company bears an endorsement, "Paid by Check No. 4436, February 20, 1920." To what does that refer?

A. It shows that that check was drawn on February 20th, and sent to the Lehigh & Wilkes-Barre Coal Company.

Q. The check of the New York & Queens Gas Company?

A. Yes.

873 Q. And the stamp, "Paid," the voucher of the New York Edison Company, "Paid by Check No. 4441," the same as to that?

A. Yes.

Q. And the initials then are W. R.?

A. It shows the check was checked against the invoice by Mr. Raynor.

Mr. Ransom: These will be considered then, marked as one exhibit?

The Master: Yes.

Vouchers marked Complainant's Exhibit No. 86.

Mr. Neumann: There is no stamp on them, is there, or signature of the person who received those checks on those vouchers?

The Witness: No; we do not send the voucher with the checks.

Q. Mr. Spear, have you likewise produced from your files the original vouchers of the Standard Oil Company of New Jersey for gas oil received and paid for in 1920?

A. I have.

Q. And these are such vouchers (indicating)?

A. They are, except that I do not think the check has been drawn yet for the April account, I am not quite sure of that.

Q. You mean the one of April 3, 1920?

A. Yes.

Q. Paid by Check No.——

A. Oh, yes, May 17th, that is right. I know we had it up the other day.

Q. And annexed thereto is the certificate of the Produce Exchange checker?
A. Yes, sir.

The Master: That comes as part of the voucher, does it?
874 The Witness: It comes with every bill, yes.
Mr. Ransom: I offer them in evidence.
Mr. Tobin: We object, if your Honor please.
Mr. Neumann: One moment. Let me see them, please.
Mr. Ransom: Yes (handing papers).
Mr. Neumann: May I ask a question before formulating an objection.
The Master: Yes.

By Mr. Neumann:

Q. Mr. Spear, this stamp on the back of these bills has your name as general manager signed thereto?
A. Yes.
Q. Now, one of the items is "Price O. K.," and then there are some initials that look like "W. J. T."?
A. Yes.
Q. Is that correct?
A. Right.
Q. Who is W. J. T.?
A. W. J. F.—Foy.
Q. William J. Foy?
A. William J. Foy.
Q. Your bookkeeper?
A. General bookkeeper, yes.

Mr. Neumann: Now, what purport to be certifiates of the Produce Exchange, purporting to be signed or signed with a stamp by Charles Martin & Company, are specifically objected to on the ground that they are improperly proven, no foundation been laid for them, not the proper method of proving those facts.
875 The Master: I will ask Mr. Spear a question about them. What is the custom with reference to the delivery of oil?
Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving the custom.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.
Mr. Neumann: He may not know anything about the custom outside of his own company.
The Witness: Charles Martin & Company do all measurement for the oil companies and certify to the oil conditions and quantities shipped in each barge.
The Master: How long has that been the custom?
The Witness: I could not say how long that has been a custom, it is so many years.

The Master: In other words, the custom of the port around here, or is it general throughout the country, if you know?

The Witness: I do not know about the country, but I know about this port here.

Mr. Ransom: Specifically provided in the contract.

The Master: Well, what I want to get at is, these vouchers are accompanied by this certificate for whatever it may be worth.

Mr. Neumann: I object to it as irrelevant, incompetent and immaterial.

The Master: Objection overruled.

Mr. Tobin: Exception.

A. Yes.

876 Mr. Neumann: Then can I further question him?

The Master: After they are in evidence you can, yes.

Mr. Neumann: Not now?

The Master: No.

Mr. Neumann: Then I object to the bills on the ground they are incompetent, irrelevant and immaterial, not properly proven, not shown to be proper vouchers.

The Master: Overruled.

Mr. Tobin: Also the further objection, if your Honor please, that there is nothing before the Master to show the price or the contract price for this particular oil; there is no evidence here whatever.

The Master: Objection overruled.

Mr. Neumann: Upon the further ground that they appear to be self-serving declarations.

The Master: Same ruling.

Mr. Tobin: Exception.

Marked Complainant's Exhibit No. 87.

By Mr. Ransom:

Q. Mr. Spear, included with these bills are also certain credit memoranda of the Standard Oil Company of New Jersey?

A. Yes.

Q. Giving you credit for discrepancies in quantities?

A. Yes.

Q. Have you also produced here the other vouchers of your company for expenditures thus far in the year 1920?

A. Yes, sir.

877 Q. That is vouchers covering other materials and supplies than coal and oil?

A. I have.

Q. And those documents in the files before you are such vouchers?

A. They are.

Mr. Ransom: I offer them in evidence.

Mr. Neumann: Objected to on the ground they are immaterial and irrelevant, not properly proven, no foundation laid for them, hearsay, selfserving declarations.

The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.
Mr. Ransom: May they be considered as marked one exhibit?
The Master: Yes, one exhibit.

Considered as marked Complainant's Exhibit No. 38.

Mr. Tobin: Before you proceed, Judge Ransom, we would like to ask the privilege of the Master of an opportunity of examining these vouchers and then offer any specific objection we may wish. It is hard to examine, within the time given here today, all of these various vouchers that are handed up by you and passed in as an exhibit.
Mr. Neumann: And at the same time try to keep track of Judge Ransom's questioning.
The Master: I will give you an opportunity at the next session to specifically object to any of those that you want to.
Mr. Tobin: Any vouchers of this bundle?
The Master: Yes.
Mr. Tobin: I thank you.

878 Q. Mr. Spear, what is the capacity of your tanks for the storage of oil?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, already fully testified on both direct and cross by the witness Alrich, and by the witness Morrison.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. With the tanks full and the oil line, it would be about 193,000 or 194,000 gallons.
Q. Well, what is the capacity of the two tanks?
A. The working capacity is about 180,000 gallons up to the inlet pipe of the oil.
Q. But you sometimes come above the inlet pipe?
A. Yes, if we get a very large barge.

Mr. Neumann: If the Court pleases, I direct attention to Exhibit 79, which was sworn to by the witness Alrich as being correct; the oil tank capacity there is given as 180,000 gallons.
The Master: Yes.

Q. That is correct up to the inlet pipe?
A. Yes.
Q. Mr. Spear, you testified you were familiar with the rate paid to the various classes of labor of the New York & Queens Gas Company, and I show you Complainant's Exhibit No. 77, that purports to show certain rates of pay and compensation for various classes of employees. Are those rates of pay and compensation correct, according to your knowledge, as of the present time?

Mr. Neumann: Are you through, Judge Ransom?
879 Mr. Ransom: I have asked a question.
Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, already fully covered by the witness Woods.
The Master: Overruled.
Mr. Neumann: Exception.

The Witness: Yes.

Mr. Neumann: And also by this witness' own Exhibit No. 58 or 59, whichever it may be.
The Master: Overruled.
Mr. Tobin: Exception.
Mr. Cummings: Going to let him contradict his own testimony?
Mr. Ransom: Going to show the wages to date.

Q. Are you familiar with the number of the different classes of employees that the company now has in the gas making labor?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving it, just like an agent proving his own authority.
The Master: Overruled.
Mr. Tobin: If your Honor please, you have got before you these monthly sheets which would indicate the particular thing that he is trying to testify to here to a hypothetical question. I think it is clearly out of order, that is, from this witness. He is the Vice-President and General Manager, and I think he should be confined to the actual operation of the company rather than to take and hand him something which is entirely outside of the plant itself.
880 The Master: Overruled.
Mr. Tobin: Exception.

A. Yes, I am.
Q. You have now a superintendent?
A. Yes.
Q. Have you now a clerk?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it, the payrolls should be here. That would be some evidence of what people are in their employ, and what they are paid.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Well, if the Master please, I think it is decidedly unfair to the State to allow the witness to testify in this way when they can bring in the actual operation of the company and show to you what the actual operation is. You can get the actual facts. Now, I think that we ought to have the actual facts instead of this sheet, which is made up just for the purpose of taking care of this particular case as viewed by the attorneys on the other side.
The Master: But you don't seem to understand the question.

Mr. Tobin: Oh, yes, I do.

The Master: Mr. Spear is asked whether, as a matter of fact they do today have a superintendent, and he says yes.

Mr. Tobin: Yes.

The Master: And whether as a matter of fact they do today have a clerk, and the question is unanswered, and the objections are overruled. Do you?

881 Mr. Tobin: I object to the form of the question, if your Honor please.

The Witness: We do.

Q. How many gas makers?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and the pay rolls are the best proof of the fact.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Three.

Q. How many engineers?

A. Three.

The Master: When I take the pay rolls you object because there should be some man to swear to it, and when we have a man to swear to it, you say I should take the pay rolls.

Mr. Tobin: That is not the purpose of this testimony.

The Master: Objection overruled.

Mr. Neumann: The difficulty is, you never have the pay roll here and the man at the time so that you can confront him with it.

Q. How many boiler firemen?

Mr. Neumann: Same objection.

The Master: Same ruling.

A. Six.

Q. How many generator firemen and coal passers?

Mr. Neumann: Same objection.

The Master: Same ruling.

A. Six.

Q. How many laborers, purification and the like?

A. Five.

882 Mr. Neumann: Same objection.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. Do you know how many men you now have engaged on repair labor?

A. (No answer.)

Mr. Neumann: Same objection.
The Master: Same ruling.
Mr. Tobin: Exception.

Q. Is it at least the number shown on Exhibit 5?

Mr. Neumann: Same objection.
The Master: Same ruling.
Mr. Neumann: Exception.
Mr. Tobin: May we ask before any other answers are made as to what particular date he is asking these questions?
The Master: As of this date?
Mr. Tobin: As of today's date?
The Master: Yes, now.

A. At least five.
The Master: Of repair labor?
The Witness: Yes. Part of those were included in the statement of mine that there were five laborers altogether; part of them are on repair work.

Q. Now, Mr. Spear, reference has been made to the Douglaston extension. Are you familiar with the amount of money that has been expended in constructing this Douglaston extension?
A. I am.
Q. That has been done under *year* direction?
A. It has.
Q. And are you likewise familiar with the amount of gas which has been sold to consumers on the Douglaston extension?
883 A. Yes.
Q. And have you also checked up from your records the revenues thus far from the sales of gas to those consumers?
A. I have.
Q. And was this statement prepared by you and is it correct, to your knowledge?
A. It is.

Mr. Ransom: I offer it as a compact form of the witness's testimony in that respect.
Mr. Cummings: Is this some more evidence in tabular form, your Honor?
The Master: Yes.
Mr. Cummings: Pellets, eh?
The Master: Take out that last item there, you have not asked about that.
Mr. Ransom: I will ask him about it.

Q. Have you also computed, at 8 per cent, the interest on the additional investment required by the Douglaston extension, aside from the investment in any additional plant and holders?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and not within the province of this witness to testify to any such fact.

Mr. Tobin: Further objection that there is no testimony here as to what that particular investment is.

The Master: That is what the judge is trying to prove now.

Mr. Neumann: There is no testimony here as to any rate; 8 per cent is a pure assumption.

Mr. Tobin: More than that, there is no testimony as to the particular investment.

884 The Master: That is what he is trying to prove now.

Mr. Tobin: He has got some figures as to income.

The Master: He has got figures as to the cost.

The Witness: The books show that.

Mr. Ransom: I offer that in evidence.

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it, no foundation been laid for it, the matter presumably could be proven by the books if the books are properly kept, and the other data and records of the company.

The Master: Well, these figures appear in the books in evidence, do they, Mr. Spear?

The Witness: They do.

Mr. Neumann: That is what we want to know, what it is based on.

The Master: And is practically a tabulation from the books?

The Witness: Yes.

The Master: Except as to the computation of 8 per cent on the investment.

The Witness: That is right.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: Spread it on the record as part of the testimony.

The statement is as follows:

885 New York & Queens Gas Company.

Investment in Douglaston Extension up to May 1, 1920, and Revenues Therefrom.

Cost of 16" Line	$68,931.15	
High Pressure Mains	64,923.15	
Services	5,833.63	
Meters	3,277.70	
Meter Installation	2,770.08	
		$145,735.71

Cubic Feet of Gas Sold on Douglaston Extension.

January, 1920	267,000	cu. ft.
February, "	413,200	"
March, "	529,500	"
April, "	551,000	"
Total	1,760,700	cu. ft.

Total Revenues from Sales of Gas to Consumers on Douglaston Extension	$1,271.00
Interest at 8% on additional investment required by Douglaston (aside from investment in additional plant and holders)	$11,658.86

Q. Mr. Spear, do you know how many apartment houses there are in the whole territory served by the New York & Queens Gas Company?

Mr. Neumann: Objected to on the ground it is incompetent, immaterial and irrelevant, not the proper way of proving it; and
886 in addition to that, a flat contradiction of some of the testimony given by Mr. Spear on his former direct examination.

The Master: Overruled.

Mr. Neumann: Exception.

The Master: Do you know?

The Witness: Yes.

Q. How many?

A. Six.

Q. Do you know the number of families in the largest of those?

A. I do.

Mr. Neumann: Exception.

Q. What number?

Mr. Neumann: Objected to.

The Master: Overruled.

Mr. Neumann: Exception.

A. 26.

Mr. Neumann: This was relating to your entire area that you serve, is it, or did you confine that to Douglaston?

The Master: Yes, the hole area of the complainant company.

Mr. Neumann: That is what I understood.

Q. Mr. Spear, at what points are mains of the New York & Queens Gas Company exposed to the action of water in crossing marsh or meadow land?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, not within the witness' province to testify to any such fact.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

887 A. On Linden Avenue between Flushing and College Point, and on Lawrence Street, between Flushing and Queens Borough Hill; and a short distance on Hillside Avenue between Flushing and Queens Borough Hill.

Q. On this Linden Avenue main, how large a main is that?

A. 12 inches.

Q. For what distance, approximately, is it thus exposed to the water?

Mr. Neumann: Same objection as last urged.

The Master: Overruled.

Mr. Tobin: Exception.

A. About a mile.

Q. And are there any points on the line where it is also exposed to the action of the temperature of the air?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not within this witness' province so to testify.

The Master: Overruled.

Mr. Tobin: Exception.

A. Yes, where it crosses the bridges.

Q. How many?

A. Three.

Q. And on the Lawrence Street line to Queens Borough Hill, about how long there is the distance where it is exposed to the action of the elements on this marsh or meadow land?

Mr. Neumann: Same objection as last urged.

The Master: Overruled.

A. I would say about three-quarters of a mile.

888 Q. Now, are there any places where the mains are exposed to the action and effect of the temperature of the air in connection with the crossings of streets and mains over railroads?

A. There are.

Mr. Neumann: Same objection as last urged.

The Master: Overruled.

Q. Where?

A. In Flushing at Union Street, Brown Avenue, Parsons Avenue, Percy Street, Wilson Avenue, and Boerum Avenue, and in College Point at 10th Street, and in Whitestone at 11th Avenue and 10th Avenue.

Q. Referring to the Parsons Avenue to Boerum Avenue region in Flushing, are those mains thus exposed in connection with the elimination of grade crossings?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, not within the province of this witness to testify to any such fact.

The Master: Overruled.

Mr. Neumann: Exception.

A. They are.

Q. Where is the City testing station, so-called?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, no foundation shown for it, and he ought to show that it is known to him first.

The Master: Overruled.

Mr. Neumann: Exception.

A. On the first floor of the building located on the southwest corner of Boerum and Madison Avenue, Flushing.

889 Q. Well, how far is that building from the point where the mains are thus exposed in the Boerum Avenue grade crossing elimination?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, the witness not qualified to testify to that fact.

The Master: Overuled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. The service end of the building is about 100 feet from the railroad crossing.

Mr. Neumann: I move to strike the witness' answer out.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. And at the railroad, the railroad there runs in a cut?

A. It does.

Q. The elimination proceedings being those of the Public Service Commission for the First District?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it.

The Master: Objection sustained on the ground that that is not the way to prove it; this witness has no knowledge about it.

Q. Well, how far is it from the exposed main to the city testing station building?

The Master: He said about 100 feet, didn't he?
Mr. Neumann: Yes, already covered.

A. To the service end, yes.
Q. And do you know the approximate width of that depression in which the railroad now runs at that point?

890 Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent.
The Master: Overruled.
Mr. Neumann: Not the proper way of proving it.

A. I would say about 75 feet.

The Master: In other words, that is the extent of the exposed main?
The Witness: Yes.
Mr. Neumann: I move to strike out the witness' answer.
The Master: Motion denied.
Mr. Neumann: Exception.
Mr. Ransom: The defendants may cross examine.

Cross-examination.

By Mr. Tobin:

Q. What is your present position with this company today, Mr. Spear?
A. Vice-President and General Manager.
Q. You came to the company in what year?
A. 1902.
Q. And you stayed until what date?
A. 1905.
Q. What was your position during that period of time, sir.
A. Superintendent.
Q. And the company was then known as what?
A. Newtown and Flushing Gas Company.
Q. The New York & Queens Gas Company, the present corporation, then came into existence when?
A. In 1904. I will correct that by saying that in 1904, in August, 1904, it was the Newtown & Flushing Company, and after that it was the New York & Queens Gas Company.

891 Q. That was the merger, the Newtown & Flushing was merged into the New York & Queens Gas Company.
A. Yes.
Q. That was in 1904?
A. Yes.
Q. Are you familiar with the organization of the New York & Queens Gas Company?
A. No.
Q. At the time of the merger, you were an officer in the Newtown & Flushing Gas Company?
A. No, I was only superintendent.

Q. You were superintendent at that time?
A. Yes.
Q. Well, as superintendent, did your work entail a knowledge of the plant, that is the extent of the plant owned by the Newtown & Flushing Gas Company?
A. Yes; I was superintendent of the works and distribution department, in charge.
Q. That is, you had to do with the tangible property of the company?
A. I do not quite get what you mean by that.
Q. By tangible property I mean property in the works and property outside, like the distribution and so forth?
A. What do you mean, I had to do with it.
Q. It was all under your supervision?
A. Yes.

The Master: Including the mains and services.
The Witness: Yes, mains and so forth.

Q. That is, including the property where they manufactured the gas?
A. Yes.
892 Q. What property did the New York & Queens Gas Company have when it was merged with the Newtown & Flushing Company?

Mr. Ransom: Objected to as not cross-examination of this witness, not part of the cross-examination on any proof of matters testified to by him.
The Master: Overruled.
Mr. Ransom: Exception.

A. What do you mean by property, the plant?
Q. What property did the New York & Queens Gas Company have when it took over the Newtown & Flushing Gas Company, which happened, as I understand, about July, 1904; what tangible property did it have, and this refers to the present company, the New York & Queens Gas Company?
A. I could not tell you offhand just what property they had.
Q. Do you know if they had any property?
A. Why, yes, it was an operating company?
Q. Sir?
A. It was an operating company.
A. The New York & Queens Gas Company was operating?
A. No, the Newtown & Flushing Gas Company.
Q. I understand the Newtown & Flushing Gas Company was an operating company doing business, and you were then superintendent of that company?
A. Right.
Q. The New York & Queens Gas Company was organized about July, 1904?
A. Yes.

Q. You stated—I asked you the question as to what property the New York & Queens Gas Company had at that time?

893 A. Oh, I don't know.

Q. You don't know. Mr. Spear, how long did you stay with the New York & Queens Gas Company following the consolidation or merger?

A. Until January, 1905.

Q. So that you were superintendent at the time that this merger came into existence?

A. Yes.

Q. And did you continue as superintendent with the New York & Queens Gas Company?

A. I did.

Q. And your duties were similar to those that you had with the Newtown & Flushing Gas Company?

A. They were.

Q. That is, they embraced the—you were in charge, or it embraced the tangible property in the streets, and the plant and the distribution system, the plant and works?

A. Yes.

Q. And can you now testify as to what property came into the company or into the merger, or the merged company, when the New York & Queens Gas Company was merged into the Newtown & Flushing Company, or, better still, the Newtown & Flushing Company was merged into the New York & Queens Gas Company?

Mr. Ransom: Objected to as not within the scope of cross-examination.

The Master: Overruled.

Mr. Ransom: Exception. Further, it is very vague and indefinite. What does he want a description of?

The Master: Answer the question.

A. You mean what additional property did the New York & Queens Gas Company——

894 Q. (Interrupting.) What property, if any, they had—what tangible property, distribution system, or what plant property did they have?

A. I don't know that.

The Master: After the merger of the New York & Queens Gas Company and the Newtown & Flushing Company, the New York & Queens Gas Company had an operating plant, didn't it?

The Witness: Yes.

The Master: Where?

The Witness: In Flushing.

The Master: That is the way I understood it.

Mr. Tobin: I asked Mr. Spear as to what property the New York & Queens Gas Company had at the time the Newtown & Flushing Gas Company was merged into it.

The Master: He said he did not know, and now I thought you were trying to bring out what the combined property was after the

merger. If that is not what you want, I will withdraw my question.

Mr. Tobin: He has indicated—he has said that he was the superintendent of the New York & Queens Gas Company after the merger was accomplished.

The Master: Yes.

Mr. Tobin: He was superintendent down to January 1, 1905.

The Master: Yes.

Mr. Tobin: In other words, he had to do with the distribution system.

The Master: Yes.

Mr. Tobin: Of the company as merged, and he had to do with the plant.

895 The Master: Yes.

Mr. Tobin: Now, I am asking him as to what property came into the merged company from the New York & Queens Gas Company.

The Master: Do you mean what property was added to the Newtown and Flushing?

Mr. Tobin: Yes, sir, and came to make up——

The Master: As a result of the merger?

Mr. Tobin: Yes.

The Master: Can you tell us that?

The Witness: No, I do not know that.

The Master: You don't know of any property that was added to the Newtown & Flushing property?

The Witness: No.

Q. Was there any property added?

The Master: He said he did not know of any.

Q. Well, answer it that way; was there any property added to it?

A. Not that I know of.

Q. You would be the person to know that, because you were superintendent of the merged company, weren't you?

Mr. Ransom: I object to that, that does not follow at all.

The Master: Overruled.

Mr. Ransom: Exception.

A. Yes, if it was anything to do with the works or the mains system or the shop.

Q. That is the tangible property of the company, that is what I am after. You know what tangible property is?

A. Yes.

896 Q. So that—I don't know the date, maybe you could tell me the exact date of the merger.

Mr. Neumann: August 1st, 1904.

Q. So that on August 1st, 1904, all of the property that came into the merged company, which is the New York & Queens Gas Company, was the property that was formerly owned and in title held by the Newtown & Flushing Gas Company?

A. So far as I know.

Q. Well, you learned of no property which did come in through the merger of the New York & Queens Gas Company?

A. No.

Q. On January 1, 1905, you left the employ of the company, sir?

A. I did.

Q. And went where?

A. To the Williamsport Gas Company, Williamsport, Pennsylvania.

Q. And how long did you stay with that company?

A. Until July, 1906.

Q. Then you returned to this company?

A. Yes.

Q. The New York & Queens Gas Company?

A. That is right.

Q. In what capacity?

A. Manager.

Q. How long did you remain as manager?

A. Until, I think, 1907.

Q. Was your title General Manager, or just Manager?

A. Just Manager.

Q. Can you tell us in a brief way what change in duties were effected by reason of your becoming Manager as against being
597 Superintendent, as we understood you were with the old company before you left.

A. Well, I took over the new business as well as the works and shop.

Q. When you say new business, what do you mean?

A. Getting new business.

Q. That is the commercial side of the work?

A. Yes.

Q. Or the commercial side of the company?

A. Yes.

Q. You were the person in charge of the reports that were made to the various branches of the Government, as they might be required from time to time?

A. Not at that time, no.

Q. When did you go into charge of that particular branch of the work?

A. In 1913.

Q. 1913?

A. Yes.

Q. Then that was turned over to you, entirely turned over to you and under your personal charge?

A. It was.

Q. Could you tell briefly just what extent you had to do with the making of those reports, that is, the various reports called for by the, I will say, Public Service Commission and the State Tax Department of New York?

A. You mean since 1913?

Q. Since 1913, when you took charge of that?

A. Parts of the report I made up personally, and other parts I went over with the—Mr. Raynor, or whoever did the detail work.

898 Q. Well, take the values that were placed in those reports as to particular items of property, where did you obtain those values?

A. They were taken from the books.

Q. Taken from the books of the company?

A. Yes.

Q. And those figures on the books were obtained from where?

A. I don't know that I quite get your question.

Q. I am asking particularly as to values, you were called upon to put certain values in those reports, that is to illustrate particularly, there accompanies the reports to the State Board of Tax Commissioners a table of the tangible property in the streets, in other words, the mains and services and date and age and so on, there is a lot of detail there, and I want you to tell me, you said you made those reports from 1913 on?

A. Yes.

Q. I want you to tell me where you got the figures that were put in those particular supplementary reports, or supplemental sheets.

Mr. Ransom: I object to the question in so far as it used the term "value." So far as the reports to the Public Service Commission, a statement of value is not required; so far as the reports to the State Tax Commissioners, likewise a statement of value is not what is required by law, or what is made, but it is a definite kind of a computation of a peculiar kind, it is not value, and it is not even regarded by anybody as value.

Mr. Tobin: I have my own opinion about it, Judge Ransom.

Mr. Ransom: I follow the statute, and even the Attorney General should do that.

899 The Master: Objection overruled.

Mr. Cummings: Let the witness answer.

A. The amounts were taken from the books.

Q. I want to have you tell me how they got on the books, from what source you got them on the books?

A. When I took hold of the books there was a certain value there.

Q. I have particular reference to these supplemental reports that would be made from time to time to the State Board of Tax Commission-s as to the detail of the tangible property in the streets, which call for an engineer's estimate, and I am asking you as to whether you took those from the books, or whether you took them from the engineer of the company?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial, not within the scope of cross-examination, it assumes a lot of things about documents which are in no way produced and in no way before the witness and in no way in evidence.

Mr. Tobin: The purpose of my question is this, that Mr. Spear testified at folio 162 that he made up the reports to these various state

agencies and state departments, and I am simply asking him how he obtained the figures that went in those reports.

The Master: Objection overruled.

Mr. Ransom: He has said he took them from the books.

Q. That is not my question; I asked you the figures that were in the books, from what source they were put on the books.

Mr. Ransom: Objected to as already answered.

900 The Master: Overruled.

Mr. Ransom: Exception.

A. There was a certain amount for each account on the books, and each year we added to it the new construction or any additions to the previous figures.

Q. Take those new construction lines, where do you obtain those figures?

A. From the actual material and labor that was put into the jobs.

Q. And those were turned in to you?

A. Yes.

Q. By whom?

A. Well, it all depends upon what work it was.

Q. Take the tangible property in the streets, take the mains and services that are laid in the public streets, who turns in the data that goes into your books as to the figures subsequently used by you in these reports?

A. The contractors turn in the reports of the amount of pipe they use, and bills for the labor. The material was figured at cost price to us.

Q. Who figured the cost?

A. Well, it may have been one of the clerks there, or I may have figured it myself.

Q. Now, when the daily record of manufacture is turned over by you to Mr. Morrison, what do you do as far as the books are concerned?

A. I take those figures and make up what we call our office report, putting the values on that, that is, the cost of the coal, the cost of the oil, and add it to the previous amount, and figure the cost per ton and the amount used and the amount on hand in dollars and cents.

Q. In other words, you did not use these daily reports——

901 A. For quantities, yes.

Q. You say you used the reports as a basis—I say, you did use these daily reports as a basis for quantities, and then you yourself established the prices before they were passed on to the bookkeeper?

A. Yes, from the invoices.

Q. Did you do this yourself?

A. I did.

Q. And those figures were given on what you call a daily report?

A. No, it is a monthly office report.

Q. Monthly office report, and handed to the bookkeeper for entry in the books?

A. Yes.
Q. That was the process?
A. That is right.
Q. Was any memorandum whatever kept of the orders or requirements of coal either monthly or weekly, that is, of the coal you might need for a particular month or for a particular period of time?
A. No, except on the first of each month, when I get the sheets I always look at the quantity of coal that is on hand, and if I find that we can take some coal, if it is a time when coal is coming easy, I order in a cargo.
Q. How do you order that?
A. Sometimes by telephone, to Mr. Francklyn, and sometimes by memorandum asking him to deliver coal within the next week or two weeks or three weeks.
Q. What check would the office have as to incoming coal as per the request that you have made for coal?
A. Well, I am at the plant almost every morning, go there
902 the first thing from the house, and I always know when coal comes in, I see it coming in there when I am down there.
Q. I don't mean that so much; I mean as to the memorandum that you send to Mr. Francklyn, and the subsequent receipt of it by the company; is there a memorandum kept of your request for this coal?
A. I don't think so, because sometimes it is a written memorandum and sometimes it is over the telephone.
Q. In other words, the practice is not settled as to just how you order your coal?
A. Oh, yes; it is, it is either by telephone or memorandum.
Q. I mean, it is not definite, that is, there is no requirement made by you that it shall be ordered on a written memorandum or statement of any kind, it is just as it happens?
A. No. As I consider the needs of the company require it it is ordered.
Q. Who has to do with making up the requirements for the coal year, that is, the number of tons necessary for a particular coal year?
A. I have.
Q. That is yourself personally?
A. Yes, sir.
Q. Do you sit in conference as to the price that is to be paid by your company for coal, with the officials of any other company?
A. No.
Q. How does your company protect itself as to the price it shall pay for coal?
A. Well, I know that the prices that we have been getting on coal have been less than other companies of our sizes, because frequently——
Q. That is not just exactly what I want. I want to
903 know how your company protects itself. You are an officer of the company, you are vice-president and general manager of the company. How do you protect yourself as to the price? Do

you simply accept what somebody else says shall be the price for your company?

A. Yes, we ac-ept whatever the Consolidated makes a contract for.

Q. So you accept their prices?

A. Yes, but I know that it cost other small companies——

Q. I don't care for that particular part; I am anxious to know whether you take any part in the contracts that are made by the Consolidated Gas Company?

A. No.

Q. Does any officer of your company take any part?

A. No.

By the Master:

Q. Who is the president of your company?

A. Moses Taylor.

Q. He is not active?

A. No.

Q. Does he get a salary?

A. No.

Q. What other officers have you?

A. The treasurer is Mr. R. A. Carter.

Q. Does he get a salary?

A. No.

Q. Who else?

A. Mr. Raynor the secretary.

Q. He is active?

A. Yes.

Q. Who else?

A. Mr. George S. Woods is consulting engineer.

Q. He only gets $500 a year?

A. That is right.

904 Q. Then the general executive officers of the company are yourself and Raynor?

A. Yes.

A. Yes, and Mr. Carter.

Q. But I mean sala

A. That is all.

Q. What is your salary?

A. $5,000 a year.

Q. What is Raynor's salary?

A. $2,400.

Q. And Woods' salary is $500?

A. Yes, sir.

Q. That is less than $8,000, isn't it?

The Master: That is what I was trying to find out. How is that $20,000 item made up for general officers?

Mr. Ransom: That includes not only general officers' salaries, but general office expense. It is called "Salaries, General Office."

The Witness: Salaries and expense, isn't that the item?

Mr. Ransom: It is not only the salaries of the general officers, but it is the expense of the general office. It is all the salaries in the general office. Isn't that correct, Mr. Spear?

The Witness: Yes.

The Master: I see from Mr. Teele's Exhibit, Mr. Spear, that the salaries of general officers is only $5,760.78 for the year.

Mr. Ransom: 1919.

The Master: That is your salary of $5,000?

The Witness: Yes, but it was not 1919. That was made $5,000 in the latter part of December or the early part of January.

905 The Master: Well, this $5,760 includes yourself and Raynor?

The Witness: Yes.

The Master: And Woods $500?

The Witness: Yes.

The Master: For the whole year?

The Witness: Yes.

The Master: I had the idea that the general officers' salaries amounted to that $20,000 item.

By Mr. Tobin:

Q. What was your salary on the 1st of January, 1919?

A. $4,500.

Q. What was the salary of Mr. Raynor at that time?

A. I don't recall right now.

Q. About how much?

A. I think it was about $2,000.

Q. What increases have occurred in the year 1919 down to and including this date?

A. I would say probably about $900 in the two salaries.

Q. In round numbers how much is paid to directors for attendance at meetings of your corporation over at the works, or in New York City, in a given year?

Mr. Ransom: I object to that as immaterial, and the details are shown in the revenues and expense statement.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Master: Do you know what the fees were for directors in 1919?

The Witness: Between $1,600 and $1,700.

906 Q. How often do the directors meet?

A. Once a month.

Q. Are you sure about that?

A. It won't run over $2,000. It is $140 a month, and that would be $1,680.

Q. Don't they meet more than once a month?

A. Occasionally we have a special meeting, once a year.

The Master: How many directors are there?

The Witness: Seven.

The Master: Is there a minimum number of directors required for a gas company?

Mr. Ransom: Five or more.

Q. What are their names?

A. William Rockefeller, N. F. Brady, G. B. Cortelyou, Moses Taylor, R. A. Carter, W. R. Addicks, and Donald Geddes.

Q. What arrangement has this company as concerns work done for it by the Consolidated Gas Company?

A. They do not do any work until I give them an order to do it.

Q. Can you tell us what class of work the Consolidated Gas Company does for your company?

A. Some repair work.

Q. Repairs in what particular places, or what classes of repairs, if you can tell us?

A. You mean their own men.

Q. I mean any work that is done by the Consolidated Gas Company and charged against the New York & Queens Gas Company?

A. Well, occasionally they do repair work for us such as changing the position of a tank and erecting it in a new location. Their
907 men erected the fence for us. They looked after the installation of the present four boilers. They designed and looked after the alterations to the boiler house.

Q. As to these particular jobs that you have just mentioned, was that work accomplished within the last few years?

A. Yes.

Q. Can you tell us as to who had charge of that work for the Consolidated Gas Company?

A. Well, I always take it up with Mr. Morris of the Consolidated.

Q. What is his title?

A. Engineer of Construction.

Q. What would you say that it would be, new construction that they had to do with, as far as employment by the Consolidated Gas Company is concerned?

A. Also betterments and repairs.

Q. In other words, can you tell us if there is any line of demarkation as to where they come in and are employed or where they don't come in?

A. No, it is whatever I ask them to do.

Q. Whatever you ask them to do?

A. Yes.

Q. Are you directed as to this work to be done by your board of directors or is it done entirely upon your own say-so?

A. When I see the need of some work I ask them to make up an estimate of what it would cost to do the work. When I get that estimate I take it up with the Board of Directors and get authorizations. Then the prices are gotten, and I go over it with them and decide upon the contract and give them an order to go ahead with the work.

908 Q. Then would you say that practically all the new construction and all the replacements of plans and distribution system is cared for by the Consolidated Gas Company?

A. No, I would not.

Q. Is there any line that is drawn *that is drawn* between the work to be done by the Consolidated Gas Company and by the company itself?

A. Well, they look after most of the construction, particularly the large items, because they have the organization to do it and we have not, and we avail ourselves of their experience. There might be small items of construction which we can do, and which we do ourselves.

Q. Rather then it is the large pieces of work that are cared for — the Consolidated Company?

A. For the works, yes. They very seldom do anything on the distribution, except that I called them in on the Douglaston extension, and also for advice on the changing of our mains in connection with this big sewer construction which is going on in Flushing.

Q. All of the work done by the Consolidated Gas Company, not only for the work actually accomplished, but for the overhead, that is for the superintendency, is charged against your company, is it not?

A. Whatever time they put on it, yes.

Q. Whatever time the engineers of construction, or whatever time the superintendent of plants puts on to your particular company is charged against your company and paid for by your company?

A. Yes.

Q. Can you tell just how you take care of discrepancies in the oil contracts—not in oil contracts, but in oil received and
909 coal received, that is, in your particular capacity of Vice President and General Manager, how you take care of that particular part of the work?

A. For instance, a barge of oil came in this afternoon, I would go over tomorrow morning while I am at the plant with Mr. Morrison——

Q. He has already received the measurements of the barge and handed it to you, is that it?

A. No. Sometimes it is two or three days later that we get the actual measurements. The captain on the barge knows approximately what he has got, and Mr. Morrison takes an accurate measurement of the tanks, and then——

Mr. Neumann: I move to strike out the word "accurate." The witness Morrison has already testified as to what he does.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. I have in mind particularly the discrepancies—I am not particularly interested in the——

A. I am leading up to that. If there is a large discrepancy I would take it right up with the Standard Oil Company and tell them that the quantity we received was much less than the amount. For instance, I think it was in February or March, there was a discrepancy of about 8,000 gallons between what the captain said he had and what he had, and we knew that some went back in the barge. I made a claim right away and notified them that some went

back in the barge. We got a credit memorandum from the Standard Oil Company for that difference.

Q. Then there is a measurement taken for the benefit of the company of the gas oil as it comes from the barge?

910 A. Oh, yes.

Q. You disregard what the captain of the boat says it contains?

A. Except to use that in seeing how near we came to the barge so there is not a large discrepancy. A difference of 300 or 400 or 500 gallons we would not pay any attention to until we got the bill.

Q. Then it is measured again where? It is measured at the barge and it is measured again where?

A. We do not measure it in the barge.

Q. I mean as it comes from the barge?

A. We only measure it in the tanks.

Q. In the tanks themselves?

A. Yes.

Q. You don't pay any attention to it—as I understand it, it passes through this conduit, or pipe line that is connected with the barge, and is drawn to your tank?

A. Yes.

Q. You don't pretend to make any measurement at all of the oil until it reaches the tanks?

A. No, we cannot.

Q. You were going to tell us as to what process you followed as far as getting credits and claims is concerned?

The Master: He did tell us that.

Q. Taking up the coal, how do you follow that through, how do you take care of that as far as protecting the company in getting the full quantity of coal that is billed to you is concerned?

A. Only by the measurement of the piles which is taken periodically.

Q. There is no account taken of it as it is unloaded from the barges to the wagons or carts which draw it from the barges to your coal piles?

911 A. No.

Q. You take no account at all until it reaches the coal pile?

A. That is right.

Q. And then you follow it through in the measuring of the coal as it goes into the manufacture of gas, that is, you take another measurement then?

A. We measure it periodically, usually about the first part of the month.

Q. I mean these buggies?

A. I don't pay any attention to the buggies except occasionally as I go to the generator house and look to see if they are filled to about a certain point, to see how they are running.

Q. Your account, then, of quantity is taken in these periodical

measurements as against the amounts that are received for bills rendered?

A. Yes.

Q. Now, as to the quality of coal, do you make any complaint if the quality of coal does not meet the necessary requirement, or what your gas maker says it should be?

A. Yes.

Q. How often would it happen in the course of a year that the quality of coal would be deficient?

A. Oh, it is very rare.

Q. Very rare?

A. Yes. Coal will vary, but we very seldom make a complaint on the quality of coal.

Q. Did you find in the year 1919 that the quality of coal was more or less deficient, and that you had to make up that deficiency by something else to make up the manufacture of gas?

A. It had more dust in it than usual.

912 Q. It had more dust than usual?

A. Yes.

The Master: Screenings?

The Witness: Screenings.

Q. Have you access to the reports of the Auditing Committee that are made from month to month?

A. Yes.

Q. Are those kept in your file?

A. They are.

Q. In the Flushing office?

A. They are.

Q. I think you testified—I am not sure, but I think you testified as to how far your authority went in the way of expenditures. Can you tell us again how far your authority extends in the way of expenditures or when you have to go to the board of directors as far as getting work done is concerned?

A. There is no set rule on it except that I do take it up with the board of directors on anything that will run around $1,000 or more.

Q. The reason I ask that question is this: I would like to have you tell us if you can as to whether you have any fixed rule, or any rule adopted, or any by-law adopted by the board of directors as to competitive bidding? Is there any rule that you are bound by in the purchase of supplies for this company as far as competitive bidding is concerned?

A. There is no rule laid down by the board of directors, but I always do it as a business transaction.

Q. You follow that in transactions of the company?

A. Yes.

913 Q. Taking the large expenditures, does the same thing occur there?

A. It does.

Q. Do you always have competitive bidding as to the work to be done?

A. Yes.

Q. Do you follow closely the quality of the coal supplied to the company?

A. Yes, I do.

Q. From whom do you receive reports on which to base your complaints if any are made, whom do you receive reports from, the gas maker?

A. No, from Mr. Morrison, or from looking over results, or from looking over the coal myself. From my experience in the gas business I can tell——

Q. You can tell whether it is proper quality or not?

A. Yes.

Q. Now, what would you say as to the quality of coal in 1918 as compared with the quality of coal in 1919, confining yourself entirely to the coal received by your company?

A. Well, I cannot recall the comparison now between 1918 and 1919.

Q. Can you say as between 1919 and the period of time that we have gone in 1920?

A. No, I do not want to draw a comparison on that from memory now.

Q. Would you say it was better in 1920 than it was in 1919?

A. That would be pretty hard for me to say from memory; I would not want to do it.

Q. Would you say it was about the same in 1920 as it was in 1919?

A. I would not want to make a statement on that.

914 Q. That is, you do not care to make a statement?

A. Well, I cannot recall it from memory.

Q. Now, taking up the quality of gas oil furnished, would you say that the quality of oil furnished in 1919 was better than that furnished in 1918?

A. Well, I can't recall that.

Q. Would you make the same answer as to 1920, as against the quality of oil in 1919?

A. I don't think the oil is as good now as it was two or three years ago, I will say that.

Q. Back in 1917?

A. Because they have been taking more gasoline out of it all the time; just when they started I would not be prepared to say.

Q. But you are satisfied that to-day, during 1920, that you are not getting as good a quality of oil as you got in 1917?

A. I would think there is some difference, yes.

The Master: How about coal? Would you say it was poorer today than it was two or three years ago?

The Witness: No, because during the war period we got some cargoes that were very poor. We even had to go to the Shipping Board to get some coal, and some of it was awful. It is hard to form a comparison.

Q. On the coal you cannot say, but on the oil you are satisfied that it is not running quite so good. Can you give us any degree of less quality in 1920 as against 1917 or 1916?

A. No, I cannot.

Q. You have not formed any judgment on that?

A. No.

Q. You have seen Exhibit 77, have you not, Mr. Spear?

915 A. Yes.

Q. You are familiar with it?

A. Well, it depends how familiar; I have looked it over.

Q. You know more or less the figures?

A. Yes.

Q. Have you prepared any table, or have you any table made up from the actual book figures as to the cost in cents per thousand cubic feet of gas sold of generator coal, that is, of anthracite coal?

Mr. Ransom: I object to the question. It does not relate to any matter covered by this witness. There is such a table already in evidence by the witness Teele.

The Master: I will overrule the objection.

Mr. Ransom: Exception.

A. No, I have not made any up.

Q. Do you know what the figure is, what the figure would be for generator coal, anthracite coal?

A. I don't recall it just now.

Q. I am using book figures.

A. I say I don't recall from memory just what the figure was from our books.

Q. Is it not a fact, Mr. Spear, that such figures do exist as a part of the records of this company?

A. Oh, yes.

Q. Can you tell us in what manner they are kept by the company? That is, I mean is it a matter of monthly calculation or weekly calculation or just what?

A. Mr. Morrison makes up those figures every day, and then makes up a summary for the end of the month, showing the number of pounds of coal per thousand cubic feet, and the number of

916 gallons of oil per thousand cubic feet, and we also make up monthly figures showing——

Q. These last figures that you speak of, based upon the quantities furnished by Mr. Morrison are compiled by you?

A. Yes.

Q. Is there such a report as that rendered to the directors each month?

A. Not just such a report as that. There is a report submitted to the directors every month as to the cost of producing the gas and distributing it, and the fixed charges, and so on.

Q. Can you give us some detail of that report, that is, I mean as to just how far it goes into detail. Does it tell as to generator coal, that is, the cost in cents per thousand cubic feet of generator coal, anthracite?

A. It shows the total cost of production and the total cost of distribution.

Q. Is there any further separation of those two items? Do you just have those two items, the cost of making the gas and the cost of distributing the gas?

A. In the figures submitted to the board of directors that is the way it is done.

Q. That is, you make a report from the calculation cared for by yourself to the board of directors, but before making that report to the board of directors as to the cost of making the gas and the cost of distributing the gas, you have certain figures before you, certain factors, and those are compiled by you?

A. It is compiled by Mr. Foy under my direction, from the general books.

Q. Can you tell us what factors go into that particular table which give you the cost to manufacture the gas, and the cost to dis-
917 tribute the gas for a particular month?

A. I don't just get your question.

Q. In your Exhibit 77 you have such factors as Generator Coal, the cost in cents per thousand cubic feet, boiler coal, anthracite, boiler fuel, additional boiler fuel use din account of steam used for high pressure transmission; then you have gas oil, and tar and drip oil credits, and the net cost of oil, net cost of fuel coal, oil, iron oxide water and sundries. In the table that you used to bring about the report that you hand to the board of directors don't you use these same items of calculation, the same factors of calculation?

A. Oh, yes, they have to be summarized in this other report.

Q. You simply summarize it when you hand it in to the Board of Directors?

A. Yes.

Q. And in the make-up of that summary you have an analysis and detail similar to that set forth on Exhibit 77?

A. Oh, yes.

Q. Is that kept as a part of the records of your office, vice-president and general manager?

A. Yes.

Q. Taking the item of gas-making labor, has the company employed at any time during the year 1919 any more than one superintendent?

A. No.

Q. Has it employed how many clerks in that particular branch of the works?

A. One.

Q. And how many gas-makers?

A. Three.

918 Q. Is that the average, three, or is that the extreme number employed?

A. Three would be the extreme number, except that we have an extra man broken in in case of sickness of one of the gas-makers that could take his place, but we only use the three where we are running three shifts.

Q. Taking the 12 months, for many months, would you employ three gas-makers during the year 1919?

A. I can't tell that without looking over the records.

Q. Would you employ two gas-makers for most of the year?

A. That is pretty hard to say. I say possibly two and a half for the year 1919, it might average that.

Q. It would average about two and a half?

A. It might; I can't tell except from the records.

Q. That would be your judgment?

A. I would not want to say positively on that without a study of it.

Q. Take the engineers, how many engineers do you employ?

A. There are always three.

Q. Always three?

A. Yes.

Q. And there were three during the entire year 1919?

A. Yes.

Q. Were there any more than three employed?

A. No.

Q. Boiler firemen, how many men did you employ during 1919?

A. Three.

919 Q. Maybe you have confused that with the generator firemen and coal passers?

A. No, boiler firemen, a man on each shift.

Q. How many men do you employ as generator firemen and coal passers, how many did you employ in 1919?

A. That would depend upon the length of time the machines were run.

Q. Take your laborers for purification, can you tell us the number employed there?

A. That varies. Sometimes they will work on purification and sometimes on other work around the yard.

Q. What plan has the company as to holidays and Sundays and overtime. If you employ these three shifts that you speak about in manufacturing gas is there any necessity at all for overtime?

A. Yes.

Q. In what way is there necessity for overtime?

A. You may have some extra work to do which would call for overtime.

Q. How often would that happen?

A. It would be hard to say how often it would happen, but it does happen.

Q. Do you pay for the time of these men whether they are employed or not, these laborers and boiler firemen and engineers? Do they get their weekly salary whether they are employed or not?

A. There are a few of the old employees that do; they are on the weekly roll. Laborers are all by the day.

Q. And firemen?

A. Yes.

Q. They are by the day?

A. Yes.

920 Q. And gas-makers?
A. I think two of the gas-makers are on the weekly roll.
Q. How about the engineers?
A. Two of them I think are on the weekly roll.
Q. So that this overtime would practically take up what was lost by those regularly employed?
A. No, they are paid if they work overtime.
Q. That is, if the regular employees work overtime?
A. Yes.
Q. Taking your repair labor, how many mechanics are employed on the average?
A. I would say on the average two.
Q. And helpers?
A. About one.
Q. And laborers?
A. I would think it would average two.
Q. Taking up the question of gas oil, can you tell us in your experience how many gallons per thousand cubic feet are needed of gas oil for manufacturing gas?
A. I would say at least 4.2 gallons average for the year.
Q. That is taking the average for the entire period?
A. Yes, sir, the year.
Q. Well, take the year 1919; you say it ought to be 4.2 gallons?
A. I would say at least.
Q. At least 4.2?
A. Yes.
Q. Mr. Spear, can you furnish the names of the employees, and the salaries paid by your company in the year 1919 that goes
921 into the gas-making labor, and the men who were under the title of repair labor?
A. I cannot offhand.
Q. I don't mean offhand, I ask you if you can furnish it?
A. There might be a few men that were employed on repair labor during the year, and part of their shift they might be on repair labor and part on production. Whatever time they spend is charged.
Q. Their names would be carried on the payroll?

Mr. Ransom: The payrolls are here at the request of the defendants, or some of them.

Q. That would be carried on the payroll, is that it, Mr. Spear?
A. Yes. Sometimes we have outside work. For instance, on our boilers we have the repair work done by Christopher Cunningham, Boiler Maker.
Q. That comes in on a separate item, and is not carried on the works payroll, or the payroll of the company?
A. No, it comes in on a voucher.
Q. A regular voucher?
A. Yes, sir.
Q. What has been the experience of the company, taking the year 1918, as to the tar and drip oil credits? What value has there been to them for the company?

A. The value of the tar as fuel. Drip oil we store.
Q. You store and then sell it?
A. Yes. We have not sold any drip oil, though, since the war started.
Q. Why is that, because the price is low, or why?
922 A. We don't get a great deal of drip oil, and we put it in the new storage holder, we have a dam in there, and put it inside of it.
Q. At this particular time how many gallons have you got of this oil on hand?
A. I don't know.
Q. How long have you been accumulating it?
A. I would say that the last we sold was some time in 1918.
Q. You haven't sold any since then?
A. No, except a few gallons of tar that we sold.
Q. What is it worth today in the market?
A. I don't know.
Q. What does it usually sell for?
A. Well, the price varies according to the demand.
Q. For what you sold to the farmers?
A. We get about $3.50 a barrel for tar when they buy it in the quantity.
Q. Are the barrels returned?
A. No, we charge the barrels in that.
The Master: What do the farmers use it for?
The Witness: For driving rats out of their chicken houses. It is also used under cauliflower to kill cauliflower worms, and to impregnate fence posts, and painting roofs of outhouses.

By Mr. Neumann:

Q. Mr. Spear, when you use the word "tar" do you use it interchangeably with drip oil?
A. No, drip oil would not be used for these purposes.
Q. I understood Mr. Tobin's questions to be directed to drip oil and not to tar?
A. The Master asked me what the farmers used the tar for.
923 Q. In answer to one of the questions of Mr. Tobin you switched from drip oil to tar. He was questioning you about drip oil.

By Mr. Tobin:

Q. I was interested in the quantity of drip oil you have on hand today?
A. I told you I could not tell you that.
Q. Do you know how much it would average in a given year that you obtain from your plant?
A. No.
Q. Can you tell us in round figures how much it would be?
A. No. I could not without looking it up.
Q. Will you be good enough to furnish that to us?

The Master: I am not going to have that.

Mr. Ransom: That has already been furnished.

Mr. Neumann: The Public Service Commission's reports are here, if the witness wants to refresh his recollection.

Mr. Ransom: I will consent that they go in evidence.

Q. As to tar, what do you do with tar?

A. Burn it under the boilers for fuel.

Q. And it is used up just as it comes through?

A. Yes.

Q. To what extent is there value in that tar, to what extent do you charge a credit for that tar as against the gas oil?

The Master: What do you mean? They don't use tar in place of gas oil.

Mr. Tobin: No, but they use it as a credit because it is of some value to the company.

The Master: I don't think your question is accurate, as against gas oil.

924 Mr. Tobin: As a fuel.

Mr. Ransom: It is used in the place of coal.

Mr. Tobin: I understand how it is used. I am asking what it is worth to the company, I don't care how it is used, what it is worth to the company. I am interested in getting how much value there is to this particular tar that is used by the company as fuel.

Q. How much is it worth to the company?

A. We have been charging it at six cents.

Q. As for what year?

A. I know for 1919 we charged that.

Q. That was for 1919?

A. Yes.

Q. And what have you charged for the months that have gone on in 1920?

A. Six cents.

Q. As I understand it, you use this tar as a fuel in place of coal?

A. Yes, supplementing coal.

Q. It is as good as coal, is it not?

A. Well, there is a comparison between the oil and coal.

Q. Why wouldn't you deem it to be of the same value as coal, that is, as far as a credit is concerned?

A. It would not make much difference what value you put on it. You charge it and you credit it, it doesn't make much difference what price you put in there, but it takes less labor to fire the boilers when you are using tar than when you are using straight coal.

Q. Wouldn't that be an item of benefit in its use as against the use of coal, so that it has more value to the company than if the company used coal?

925 A. It is an advantage from the labor standpoint.

Q. Well, it is in the cost?

A. Well, the men don't have to work so hard and they like it better.

Q. Can you state what the cost is, the average cost, in cents pe thousand cubic feet of gas made, of generator and boiler fuel i 1919?

A. No, I cannot recall it from memory.

Q. You have that as part of your records in your office?

A. Oh, yes.

Q. And you also have a record as to the cost in cents per thousan cubic feet of gas oil?

A. Yes.

Mr. Tobin: I will suspend just a minute.

By Mr. Neumann:

Q. Did you testify as to where the board of directors held the meeting, Mr. Spear?

A. 55 Wall Street, New York City.

Q. Do they keep minutes of their meetings?

A. They do.

Q. Who takes the minutes for them?

A. The Secretary.

Q. Who is the secretary of the Board of Directors?

A. Mr. Raynar. I used to do it.

Q. Those minutes are under his custody and control?

A. They are.

Q. And they are available, are they?

A. How do you mean available?

Q. They would be available at any particular moment for e amination?

A. Oh, yes. They are in the custody of the company.

926 Q. The company also has by-laws, has it not?

A. It has.

Q. When were they adopted, do you know?

A. I think on the organization of the company, except that the have been amendments made.

Q. They have been amended from time to time?

A. There have been amendments made.

Q. And these by-laws, with amendments to date, are availab are they not?

A. Yes.

Q. And they contain the various duties of the various officers?

A. They do.

Q. Who is charged with the duty of taking custody and control the books and papers of the New York & Queens Gas Company?

A. I do not quite get that question.

Q. Do you mean the question is not clear or you did not hear

A. The question is not clear to me.

Q. In what respect? Who is charged with the duty of taki custody and control of the books and papers of the New York Queens Gas Company?

A. In the by-laws, you mean?

Q. Either in the by-laws or by the company's rule or regulation, or whatever else you want to call it.

A. I am in charge of all the company's property and the operation of the company.

Q. And is that set out in the by-laws?

A. No.

Q. What is it, a rule of the company?

A. Yes.

Q. Is there nothing in the by-laws as to who shall have custody and control of the books of the company?

927 A. Of certain parts of the company. For instance, the seal of the company is in the custody of the secretary.

Q. How about the duties of the secretary?

A. That is set forth in the by-laws.

Q. Have you a copy of the by-laws with you?

A. I have not.

Q. Is there anything in there in reference to the custody of the books?

The Master: What books?

Mr. Neumann: The books of account of the company.

A. No, the by-laws do not state anything about that.

Q. How far back to your knowledge did this company keep books of account?

Mr. Ransom: Objected to as fully covered. It was gone into in great detail.

The Master: I will allow it. Was there ever a time that this company did not keep books of account?

The Witness: No, not that I know of.

The Master: Well, why don't you answer it?

Q. Are the books of this company from the year 1904 to date now in existence?

A. Yes.

Q. All of them?

A. Yes.

Q. Did you keep the same number of books each year as you have produced here in court for the year 1919?

A. No, the operating expense ledger is only a few years old. We did not have one in 1904. I would say the other journal system, or the other books, are practically the same.

928 Q. When did you first begin using an operating ledger?

A. Oh, I do not recall just what year it was.

Q. About four or five years ago?

A. I think this one is No. 2.

Q. And how many years does this cover?

A. I cannot tell you all that without looking at it. It is in my testimony before, when I was looking at the books.

Q. Would you mind looking at it; it is right in court here?

The Master: I am not going to waste time on that; I will not le the witness look at it.

Mr. Neumann: Does your Honor by your ruling mean—what i that?

The Master: I will not let the witness look at it. Look at it your self.

Q. You testified on your direct examination that there was a auditing committee, consisting of Mr. Edgar Palmer and Mr. Brun dage, who audited the books?

A. I did.

Q. Who is Mr. Edgar Palmer?

A. President of the New Jersey Zinc Company.

Q. Is he in any way connected with your company?

A. He is not, excepting that he is on the auditing committee.

Q. Is he connected in any way with the Consolidated or its affili ated companies?

A. I do not know.

Mr. Ransom: I object to that as immaterial.

Q. Is Mr. Palmer paid any salary for the audit of the books?

A. No.

929 Q. Do you mean that he gratuitously audits these book of this company?

A. No, he gets a fee.

Q. Who pays him that fee?

A. I do—the company does, rather.

Q. How much is it?

A. $20.

Q. For each audit?

A. For each audit.

Q. And how often does he audit the books?

A. Once a month.

Q. And does Mr. Brundage get the same fee?

A. He does.

Q. Is this auditing committee provided for in your by-laws?

A. I am not sure about that, but they were appointed by the Boar of Directors at the organization meeting, after the election by th stockholders.

Q. You testified that this auditing committee makes out a certi cate; is that correct?

A. It is.

Q. Are these certificates of the auditing committee preserved?

A. They are.

Q. For how long a period back?

A. Oh, I would say that I have those in our office since 1913.

Q. Prior to that time they are not in existence?

A. No.

Q. The New York & Queens Gas Company was organized on wh day in the year 1904?

The Master: We have had that half a dozen times. The 1st of August or thereabouts, 1904. Let us get to something new.

930 Mr. Neumann: And the company that was operating in that vicinity prior to that——

The Master: Was the Newtown & Flushing.

Mr. Neumann: Yes.

The Master: We have heard that half a dozen times.

Q. That company was in existence for how many years, from when until when?

Mr. Ransom: Objected to. All those corporate papers are in evidence, showing the incorporation of each of these companies.

The Master: Objection sustained.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. Do you know whether the books of account of the Newtown & Flushing Company are still in existence?

A. I am pretty sure they are. I think they have all been delivered to your accountants.

Q. When did you see them last?

A. Oh, I would say it is a month or two months ago that I turned them over to Mr. Frank or something like that.

The Master: Who was Mr. Frank?

The Witness: He was the accountant for the Public Service Commission.

Q. Where was that?

A. 115th Street.

The Master: 115th Street?

The Witness: 15th Street, rather.

Q. What was the predecessor company to the Newtown & Flushing Company?

Mr. Ransom: Objected to as fully shown by the papers in evidence.

931 The Master: No, I will take that.

Mr. Ransom: And not within the scope of the cross examination of this witness.

The Master: I will take it.

A. I do not know, except that there is a long list of companies prior to that. The New York & Queens Gas and Electric and the Flushing Gas Light Company, the Whitestone Gas Company and the College Point Gas Company, and the Flushing Gas & Electric Company. Those are all predecessor companies.

Q. Which one was the immediate predecessor to the Newtown & Flushing Company?

Mr. Ransom: Objected to as not within the scope of cross examination, not the proper way of showing it; it is shown by the exhibits in evidence.

The Master: I will take it.

A. I do not recall.

Q. Didn't you ever look into the history of how your company was organized?

A. Yes, I have gone over the certificates of merger and assignments but I have never made a chart of it.

Q. Is it not a fact that the Newtown & Flushing Company is a merger of the College Point Gas Company?

Mr. Ransom: With the what?

Q. (Continued.) Or a taking over of the College Point Gas Company, I should say, rather than a merger?

A. I do not know just what that chain is: I do not remember.

Q. Do you know if there were any books of account in ex-
932 istence, of any of the gas companies prior to the time the Newtown & Flushing Gas Company came into existence in the year 1900?

A. I have never seen any.

Q. Well, are there any?

A. I have never seen any.

Q. Does that mean that there are none?

A. I would say so.

Q. You testified, did you not, that the data used as a basis from which entries were made in the journal or ledger were not taken from the daily works sheet so far as coal and oil used is concerned; is that correct?

A. No, as far as the dollars are concerned. The quantities are.

Q. The quantities are taken from the daily works sheets?

A. No, the monthly works sheets.

Q. The monthly works sheets. So that if there are any errors in the monthly works sheets they will appear either in the journal or the ledger?

A. Yes.

Mr. Neumann: Let me have those works sheets, please.

Mr. Ransom: Do you mean the daily manufacturing records?

Mr. Neumann: Yes. Those that were introduced in evidence this morning.

Mr. Ransom: They were all introduced (handing counsel papers).

Mr. Neumann: Is the ledger and the journal here?

Mr. Ransom: I believe the ledger and the journal are here (producing books).

Mr. Neumann: I will go as far on this as the Master wants me to in order to demonstrate the point I wish to make.

Mr. Ransom: Or disprove it.

933 Mr. Neumann: Either one. We are after the facts, that is all we are after.

Mr. Ransom: That is a great change in attitude.

The Master: I think Mr. Neumann is doing very well.

Mr. Ransom: He is doing splendidly; I think so, too.

The Master: It is quite a relief to see the examination conducted in this case after what we had in the Consolidated.

Mr. Ransom: He is doing splendidly.
Mr. Neumann: Do you mean that, Judge?
Mr. Ransom: I do mean it, very sincerely.

Q. Mr. Spear, I will direct your attention to Defendant's Exhibit A. The witness Morrison testified this morning and conceded that the column "Oil Used" was incorrectly totaled, in that there was an error therein of 3,000 gallons. Will you kindly turn to either the ledger or the journal to which this entry is carried and indicate it?

A. That is not carried into the journal, it is carried onto the office report, and then the amount in dollars and cents is carried into the journal.

Q. Did you not testify a short while ago that from these sheets you did not take the price, but you took the quantity?

A. Yes.

Q. Then where does the quantity find its way into the books, from what source?

A. Through the office reports.

Q. Did you not state that the office report was only taken so far as the money was concerned and not the quantity?

934 A. No. These figures are taken from these sheets (indicating), and put on the office report, and then the price is figured up on the office report and the quantity in dollars and cents is transferred to the books.

Q. Taking this figure, the total of this column, 146,964, oil used during the month of January, 1919, where and from what source would that find its way into the books?

The Master: Mr. Neumann, I am going to interrupt you, because I think it has been asked and answered before. Mr. Spear, turn to your journal entry, which would include this item of oil used in January, 1919, and let us have it.

The Witness: There it is (indicating).

The Master: Read it out, will you?

Mr. Neumann: You are now calling attention to page 54, and will you kindly read the item.

The Witness: Gas oil 146,964, and the amount is $10,884.99.

The Master: Then the amount shown on there is the quantity carried into your journal, is it not?

The Witness: Yes.

The Master: That is what I thought it would be.

Mr. Neumann: Certainly.

The Master: That is where I thought you would find it.

Mr. Neumann: I can demonstrate that right through all of them.

The Master: That is right.

935 The Witness: But that amount would not make any difference at the end of the year.

Q. That is not the question, it is whether the underlying data is correct. If the underlying data was incorrect, your books would be incorrect?

The Master: To that extent.

Mr. Neumann: To that extent?

A. Yes, but it corrects itself in the year.

The Master: But you took the quantity Mr. Morrison reported on his sheet and carried that into the journal with the amount of money that you entered in there?

The Witness: Yes.

Q. And that is true of every one of these items that Mr. Morrison's attention was called to in all these daily records of manufacture?

A. Yes.

Q. In each instance where there has been any error in the quantity, as shown by Mr. Morrison's testimony, that error has been carried into the books?

A. I do not know just what errors you called Mr. Morrison's attention to.

Mr. Ransom: I object to it.

Q. Were you here when Mr. Morrison testified this morning?

A. Yes.

Q. Did you hear him testify as to the errors that were committed on these sheets with reference to the quantities of oil used, and the coal, for instance, in one 200,000 pounds of coal dust?

A. Yes. Is that on materials used?

Q. Yes. Then all those errors contained in these sheets were carried right into your books?

936 A. All the figures——

Mr. Ransom: But it does not affect the amount of money.

Mr. Neumann: That is not the question, Judge, and you know it. We are testing the accuracy of these books.

Mr. Ransom: You know that the cost of making gas is the amount of money that has to be paid for the materials that make it up.

The Witness: Any error made in one month would correct itself at the end of the year.

Mr. Neumann: That is not the question.

By the Master:

Q. No, what Mr. Neumann is trying to bring out is that you took the figures as they appeared on these monthly work sheets and carried them into your journal?

A. Oh, yes.

Q. And whatever errors appear there appear in your journal entries?

A. Yes.

Q. To that extent?

Mr. Ransom: So far as the quantities are concerned.

A. Yes.

By Mr. Neumann:

Q. And your answer would be the same as to each specific question on the items that I pointed out to Mr. Morrison this morning?
A. As to the quantities given, yes.

By the Master:

Q. For instance, I see Mr. Morrison said he readjusted oil used by adding 500 gallons in one instance and 2,000 in another
937 instance and 1,000 in another instance. You took those totals as he reported them?
A. Yes. Many times I tell him to add that quantity.
Q. When it is added on his sheet it is added on your figures of quantity in the journal?
A. It is.

The Master: Is there much more from Mr. Spear?
Mr. Neumann: Yes, there is quite some more.
The Master: I have to go to my office for a few minutes.
Mr. Neumann: I will be at the Master's convenience. I will suspend or go forward with Mr. Spear, just as you say.
The Master: If I though you could finish in a few minutes with Mr. Spear I would go ahead.
Mr. Neumann: I doubt that.
The Master: When will you be ready to ktae up the cross of Mr. Teele and Mr. Raynar, and go forward with your proof?
Mr. Neumann: I will say this to the Court. I will be guided by what the Court tells me, but if the needs of our bureau, that is our statistical bureau and engineers bureau, are consulted I will say frankly it will take them at lest ten or twelve days more to go forward. If the Court is willing to grant me that time, why, in the interests of justice, and on the showing we have made—we have tried to be fair with them and to expedite it—I think we ought to have at least ten or twelve days more in order to complete the cross-examination.
938 The Master: The trouble with it is that we are getting pretty close up to the summer, and I will not be able to do any more work on this after about the middle of June, allowing for the time that I have got to submit a proposed report, as I suppose this order requires.
Mr. Ransom: I think it is in the same form.
The Master: And the discussion of the details of it, and the filing of a final report, and the rest of it. I have got to get through with this pretty quick.
Mr. Neumann: Will the Court, then, give me a week?
The Master: I am going away soon after the 15th of June. I am tired and I am through, I am not going to sit any longer. I am willing to adjourn this to a week from tomorrow, and that will give you a full eight days, until Wednesday of next week.
Mr. Neumann: That will be all right.

The Master: With the understanding that we shall go forward until we finish it.

Mr. Ransom: And with the understanding that on the conclusion of the complainant's case they will go forward with the defendants' case.

The Master: Yes, that they will go forward with it.

Mr. Tobin: May I ask, in order to carry our your wishes, what other witnesses Judge Ransom will bring here to testify. I would like to know that in order that we may prepare ourselves.

939 Mr. Neumann: If the Judge will be fair, we will be prepared.

Mr. Ransom: I will tell you now I have no expectation of calling any other witnesses in this case.

Mr. Tobin: Except those that have been called.

Mr. Ransom: Except those that have been called.

Mr. Tobin: That is fair enough.

The Master: Get your matter ready. You have done very well; you have brought out whatever you wanted to bring out without fooling or fishing around. We will get through with it very quickly. I will put this down for a week from tomorrow; that will be the 26th.

Mr. Tobin: Then are you going to run through the rest of the week?

The Master: I am going to run through until you finish it.

Mr. Ransom: May I suggest this, your Honor: There is just one further phase that Col. Miller has to testify to on direct. In fifteen minutes now I could put that in and then they could have it and be ready to cross-examine on that.

The Master: All right, put him on. From nine-thirty in the morning, and we will run through to six or seven o'clock in

940 the night.

ALTEN S. MILLER recalled by complainant.

Direct examination.

By Mr. Ransom:

Q. Col. Miller, when you were last on the stand you testified as to your examination of the plant, machinery, apparatus and equipment of the complainant company. Upon this examination made by you did you ascertain what work in your judgment it would be necessary to do upon the various buildings, structures and the various units and apparatus and equipment, in order to put them in the condition in which they were when new?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way of proving it.

The Master: That is overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. Did you also make an estimate of the expenditures necessary in your opinion to put these buildings and structures and this apparatus and equipment in the condition in which the same were when new?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent.

The Master: Overruled.

Mr. Tobin: I would like to ask you what the purpose of the question is, Judge, as to these additions and changes that are contemplated; to put the plant on an economical basis of operation, is that what you intend?

Mr. Ransom: I will ask another question which I think will—did you answer that question?

941 Mr. Tobin: I would like to know.

The Master: Read the question.

(The question was repeated by the stenographer.)

A. Yes.

Q. What work, Col. Miller, do you comprehend in the putting of the property in the condition in which it was when new?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it, and the witness is not qualified.

The Master: Overruled.

Mr. Tobin: The further objection, if the Master please that there is nothing to indicate that the witness has gone to the plant and made the necessary examination so as to carry out what he is going to testify to in the way of changes or improvements.

The Master: Overruled.

Mr. Tobin: Exception.

A. The work involved the repairing of roofs, the pointing of brickwork, the repairing of the mill work, carpenter work, painting the relining in at least one case of the gas-generating apparatus, putting on a few new doors, some new floor plates, some new brickwork on floors. In general it involves the immediate doing of work which would be normally done by the Company in its regular course of maintenance.

Mr. Neumann: I move to strike out the witness' answer on the ground it is not responsive to the question.

The Master: Motion denied.

Mr. Neumann: Exception.

942 Q. Is this restoration according to the present design or according to the original design?

Mr. Neumann: Objected to on the ground it is immaterial and irrelevant, vague, indefinite and meaningless.

The Master: Overruled.

Mr. Neumann: The witness is not qualified to testify to it.

The Master: Mr. Tobin was anxious to get that information.

Mr. Tobin: I would like to take exception to the Master's observation.

A. According to the present design.

Q. With respect to maintenance and upkeep, in what condition did you find the property which you examined?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and from a witness not properly qualified to testify to that fact.

The Master: Overruled.

Mr. Neumann: Exception.

A. The plant was very well maintained, very well kept up and had been recently painted and had been generally overhauled.

Mr. Neumann: I move to strike the witness' answer out upon the ground that "very well" is meaningless, and "recently overhauled" must be on pure hearsay.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. With respect to operating efficiency, in what condition did you find the plant?

943 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial; that is for an engineer to say, not for Colonel Miller.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: If your Honor please, there is no proof here that Colonel Miller examined into that particular question, as concerns this plant. There is no proof of that whatever.

The Master: Overruled.

Mr. Tobin: He should not be allowed to testify along that line. Exception.

A. A very high state of operating efficiency.

Q. As a result of your examination, Colonel Miller, have you prepared a schedule showing the work which in your judgment would be necessary in order to put the buildings and structures and the apparatus and equipment in the condition in which they were when new?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and from a witness not properly qualified. It is speculative and unsound, based on a guess, based on supposition and on an hypothesis; and furthermore there is no court in this land that has ever adopted any such rule.

The Master: Overruled.

Mr. Tobin: Exception.

A. What was that question?

Q. (Read by the stenographer.)
A. Yes.

Q. Do you also show in this schedule the amount which it would cost to put these properties in that condition?

944 Mr. Neumann: Same objections as last urged.
The Master: Same ruling.
Mr. Neumann: Exception.

A. Yes.
Q. And will you produce such schedule?
A. That is the first copy (handing counsel), and I have some additional copies.
Q. The first sheet is a summary?
A. Yes.
Mr. Tobin: Let us look at it.

(The witness hands Mr. Tobin copy.)

Q. The cost which you have shown is as of January 1, 1920?
A. Yes.
Q. The references in the first column are to the various units of the structures and equipment?
A. Yes.

Mr. Neumann: I think, if the Court pleases, the instrument speaks for itself.
The Master: I will take this.
Mr. Neumann: Exception.

Q. And on the succeeding pages, with respect to these units of the buildings and structures, have you given the details of the work which in your judgment it is necessary to do, and the cost of such work, as of January 1, 1920?
A. Yes.
Q. And if interrogated by me with respect to each of these items, would you give the details of work as shown in this statement and the amounts of money shown in connection with each such item of work?
A. Yes.

945 Mr. Neumann: Objected to on the same grounds as last urged.
The Master: Overruled.
Mr Neumann: Exception.
The Master: What is your total?
The Witness: $6,144.07.

Q. Of which how much is for buildings?
A. $4,297.81.
Q. And how much for apparatus?
A. $1,846.26.

Mr. Ransom: I offer this in evidence as a summarized and convenient form for the reception of the testimony of the witness.

Mr. Tobin: We object on the ground that there is no date set as to these buildings, when the improvements are made.

The Master: January 1, 1920.

Mr. Tobin: The cost of the buildings—he does not state as of what date it would cost this to make these improvements or changes.

The Master: January 1st, 1920.

Mr. Tobin: I do not believe so, if your Honor pleases.

Mr. Ransom: The cost as of January 1, 1920.

The Witness: As the top of each column, the top of each column of figures.

Mr. Neumann: What exhibit number is this?

The Master: It will not be an exhibit, it will just be printed in the testimony.

Mr. Ransom: I might have the original marked for identification so there will be no question.

The Master: No, it will be printed in full.

946 Mr. Neumann: I object to it on the ground it is incompetent, irrelevant and immaterial, not from a person properly qualified to testify to the facts if interrogated, meaningless and worthless, and of no value to the Court; and upon the further ground that it is not based apparently on any knowledge of this witness, and upon the further ground that it speaks of an abnormal period, that of January 1, 1920.

The Master: The objections are overruled, I am taking the witness' answer as spread out in this paper, subject to your exception. Cross examination will be reserved until we reconvene. The following is the testimony of the witness referred to:

947 *Expenditures Necessary to Put the Plant of the New York and Queens Gas Company in the Condition in Which it was When New.*

948 Summary.

Building:	Cost as of Jan. 1, 1920.
Old Generator House #1	$666.62
New Generator House #2	299.00
Exhauster Room #3	66.00
Boiler House #4	191.52
Boiler House Extension #5	236.00
Engine Room #6	230.30
Pump House #7	62.70
Two Story Coal Bin #8	548.95
One Story Coal Bin #9	104.00
Garage #12	423.19
Exhauster House #13	25.00
Valve House #14	33.00
Range House #19	72.56
Paint House #20	14.33
Gasoline House #22	6.00
Office #30	580.00

	Cost as of Jan. 1, 1920.
Super'd Dwelling #31	490.74
Coal Bin #40	187.90
General	60.00
Total for buildings	$4,297.81

949 Apparatus:

Old Generator House #1	235.00
New Generator House #2	265.00
Deep Well Pump House #21	225.00
Engine Room #6	125.00
Boiler House Extension #5	506.26
Overhaul engines and Exhausters	200.00
Overhaul gauge boards	75.00
Overhaul all pumps	100.00
Overhaul compressors	115.00
Total for Apparatus	$1,846.26
Total for Buildings	4,297.81
Grand Total	$6,144.07

950 Old Generator House #1:

Point up and repair brickwork at sills and eaves	$98.82
New corrugated roof and monitor, including material	375.00
New galvanized iron flashing	63.00
1—New window 39″ x 60″ in place including framing	34.13
1—New single ply batten door, double hinged 5′ 0″ x 8′ 6″	22.87
Repair transom over door	7.05
21 panes of glass	15.75
Replacing 25 purlins; 1″ x 1″ x ⅛″ Angles	25.00
Replace two plates in operating floor and level several other plates	25.00
	$666.62

New Generator House #2:

Point up and repair brickwork	$17.00
Repair brick charging floor	26.00
14 New window panes 12 x 14	10.50
Miscellaneous carpenter work	10.00
Repair corrugated iron roof	195.00
Repair tar paper roof over meter room	40.50
	$299.00

	Cost as of Jan. 1, 1920.
Exhauster Room #3:	
Repair corrugated iron roof	60.00
Two glass panes in skylight	6.00
	$66.00
951 Boiler House #4:	
Repair roof	$113.40
New flashing on roof	36.00
1—New 3′ 0″ x 7′ 0″ Batten Door	26.12
Repair wood work around doors	16.00
	$191.52
Boiler House Extension #5:	
Repair roof	$200.00
Flashing on roof	36.00
	$236.00
Old Engine Room #6:	
Repair roof	$187.50
Replace gutter and down spouts	42.80
	$230.30
Pump House #7:	
Point up and repair wall	25.00
Replace brick floor	36.20
Replace 2 window panes	1.50
	$62.70
Two Story Coal Bin #8:	
Repair side framing and bracing	250.00
Replace rubberoid roofing, 100 sq. ft.	8.00
Replace 7 window panes	5.25
Put in new D. H. window including sash, 34″ x 6′ 0″	250.00
	$548.95
One Story Coal Bin #9:	
Repair siding, struts and stringers	100.00
Repair 50 sq. ft. of rubberoid roofing	4.00
	$104.00
952 Garage #12:	
Replace 1 square of shingles	$17.89
Replace 50′ of 4″ gutter	27.50
Replace 22′ of 3″ down-spouts	8.80
Replace 1—3′ 0″ x 8′ 0″ batten door	12.91
Replace 4 window panes	3.00

	Cost as of Jan. 1, 1920.
Replace rafters and purlins	119.03
Replace galvanized corrugated iron roof and repair side walls	218.75
Paint under side roof, 875 sq. ft.	15.31
	$423.19
Exhauster House #13:	
Repair roof and sides of galvanized corrugated iron	$25.00
Valve House #14:	
Replace roof	$33.00
Range House #19:	
Replace roof	72.56
Paint House #20:	
Repair floor	$14.33
Gasoline House #22:	
Repair galvanized corrupated iron roof and sides	6.00
Office #30:	
Replace floors and stairs	275.00
Paint wood work and 2 rooms, 2 coats	200.00
Repairing halls and rooms	75.00
Point up brickwork	30.00
	$580.00
53 Super'd Dwelling #31:	
Replace shingle roof	$171.74
Paint outside of house 2 coats	150.00
Repair front steps, porch floor and railing	35.00
Put up 60′ of 4″ gutter, galvanized iron	33.00
Put up 50′ of 3″ galvanized iron down spouts	20.00
Paint inside of house	36.00
Paper 3 rooms	45.00
	$490.74
Retaining Wall for Hard Coal #40:	
Repair cement floor	12.90
Repair retaining wall	175.00
	$187.90
General:	
Repair of gas burners	$60.00

	Cost as of Jan. 1, 1920.
Old Generator House #1:	
Replace one cleaning door and frame	$65.00
Replace on- ash pit door and frame	50.00
Replace purge valve seat	55.00
New Sheet in bottom course	65.00
	$235.00
New Generator House #2:	
New lining and checkers	$200.00
New sheet in bottom course	65.00
	$265.00
954 Deep Well Pump House #21:	
New suction pipe and steam line	$225.00
Engine Room #6:	
Overhaul engines and blowers	125.00
Boiler House Extension #5:	
Stack for #4 boiler	506.26
General:	
Overhaul engine and exhausters	200.00
Overhaul gauge boards	75.00
Overhaul all pumps	100.00
Overhaul compressors	115.00

The Master: We will adjourn until the 26th at 9.30, with the understanding that I am going to finish this case.

Adjourned to Wednesday, May 26, 1920, at 9.30 a. m.

Last Complainant's Exhibit 88.
Last Defendants' Exhibit H.

955 NEW YORK & QUEENS GAS COMPANY
vs.
CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 26, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Van Steenburgh, of Counsel for Defendant Dennis O'Leary.

Mr. Ransom: Mr. Spear, take the stand.

MAYNARD H. SPEAR resumed:

Mr. Ransom: In going over the record I find I have a few more questions in the nature of direct examination which I shall need to ask Mr. Spear at some time in the case—I am willing to do it now, or wait.

The Master: Do it now.

Mr. Neumann: I want to make an application with reference to one of the exhibits prior to Mr. Spear testifying.

The Master: Make your application.

Mr. Neumann: Will the complainant produce Exhibit 30?

956 (Mr. Ransom produces the exhibit.)

Mr. Neumann: Now I call the Master's attention to this exhibit: When the discussion of this was originally under consideration—and it is contained in the printed stenographic minutes at page 26, folio 77—the exhibit was withdrawn and the Master, prior to its withdrawal, asked this question:

"Q. Are you testifying to the genuineness of the signature?"

Now, what I want to direct the Master's attention to is that when that exhibit was introduced at the last hearing, it was introduced upon the theory that the Notary's certificate was authenticated. I now call your attention to the fact that there are three typewritten pages following the Notary's certificate.

The Master: What are those three pages following the Notary's certificate?

Mr. Neumann: Those three pages are the consents of stockholders.

The Master: To what? I saw those three pages when I admitted it in evidence; I assumed that it was a matter referred to in the body of the instrument; isn't that so?

Mr. Neumann: I may be in error, but I don't think so.

The Master: I did not read it carefully, but I assumed that to be the condition, that where something was attached to the paper I assumed it was made part of the paper by reference. If that is so, there is no reason why it should not be a part of it.

Let me see what it is—I saw those sheets.

957 Mr. Neumann: Under the circumstances I still move that they be stricken out.

The Master: Motion denied.

Mr. Neumann: On the ground that there is no proof of the signature.

The Master: Motion denied.

Mr. Neumann: Exception.
The Master: Go ahead.

Direction examination continued.

By Mr. Ransom:

Q. Mr. Spear, does the Consolidated Gas Company own all the stock of the New York & Queens Gas Company?
A. All but the shares held by the directors.
Q. The qualifying shares?
A. Yes.
Q. And does the Consolidated Gas Company own any of the bonds?

The Master: One moment: those qualifying shares are held practically for the Consolidated.

The Witness: Yes.
Q. Does the Consolidated Gas Company own any of the bonds of the New York & Queens Gas Company?
A. Not that I know of.
Q. That is, the bonds are held generally by the public?
A. Yes, and they are very generally distributed.
Q. For coupon bonds?
A. Yes.
The Master: How much?
The Witness: Five per cent.
The Master: How much, in amount?
The Witness: $816,000.
958 Mr. Van Steenburgh: Pardon me, when do they mature?
The Witness: 1934.
Q. Has the New York & Queens Gas Company paid any dividends upon its stock since 1914?
A. It has not.
Q. Has it paid interest on its bonds throughout?
A. It has.
Q. Has it borrowed the money to pay the bonds and interest?

Mr. Neumann: One moment. Objected to as incompetent, irrelevant and immaterial; the books, if properly kept, would be the best proof of that.
The Master: I will let him say.
Mr. Neumann: Exception.

The Witness: It has, several times.
Q. During 1919 and 1920?
A. Yes, and once in 1918.
Q. That is, the interest is payable semi-annually?
A. It is, February and August.
Q. And during 1919 and 1920, and part of 1918, it had to borrow the money to pay for the bonds and interest?
A. It has.

Mr. Tobin: Same objection, if your Honor please.

Q. It also had to borrow the money for the construction of the Douglaston extension?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial and not the proper way of proving it.

The Master: I will let him say whether they did in fact borrow the money and not whether they had to do it.

959 Q. Did they?
A. Yes, sir.

Mr. Neumann: Exception.

The Master: I suppose, to correct the record, Mr. Spear, or rather to get it more correct, your answer to Judge Ransom's inquiries, did you have to borrow the interest, I will limit that to this extent: Did you in fact borrow money to pay the interest on these bonds from time to time?

The Witness: We did; we didn't have the money to do it.

Mr. Neumann: I move to strike out "we didn't have the money to do it."

The Master: I will take that.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: The testimony that I am allowing to stand is that they did borrow money, that they did not in fact have the money on hand; is that correct?

The Witness: That is correct.

The Master: You did in fact borrow money to build the Douglaston extension?

The Witness: We did.

The Master: You did not have the money on hand?

The Witness: We did not.

Mr. Tobin: If the Master please, I think our objection would run to the way the Master's questions are put.

The Master: I will note your objection to the questions as I have put them, and allow you an exception.

Q. Mr. Spear, how recently have you had to borrow money to meet current bills?

960 The Master: I will sustain the objection to that.

Q. Have you had to borrow money to meet current bills?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way of proving it.

The Master: I will overrule that.

Mr. Neumann: Exception.

The Witness: We did.

Q. And you didn't have the money on hand to meet them?

Mr. Neumann: Same objection.
The Master: Overruled.
Mr. Neumann: Exception.

A. Borrowed $20,000 on May 17th.
Q. What is the present cost to you of generator coal, to your company?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: Isn't that in the record?
Mr. Neumann: The contracts are the best evidence of that.

Q. What is the present price and what are the present elements of cost that you are now currently paying?

Mr. Neumann: One moment. In the first place the question itself may be meaningless because it is too broad.
The Master: Don't spend any time on that. How recently have you bought generator coal?
The Witness: Bought generator coal this month.
The Master: From whom?
961 The Witness: From the Lehigh-Wilkes-Barre Coal Company.
The Master: How much?
The Witness: I don't recall the figures, between six and seven hundred tons.
The Master: I mean how much in money, how much did you pay for it, what is the price?
Mr. Neumann: I object to that.
Mr. Tobin: Same objection.
The Master: That is what you want, is it, Judge Ransom?
Mr. Ransom: I want to know the current price.
The Master: Well, isn't this the last thing he paid?

Q. Is there any difference between the last price you paid and the price for the next you were to receive?
A. Yes, a big one.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial and purely speculative.
The Master: I have the situation. Next question.

Q. Have you been notified of the price which will prevail between now and September?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial; the present state of the record is they make their contracts in April of each year and this is all in contradiction.
The Master: Judge Ransom, I will let you prove that the price has gone up, by some direct manner, by some direct question
962 as to some precise thing that has happened, but I think your question is a little too indefinite.
Mr. Tobin: If your Honor please, more than that, I don't think

this witness is qualified to say as to what the contract price is because this company don't make the price.

The Master: That is why I am limiting Judge Ransom to some direct question.

Mr. Tobin: I think it is unfair.

The Master: I have ruled on it, next question.

Q. Have you ascertained, by personal inquiries from the Lehigh & Wilkesbarre Coal Company, the price or prices which will be charged between now and September?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, absolutely contradictory to the present state of the record; the man who made the coal contracts was here.

Mr. Ransom: He said there were no contracts, couldn't make any contracts.

The Master: Objection overruled.

Mr. Tobin: More than that, it is mere hearsay and there is no opportunity for us to cross-examine on an issue of that kind.

The Master: Objection overruled, I am going to let the witness say whether he has ascertained, from inquiry from the Lehigh & Wilkesbarre Coal Company, just yes or no.

The Witness: I have.

Q. What did you ascertain as to the price?

The Master: I will sustain the objection to the question for the time being.

What did you do, who did you speak to, how did it come about?

663 The Witness: I asked Mr. Addicks what the present price of coal was and what the price would be.

The Master: Stop there, where you are, I will strike out that statement, let him get to the coal company.

The Witness: Then I telephoned the Lehigh & Wilkesbarre Coal Company and asked them what the price would be.

The Master: Asked who?

The Witness: A man in Mr. Heilner's office, I didn't get his name.

Mr. Tobin: Oh, if the Master please, that ought to go out.

The Master: I have ruled on it.

Mr. Ransom: All right, I will have to bring Mr. Addicks.

Mr. Van Steenburgh: Put in an objection by all the defendants.

The Master: The record shows that an objection made by one defendant, Mr. Van Steenburgh, will be for the benefit of all.

Q. Did Mr. Addicks give you a written quotation of the Lehigh & Wilkesbarre Coal Company for coal between now and the 1st of September?

Mr. Neumann: Objected to.

The Master: Objection sustained.

Q What price are you now paying for bituminous coal?

Mr Neumann Objected to

The Master Objection sustained.

Mr Ransom On what ground?

The Master On the ground that that is not the way to prove it. By my inquiry as to the generator coal I brought out that the
9654 question you asked him in that general form was not a proper question and I am not going to let you do it now.

Mr Ransom The situation is a little different as to bituminous coal

The Master I will let him say whether he bought any, what they paid for it and whether he talked to any coal men, but general questions are improper

Q Have you talked, within a few days, with any dealers in bituminous coal with respect to the price of coal for present and future delivery?

A I have.

Mr. Neumann That is objected to.

The Master Objection overruled, the witness should be permitted to state that he talked with somebody.

The Witness I called up the Shawnee Fuel Company.

The Master Strike that out Who did you talk to if you know?

The Witness Mr Terrio

Q Did you know you were talking to him?

A No, except he answered to the name Terrio.

The Master I won't take that Don't you know who you talked to?

Q You did talk to various people?

A I did.

The Master Over the telephone?

The Witness Yes

Q Did you know the voice of any of these people?

A No

Q Have you a bill for the last bituminous coal that you bought?

A I have.

9655 Q Will you produce it?

A (Witness produces paper.)

Q This is for coal purchased by your company within the month of May, 1920?

A It is

Q. And the coal had been delivered?

A Yes

Mr Neumann One moment, that is objected to as incompetent, irrelevant and immaterial, it is not within the province of this witness to so testify, he ought to be qualified as to deliveries.

The Master: Before ruling on it, I will ask you what do you know?
The Witness: I saw it at the dock.
The Master: Overruled.
Mr. Neumann: Exception.

Q. And this is a bill which you received from the New York Edi-n Company for the coal?
A. It is.
Q. What does that make the cost of coal per ton?

Mr. Neumann: One moment, objected to.
The Master: Objection sustained. I am not going to take prices ed by the New York Edison Company.
Mr. Ransom: Then I will bring these men and prove it.
The Master: I won't take a price fixed by the New York Edison mpany as an isolated instance of a price showing market price; don't think it is the proper way of proving it.
Mr. Ransom: I offer the bill in evidence.
Mr. Neumann: Objected to.
The Master: Objection sustained.
Mr. Ransom: I will have it marked for identification.

Marked Complainant's Exhibit 80 for Identification.

Mr. Ransom: It will take a week to bring all these men here.
The Master: That is no justification for my permitting anything at I don't think is in accordance with the rules of evidence, just cause it takes time.
Mr. Ransom: I think it is in accordance with the rules of evidence.

Q. Mr. Spear, have you made a comparison of the average rate of y of all employees in the works, shops and offices, practically, ring 1919; that is, the actual average rate per hour with the pres-t actual rate of pay per hour in those same department as of May, 20?
A. I have.

Mr. Neumann: Objected to on the ground it is incompetent, irrele-nt and immaterial, too vague and indefinite.
The Master: Overruled.
Mr. Neumann: Exception.

Q. In the works, comparing the actual average rate of pay per ur for the different classes of labor during the entire year 1919, with the present average rate of pay for all classes of labor for rks, what has been the present increase?

Mr. Neumann: That is objected to on the ground it is incompe-t, irrelevant and immaterial, and not the proper way of proving it.
Mr. Tobin: If your Honor please, further than that, Judge Ransom is attempting to make a comparison of a five months' period as against a full year.
The Master: That won't make any difference on averages.
Mr. Tobin: Well, more than that, he can't make a fair comparison

because the year has not spent itself and the labor market may be entirely different. He is taking a high peak price because it happens to be a high peak and comparing it with 1919.

The Master: I will take it for what it is worth but I think he should state what the average was for 1919.

Mr. Tobin: We are at the peak now, your Honor.

The Master: I understand that.

Q. What was the average in 1919, Mr. Spear, for the works?

Mr. Neumann: Further than that, his question is so broad that it might require considerable cross-examination to bring out what the real facts are.

The Master: That doesn't worry me so long as the question is proper.

The Witness: The average at the works for 1919 was .43435 cents per hour.

Q. And what is the average at the works as of May, 1920?

A. 53.83 cents per hour.

Q. An increase of what per cent?

A. 23.92 per cent.

Q. Did you make a similar comparison——

Mr. Tobin: We object to the introduction of this testimony at this time; we don't think it is fair to introduce these averages; they are not fair averages.

968 The Master: How do you know they are not?

Mr. Tobin: He is taking the peak at this time in comparison with the rest of the year; it is simply a guess at its best.

The Master: It is not a guess, it is an absolute fact.

Mr. Neumann: In addition to that, there is no foundation for any of this testimony.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Then again, there enters into it the conclusion that he has drawn here as to the method he used to arrive at this particular percentage.

The Master: I will let you cross examine.

Mr. Tobin: But we haven't anything in the record to start to cross examine on, he simply makes a broad statement here and you can't get behind it so easily as it might be shown.

The Master: I could get behind it very easily.

Mr. Ransom: They have had all these payrolls.

The Master: I could bring out in ten minutes whether it was a fact or not—go ahead.

Q. Have you similarly made a comparison of the actual average rate of pay per hour in the shop during 1919 and the present time?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on hypothesis and supposition.

The Master: Overruled.

969 Mr. Neumann: Exception.

The Witness: I did.

Q. What was the average rate of pay per hour for various classes of labor in the shop work during 1919?

Mr. Neumann: Same objection.
The Master: Same ruling.

A. 41.48 per hour.

Q. What is the average rate of pay per hour for all classes of labor in the shop?

A. 49.82 cents per hour.

Q. An increase of what percentage?

Mr. Neumann: Same objection.
The Master: Overuled.

A. 20.11.

Q. Have you made a similar comparison of the average rate of pay in the office during 1919, and the present time?

Mr. Neumann: Same objection.
The Master: Overruled.
Mr. Neumann: Exception.

The Witness: I have.

Q. What was the actual average rate of pay per hour in the office?

Mr. Neumann: Same objection.

Q. For different classes of employees?

Mr. Neumann: Same objection.
The Master: Overruled.

The Witness: I figured that by the week because they are weekly employees in the office; I don't recall the exact figure and I haven't it here, but the increase——

The Master: No.

Q. Do you know what the increase was?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, he hasn't got the figures on
970 which it was based; that is purely getting something out of the air.

The Master: I took it out of the air five minutes ago and disposed of it and you want to make a speech about it.

Q. Have you likewise made a study and comparison of the average price of materials other than coal and oil, during 1919 and the present time?

A. I have.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.
Mr. Neumann: Exception.

Q. Mr. Spear, have you at my request made a computation of the cost of the distribution of gas at the present time?
A. I have; that is based on 1919 figures; the 1919 figures based on the present cost.

Mr. Neumann: One moment, I want to get that clear. Will the stenographer read that answer?

(Answer read by the stenographer.)

Q. That is, you have ascertained the extent to which the cost of the distribution of gas, per thousand, has increased as compared with 1919?
A. Yes.

Mr. Neumann: One moment, objected to on the ground it is incompetent, irrelevant and immaterial; the exhibit, when introduced, will speak for itself.
Mr. Ransom: There may not be an exhibit.
971 Mr. Neumann: Well, you are evidently laying the foundation for one, and if you are not, you are fooling away the Court's time.

Q. Based upon an assumption of the same sales as in 1919?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and based on an assumption.
The Master: Overruled; it is simply an inquiry as to whether he made a calculation.

The Witness: Yes.

Mr. Neumann: Exception.

Q. As you have testified, you are familiar with all the elements of distribution of the company's gas and have charge of that as manager?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and counsel's question presupposes that that is the testimony and this witness has never testified to that fact.
The Master: Overruled.
Mr. Neumann: Exception.

The Witness: Yes.

Q. On the basis which you have indicated, what is the present cost per thousand of distribution of gas?

Mr. Neumann: Objected to on the ground it is immaterial.
The Master: Objection sustained.

Q. Is this a statement prepared by you (exhibiting paper)?
A. It is.
Q. In the manner in which you have indicated?

A. Yes, sir.

Q. Covering the cost of distribution, the taxes and the renewals and replacements, based on the prices being paid for the labor
972 and material entering into the cost of distribution as of May 25, 1920?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and the paper itself will speak for itself when it is introduced in evidence.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes, sir.

Q. And in this statement you have set forth the various items making up the cost of distribution and other expenses?

A. I have.

The Master: Where did you get the bituminous coal item?

Mr. Ransom: That is not in distribution.

The Master: Oh, I see. Well, where did you get all these items from?

The Witness: I took the account as of last year or—cost for 1919, and added to it the increase in the cost of labor and material as of May 25, 1920.

The Master: What kind of material?

The Witness: Any materials that entered into the distribution.

Q. You mean repair materials?

A. Yes.

The Master: And those prices have not been proved here, have they?

Mr. Neumann: No.

Mr. Ransom: Many of them. The vouchers are all in.

Mr. Tobin: If your Honor please——

The Master: Are these figures based only on the vouchers that are in evidence, that is what I want to know, or is there some cal-
973 culation based on something else?

Mr. Ransom: Well, let's see.

Q. As, for instance, in Salaries General Office, you put in here the 1920 salaries rather than the 1919 salaries?

A. Yes.

Mr. Neumann: And there is no testimony as to the 1920 salaries.

Mr. Ransom: Oh yes there is; that was brought out by you and the Master at the last hearing.

Q. And with respect to insurance, you have put in the 1920 cost of insurance rather than the 1919 cost of insurance?

A. I did.

Mr. Neumann: There is no proof as to insurance.

Q. Well, you know what the company pays for insurance?

A. I do.

Q. You have charge of the insurance matters?
A. I pass the bills.
Q. And you have charge of all these matters here?
A. Yes.
Q. And these represent your best knowledge and judgment as to what the 1920 expenses for these items would be, assuming the same sales in 1920 as in 1919?
A. Yes.

The Master: And then assuming the prices would continue during the year?
The Witness: Yes, the same prices continuing during the year.
The Master: Well, now, are there any prices in there that
974 are not evidenced by vouchers in evidence? That is what I want to know?
Mr. Neumann: Suppose you look at it, Mr. Spear.
The Master: Well, Mr. Spear ought to know how he made it up.
Mr. Ransom: Well, I take it that with respect to some of these items they do represent the witness' judgment, some of the matters on which bills have not yet been rendered.
The Master: Well, here is the situation; It occurs to me, because of the inquiry as to bituminous coal, there may be some repair labor in there that he may have rung up somebody and somebody may have said, Why, the price is a dollar and a half now, and he has based his figures on that, and I do not think that is entirely reliable. I do not think I could take that.

Q. Where you assumed, with respect to labor elements, you assumed the increase in the cost of labor which you testified to?
A. Yes.
Q. And with respect to the various elements of materials entering into the repairs and into supplies, and the like, you took the increase which you know has already taken place in the cost of that class of material, as compared with 1919?

Mr. Neumann: Objected to on the ground it is immaterial.
The Master: I will sustain that question as a leading question for once. That is the only one I have ruled out as a leading
975 question, and I think that is a good illustration of a leading question that is dangerous. I will let Mr. Spear say where he got the figures.
The Witness: Well, I took the bills for 1919.
The Master: Yes.
The Witness (continuing): And compared the same bills for the same material for April and May, 1920.
The Master: Actual bills?
The Witness: Actual bills.
Mr. Neumann: To you?
The Witness: Yes.
The Master: Was there any item that you recall in this statement that is based upon any inquiry or statements made to you by somebody else, or are they all based in the way that you have de-

ribed, upon actual payments made this year, as against payments ade last year?

The Witness: Yes, there are some items there; for instance, the lief department and pensions; I inquired as to what the doctors ere getting now as against last year, and I found there was an in- ease there.

The Master: What do you mean the doctors?

The Witness: In the Mutual Aid Society.

The Master: Well, how does that affect you?

The Witness: For taking care of our employees.

The Master: How does that affect you?

The Witness: We have to pay the doctors.

76 Q. That is, you have to contribute?
A. Yes.

The Master: You haven't had any doctors' bills this year?

The Witness: We have had some, yes, but I did not compare em.

The Master: Whom did you inquire of?

The Witness: Mr. Van Blarcum, the Secretary of the Mutual Aid ciety.

The Master: What else, if you recall?

The Witness: Then I estimated, to the best of my knowledge, the crease in the amount of cost to us this year of the rate case.

Q. The item of real estate rents paid in this statement, did you e your 1920 rents of the buildings occupied by you for your office, ther than your 1919 rents?

Mr. Neumann: Objected to on the ground it is immaterial, irrele- nt and incompetent, not the proper way of proving it.

The Master: I will overrule that.

The Witness: I did; and I added to that two floors in the build- g right next to us which we expect to get into in the next couple weeks.

The Master: That you have already rented?

The Witness: Yes.

The Master: The price agreed upon?

The Witness: Yes.

The Master: Now, as I understand it, the only items that are not idenced by vouchers or other matters in the record is the informa- n you got about the doctors' expenses and what you have figured on the rate case?

77 Mr. Ransom: That is the legal expenses and other expenses in connection with the rate case, as to which he used his best dgment and opinion.

Mr. Tobin: If your Honor please, that is all that the Master has en able to pick out himself. Now, nobody knows just how this ble is made up here, there is a list of at least twenty or twenty-five ems.

The Master: I will find out. Is there any other?

The Witness: Legal expenses.
The Master: That is part of the rate expense.
The Witness: No. We took the legal expenses, and then took the rate expenses.
The Master: Is there any other element that you know about that is estimated?
The Witness: No.
The Master: Are you sure about that?
The Witness: Yes.
The Master: As I understand it this table is made up on vouchers and payments actually made by your company in 1919 as compared with 1920?
The Witness: Yes.
The Master: Except this additional rent that you figured on paying?
The Witness: Yes.
The Master: The doctor expenses that you got from the Mutual Aid Society Secretary?
The Witness: Yes.
The Master: The legal expenses and the rate expenses?
The Witness: That is right.
The Master: That is all?
The Witness: That is all.

978 Q. Now, with reespect to this matter of the contribution to Mutual Aid Society, the amount of such contributions increases as the rate of compensation of labor increases?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it.
The Master: Overruled.

A. Yes, it is; it depends on the payrolls.
Q. And in the increase which you have got here in that figure amounting to only a few dollars, you have taken into account the increase in the rate of pay of your employees?

Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Yes.
Q. Now, the renewals and replacements figures——

The Master: The chances all are that I shall disregard the 1920 figures except as bearing upon a finding that the expenses in 1920 will be no less and probably more than in 1919.
Mr. Neumann: Well, why take that?
The Master: Well, I think I have got to have some testimony to make that finding, but I am inclined to think from what I see of the case now that I shall probably base my finding on the entire year 1919 as I did in the Consolidated case for the eight months of 1919.
Mr. Neumann: No court will adopt a rule that a part of a year is a criterion on which a statute can be declared confiscatory.

The Master: I am not worrying about that.

The renewals and replacements item you used was the 1919
e?
It was.
And the taxes and interest charges, you took the 1919 figure?
Yes.
Not having your 1920 figure as yet?
Yes.
And made up in the way in which you have indicated this
ment is correct according to your best knowledge and judg-
?
It is.

. Ransom: I offer it in evidence.
e Master: I will receive it in evidence with the reservation that
ll in analyzing the statement disregard the items of legal ex-
s and rate expenses as being estimates of this witness.
. Neumann: May we not put our objection to it on the record

e Master: Yes.
. Neumann: Objected to on the ground it is immaterial,
vant and incompetent, shown by the witness' own testimony to
t correct, based on suppositions, based on presumptions and
ption-, based on hearsay and other incompetent proof.
e Master: Objection overruled.
. Tobin: We also make the further objection, if your Honor
, that it is not proper proof in that he has to take a period of
which is not a proper average; that is, in other words, they
have attempted to take a period of time in 1919 and a period
of time in 1920, but we maintain that is not a proper method
of taking an average, and more than that it is simply a
hesis of what these figures may be in the year 1920.
e Master: Objection overruled; I will take it.
. Tobin: Exception.

per marked Complainant's Exhibit No. 90.

Mr. Spear had there been grading and filling done on the land
ied by the works of the New York & Queens Gas Company prior
igust, or land thereafter occupied by the New York & Queens
Company, prior to the taking over of the property by your
any in August, 1904?

. Neumann: Objected to on the ground it is immaterial, ir-
nt and incompetent, not the proper way of proving it, no
lation having been laid for it at the present time.
e Master: Does the witness know?
. Ransom: Why, he was there.
e Master: Overruled.
. Neumann: Exception.

e Witness: There was.

Q. You knew about it?
A. I did.

Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

Q. A substantial part of it was done under your direction?
A. Practically all of it was done under my direction.
Q. Have you estimated the quantity and cost of such work done prior to August, 1904, on this land?

981 Mr. Neumann: Objected to as incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.

A. I have.
Q. What is your estimate or calculation?
A. Approximately 5,600 yards.
Q. And do you know and did you know the cost of such grading and filling at that time?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent.
The Master: Overruled.
Mr. Neumann: Exception.

A. Yes.
Q. What was it?
A. One dollar a yard.

Mr. Ransom: That is all.
Mr. Neumann: Are you through with this witness Spear now, Mr. Ransom?
Mr. Ransom: I think so.
Mr. Neumann: Can't you make a direct statement, Judge?
The Master: Proceed with your cross-examination.

Cross-examination.

By Mr. Neumann:

Q. Now, Mr. Spear, you testified with reference to moneys that you had to borrow for this company. Do you recall what rates of interest you paid upon those moneys so borrowed?
A. Six per cent.
Q. In every instance?
A. No, the last loan is at 7%.
Q. That is more than the statutory rate?

Mr. Ransom: Objected to as an incorrect statement of the statute.
982 The Master: Objection sustained.

Q. Did you borrow the money in the form of cash or by the sale of securities?
A. Cash.
Q. And you paid 7% interest for it?
A. Yes.
Q. To whom did you pay that?
A. The Consolidated Gas Company.
Q. When?
A. The last loan, I think, is dated May 17th.
Q. What year?
A. 1920.
Q. May 17, 1920, and you paid 7%; and what was the amount of that loan?
A. $20,000.
Q. And what is the date of maturity on it?
A. On demand.
Q. Now, the loan previous to that was for how much money?
A. $50,000.
Q. What rate of interest?
A. At six per cent.
Q. From whom?
A. Consolidated Gas Company.
Q. Is that also on demand?
A. Yes.
Q. And the loan previous to that—did you give the date of that?
A. I cannot recall the exact date, but it was about the first of the ear.
Q. The present year?
A. Yes.
Q. Well, the loan previous to that?
A. I do not recall just when that was.
Q. Some time during 1919?
A. Yes.
83 Q. From whom?
A. Consolidated Gas Company.
Q. At what rate of interest?
A. Six per cent. All our loans from the Consolidated Gas Company are at seven per cent now, were changed to seven per cent.
Q. You mean those that were previously six per cent have now een raised to seven per cent?
A. Yes.
Q. So that you are paying to the Consolidated Gas Company even per cent on all moneys that you have loaned from them that ave not been repaid, is that right?
A. That is correct.
Q. Do you know what the total amount that you now claim you we the Consolidated Gas Company is?
A. I do not know the exact amount, but between $500,000 and 600,000.
Q. And upon that amount you are paying seven per cent interest om what date?

A. It is figured quarterly.
Q. You evidently misunderstood my question.

The Master. When did the seven per cent rate start?
The Witness. I think it was about the 1st of April.

Q. 1920.
A. 1920.
Q. Have you paid any interest to the Consolidated Gas Company at the rate of seven per cent on any amount at any time?

Mr. Ransom. Objected to as vague and indefinite.
The Master. Oh, I understand it. Have you actually paid any money, you mean, or by check, on account of any of this interest?
Mr. Neumann. Yes.
984 The Witness. No, we have not actually paid them yet. The quarter ends this month, and a check will be drawn the latter part of this month.

Q. So that until the end of this month there will have been no actual payment to the Consolidated Gas Company of interest on any sum at the rate of seven per cent?
A. Yes.
Q. At the present time it is simply an agreement to pay that amount, is that correct?
A. That is correct.
Q. No actual payment?
A. I do not think there is.
Q. Are you sure?
A. No, I am not positive, but that is the best of my recollection.
Q. Is there any way of refreshing your recollection?
A. Yes, I can look it up in the books.
Q. In your office?
A. Yes.
Q. You could not look it up by any books that are in court now?
A. No, they would not show the rate of interest.
Q. When you obtained the loan of this money from the Consolidated, is there any evidence in writing as to the amount?
A. The amount of the loan?

The Master. Did you give a note?
The Witness. Oh, yes, we gave a note for it and a receipt for the check.

Q. A note for it and a receipt for the check, and that note contains the rate of interest and the amount of the loan?
985 A. I do not think the interest is stated. It gives the amount of the loan, but I do not think it states the interest rate.
Q. What does it state with reference to interest?
A. With interest.
Q. Without mentioning any figure?
A. That is my recollection of it.

Q. And the agreement to pay interest is an independent agreement not set forth in the note?
A. That is my recollection of it.
Q. Well, is that correct?
A. I would say so from memory, yes.
Q. Well, can you advise yourself as to that and be able to testify directly to that question?
A. Yes, I could.
Q. You stated that you borrowed these moneys from the Consolidated Gas Company. Did you mean the Consolidated Gas Company or the Consolidated System?
A. The Consolidated Gas Company of New York.
Q. Did your company ever borrow any moneys from any of the subsidiary companies of the Consolidated Gas Company?
A. No, we have not.
Q. Are you sure of that?
A. Yes.
Q. Well, are any of the subsidiary companies creditors of your company, or is your company a creditor of any of the subsidiary companies of the Consolidated?
A. Well, we sometimes buy materials from them, which would make us a debtor.
Q. And in those instances do you have to pay the companies interest on the amount you owe?
A. Oh, no.
Q. Are you familiar with the State tax reports, or reports made to the State Tax Departments?
A. Yes.
Q. Now, you stated that you paid the interest quarterly?
A. Yes.
Q. Do you compound the interest or do you simply pay the interest quarterly and the principal sum remains the same? Do you understand my question?
A. We pay separately the interest alone.
Q. And the principal sum remains the same?
A. Yes.
Q. In other words, you do not pay interest on interest?
A. No, we do not.
Q. Now, Mr. Spear, getting back to the works, what is your capacity for the storage of coal?
A. About 2,000 tons, I would say now.
Q. And that would be how many pounds?

The Master: Oh, don't go into that. Next question.

Q. You testified with reference to the taking of an inventory of coal?
A. Yes.
Q. That was done, as I understood, monthly?
A. Usually monthly. Of course, there were conditions in the wintertime which might prevent taking an inventory, such as heavy

snows. Some of the coal is on the outside, you know, and not under covered bins.

Q. And in those isolated instances when do you take the inventory?

A. Usually around the first of the month.

987 Q. I mean taking those isolated instances you are talking about in the winter?

A. Yes, I say usually around the first of the month.

Q. That would only be so when there was a severe winter?

A. Yes.

Q. You take the average winter, the average mild winter, and you take an inventory every month?

A. Yes.

Q. The daily record of manufacture contains the amount of coal used daily, and then a monthly balance, that is correct, is it not?

A. Yes.

Q. Do you check that with the inventory taken at the end of each month?

A. Yes.

Q. Which figures are the figures which find their way into the books, the ones from the work sheets or the inventory?

A. The ones from the work sheets, unless we find, as we do sometimes, a variation between the inventory and the amount shown on the sheet, and we might charge more in the used column.

Q. Those are what you call adjustments, the same as the adjustments of oil?

A. Yes.

Q. Where would there be an indication of what adjustments were made with reference to coal?

A. It should be on the work sheet as added to the used.

Q. So that if the work sheets—the daily record of manufacture, to be precise—does not contain any adjustments at the end of the month, it is a fair supposition that the inventory at the

988 end of the month agreed with the figure; that were set down as the daily use and totalled at the end of the month; is that correct?

A. Yes, except in a case of screenings transferred to boiler coal.

Q. Well, that would be shown by a separate item?

A. As screenings transferred, yes.

Q. What I am getting at is this, Mr. Spear: Is it fair to assume that if there are no adjustments made in the column on the daily record of manufacture which indicates the coal used during the month, therefore the total for that month, the total of the daily use for that month checked with the inventory taken at the end of the month?

A. Yes, sir, if the inventory were taken that month. One other condition that I recall——

Q. Assuming that the inventory is taken——

The Master: Let the witness state what other condition.

The Witness: There are conditions which sometimes turn up in a small works like ours, where we have trouble in getting labor. I have seen conditions there when Mr. Morrison has had to go in and make gas because the gas-maker has not shown up in the morning and we were short of help. If that condition existed around the first of the month, he would not take his inventory.

Q. Generally speaking, then, you do take your inventory at the end of each month, of coal?

A. Yes.

Q. I am talking in general, not of these isolated or exceptional incidents that might occur anywhere.

989 A. Yes. He might find also on taking inventory that he was over on generator coal and under on boiler coal, due to some error made, and——

Q. Some error where?

A. Possibly in his previous figures, and then would not transfer dust—or screenings.

Q. In other words, he would use his own discretion as to whether the records were correct or not, and change them at the end of the month with the inventory?

A. No, he would not do that without talking to me about it.

Q. Well, you and he together, then, would change those records if they did not check with your inventories?

A. Yes, we might transfer less screenings than had been turned in by the man who carts the screenings over.

Q. Yes. In other words, if your daily record of manufacture did not check properly with your inventory at the end of the month, you would make the daily record—you and Mr. Morrison would make the daily record conform to the inventory: is that correct?

A. We would make an adjustment; yes, sir.

Q. So that you take as the criterion the inventory and not the daily record that is put down there as it is used; is that correct?

A. Well, the inventory is considered with that.

Q. Yes, but where there is an error between the daily record and the inventory at the end of the month, the inventory controls; is that correct?

Mr. Ransom: He has not said that.

A. If the inventory is taken, yes.

990 Mr. Neumann: Yes, he has said it.

Mr. Ransom: He has not.

Mr. Neumann: Yes, he has.

The Master: Next question, Mr. Neumann.

Mr. Neumann: May I have that last question of mine, before the witness Ransom testified, read?

The Master: Read it.

(The stenographer read the last question and answer.)

Mr. Ransom: Yes, if the inventory is taken.

Q. Mr. Spear, what is your average monthly consumption of coal?

The Master: What kind of coal?

Mr. Neumann: Generator coal.

A. You mean at the present time?

Q. Well take for the year 1919.

A. Oh, I could not tell that without figuring it.

Q. You have to determine how much coal should be sent to your company, do you not?

A. I do.

Q. That is solely within your control?

A. It is.

Q. And you determine when deliveries should be made?

A. Yes.

Q. What factors do you take into consideration when you give such an order?

A. I get the works report about the second or third of the month; I go over those figures and then I go back over several days' use of coal for the previous month, and estimate about how long the coal on hand will last, and if we have plenty of room and coal is coming in easy I order more so as to keep our bins pretty well filled.

991 Sometimes I have to get down pretty low on coal, because it is pretty hard to get at times.

Q. When do you find coal harder to get, in the summer or in the winter?

A. In the winter time, where there is much ice in Flushing Creek and Flushing Bay.

Q. No. I am talking about from the company, irrespective of climatic conditions.

A. I would say right now it is the hardest time I have ever known to get coal.

Q. What is that?

A. Usually we have a great deal more coal on hand than we have at the present time.

Q. Taking the average of years, what is the period of the year that it is easiest to get coal?

A. Well, with us I think we can—our experience has been that we can get it through the Consolidated Gas Company at any period of the year just about the same.

Q. Irrespective of winter or summer?

A. Yes, because our requirements are so small compared with theirs.

Q. Yes, and you have a contract in conjunction with their contract, that insures you delivery over a year?

A. Yes. Well, now just a minute, you say if we have a contract. How do you mean?

Q. I am talking about general conditions, generally speaking. I am not talking about this exceptional condition now.

A. Yes, generally.

Q. How and in what quantities do you obtain your coal, average?

A. Between 600 and 700 tons of generator coal in the barge.

992 Q. And when are those deliveries made?

A. As I order them.

Q. I mean generally speaking how do they average, one delivery a month, or two deliveries a month?

A. No, sometimes we get two, sometimes one; sometimes it might be six weeks.

Q. Before you get a delivery?

A. Yes.

Q. And that would depend on the time you put in the order for it?

A. It depends on how coal is coming in to tidewater.

The Master: Well, it would depend, too, on your requirements, and how you ordered it, would it not?

The Witness: Yes.

Q. Suppose instead of ordering 600 tons you ordered 1,200, that would be within your province, would it not?

A. We could not get it in the dock, there is not water enough. We have to get between 600 and 700 tons on a 1,000 ton barge.

Q. But you could get two barges, could you not?

A. Oh, yes.

Q. There would be no obstacle to you getting two barges, would there, if you ordered them at any particular time?

A. Well, in ordinary conditions, no.

Q. Or three barges, either, would there?

A. Well, it would depend on how much storage space we had.

Q. Yes, you testified you had storage capacity for 2,000 tons.

A. Yes, that is only three barges.

993 Q. Yes, that would be three barges; assuming your pile went down to 300 tons you could order two barges and have them delivered, could you not; there would be no obstable in the way of that, would there?

A. Well, the only obstacle would be the impossibility of getting it.

Q. Impossibility of what?

A. Of coal getting into tidewater. For instance, only last month we could not get any coal from tidewater, and we had to get coal from Astoria to keep going.

Q. Why?

A. Because our stock was getting too low.

Q. Why could you not get it from tidewater?

A. Because there was none coming in.

Q. I am talking about general normal conditions, Mr. Spear.

A. Well, you were asking me what obstacles there would be in the way of getting three barges, and I am explaining those are the obstacles.

Q. Generally speaking, under normal conditions?

A. There are times that I have gotten two barges in, one following the other within two weeks.

Q. Yes, that is what I wanted. You have stated you order the coal as you need it. Flushing Bay freezes over during the winter, does it not?

A. Sometimes.
Q. It did during the year 1919?
A. It did.
Q. And it has prior to that time, too, to your knowledge?
A. Twice to my knowledge.

994 By the Master:

Q. Only twice?
A. Yes.
Q. In all the years?
A. Yes.
Q. Rather unusual for it to freeze over?
A. Yes, for this reason, your Honor——

Mr. Neumann: No. I object to that, if the Court pleases. "Rather unusual" is a characterization. I am trying to bring out the facts here and not characterizations.
Mr. Ransom: Let the witness finish his answer.
The Master: Overruled.
Mr. Neumann: Exception.

The Witness: The Brooklyn Ash Removal Company have a contract to take the ashes from Brooklyn to fill in the meadows, which are about a mile beyond our dock, and they keep that open with scows running through constantly.
Q. That has continued for how many years?
A. They have been on that now I guess for six or seven years. Prior to that time the "El Boyer" used to run through carrying freight from New York to Flushing; she used to break the channel, so all we had to do was to break the channel to the dock to get a barge in. Last year we were not interfered with in our oil supply at all; we got oil in by barge right along, whereas the year before we had to get it in by rail.

By Mr. Neumann:

Q. That was in 1917?
A. Yes, 1917-1918.

The Master: I assumed, Mr. Neumann, that you had some point you wanted to develop.
995 Mr. Neumann: I have, yes.
The Master: That is the reason that I let you go on, but if I do not get your point pretty soon I will have to cut you off.
Mr. Neumann: I have a point, and I will develop it if the witness does not fence with me.
The Witness: I am not fencing, Mr. Neumann, a bit; I am trying to answer your questions as they are put.

Q. In the winter of 1919 you could not get your usual and normal supply, and by the same methods that you did, by reason of the fact that Flushing Bay was frozen over; that is true, is it not?

A. No, it is not.
Q. Isn't it?
A. No, it was due to shortage of coal.
Q. Was Flushing Bay frozen over during the year 1919?
A. No, the channel was open the entire time.
Q. No part of the time that it was frozen over?
A. No.
Q. You had to pay for the carting of coal in addition to your contract price, over and above what you did in other normal years?
A. Yes.
Q. As compared with 1919; that is correct, is it not?
A. Yes, that is right.
Q. And what was that due to?
A. Labor conditions, increase in the cost of labor and horses and trucks, and automobile trucks.

Q. Did you get your supply of coal during the year 1919
996 in the usual way that you got it in other years, or was there something extraordinary with reference to the year 1919, as to your deliveries of coal?

A. We did, but I think we got some coal from Astoria by truck and also from Ravenswood, where the barge had not come in on time and we needed a few tons to tide us over until the barge came in.
Q. And for that reason you were compelled to pay an additional charge for those particular purchases that you made?
A. Yes.

The Master: Now what is the point?
Mr. Neumann: The point, as I understood it, is that Flushing Bay was frozen over and that he did not use the proper judgment in getting a proper supply of coal in at the beginning of the winter.
The Master: Do not let us waste so much time on matters of judgment; I have still to find a man who will not go wrong on judgment, including myself.
The Witness: That was not judgment; we could not get the coal.
The Master: I know, but to spend hours attacking a matter of judgment of operating officials will get us nowhere.

Q. Mr. Spear, is it fair to say that in no case do you use your independent judgment as to whether you will pay any particular price for supplies, such as the piping and the like, until you first have taken it up with the purchasing agent of the Consolidated Gas Company?
A. I don't quite get that question, Mr. Neumann.
The Master: Read it.
997 Q. (Read by the stenographer.)
A. No, it is not.
Q. In what instances do you use your independent judgment?

The Master: Without previous conference with him.
Mr. Neumann: Yes.

A. Why, I would say most of the supplies that we buy.
Q. Mention the supplies that you buy.

A. Ranges.
Q. Those are gas appliances?
A. Yes.
Q. What else?
A. Water heaters.
Q. That is a gas appliance?
A. Yes.
Q. What else?

By the Master:

Q. What Mr. Neumann had in mind was, for instance, the repair material that you need, brick, the lining, cement, pipes, fittings and all that other mass of stuff—do you confer with the purchasing agent always before you buy, or at any time?

A. On any large order I always talk with him and ask him what his prices are and how they run.

Q. On small orders?

A. And see whether he has got any particular contract. No, our cement we buy locally.

Q. Brick?

A. We buy that locally, except the checker brick, and that we usually buy in connection with the Consolidated Gas Company. They figure up all their requirements and then get bids from
998 different concerns, and we save money that way.

Q. You get your checker-brick through the Consolidated, then?

A. We buy it direct, our order is placed direct, except that we get the prices through them.

Q. That is what I mean.

A. In other words he has a whole department there that are doing nothing but getting prices, and I avail myself of that to save money.

By Mr. Neumann:

Mr. Spear, coming back to coal, you had a contract for the delivery of your coal, running from April, 1919, to April, 1920; is that correct?

A. Well, I would not say positively. Mr. Addicks testified that; I do not know just what——

Q. Mr. Gawtry, and introduced in evidence here the contract.

A. Yes.

Q. You ran short of coal during that coal year, did you not, April, 1919, to 1920?

A. I would say that our stock diminished, yes.

Q. Did you not run short of coal and have to purchase it from other companies?

A. Yes.

Q. And that was along about March or April of this year, was it not?

A. I do not recall the date of it.

Q. And did you not introduce in evidence here the bills yourself?
A. I did.
Q. And don't you know that you testified to what the dates were?
A. Well, I do not recall it now. Whatever I testified at that time was correct.
999 Q. Yes, but did you not recall then what you were testifying to? It was only at the last hearing.
A. Well, I was probably testifying right from the bills.
Q. And you had no independent knowledge of it yourself?
A. Yes, because I knew that the coal came in at that time; but I would not say now whether it was in March or February, but about that period.
Q. It was the early part of this year, was it not?
A. Yes.
Q. And that is part of the calendar coal year?
A. Yes.
Q. During that year the daily work sheets or daily——
A. Daily works report?
Q. Daily works reports, indicate that you sold coal to your employees?
A. Yes.
Q. Is that true?
A. Yes. That is coal we cannot make gas out of, though.
Q. You have charged it up under Generator Coal, have you not?
A. Yes, because it is screenings from the screenings. It is the larger screenings. In other words, when we fill our buggies we use forks, and the work has a certain distance between the tines. Any coal that will fall through those tines does not go into the generators; that is what we call screenings. Now, we screen that on a screen of an inch mesh, and what does not go through we sell to the employees.
1000 Q. And that coal could not be used for any purpose in your works at all?
A. It is worth more to sell it that way than it is to use it in the boilers, besides helping out our employees at times when they could not get coal in Flushing.

Mr. Neumann: I move to strike that from the record as not responsive.
The Master: I will deny the motion.
Mr. Neumann: Exception.
Mr. Neumann: Have you the payrolls, Judge Ransom, that I asked you to produce—January, 1918, February, 1918, January, 1919, and February, 1919?
Mr. Ransom: I had no request until this morning. I telephoned for them. When you spoke about them a little while ago I telephoned.
Mr. Neumann: You had them here at the last hearing when this witness was under cross-examination, and we did not finish with them.
Mr. Ransom: The payrolls?

Mr. Neumann: Yes, the payrolls. The Master directed you to telephone for them.

Mr. Ransom: We had the works reports, but I did not——

Mr. Neumann: No, the payrolls; you sent up for them at the Master's direction.

Mr. Ransom: They will be here. They will be here,—again.

Mr. Neumann: Have you Exhibits 58 and 59?

The Master: Haven't you got copies of all the exhibits?

Mr. Ransom: Why, of course they have.

1001 Mr. Neumann: Yes, but I want to show the——

The Master: Well, use your copy.

Mr. Neumann: I should not like to.

The Master: And ask your question.

Q. You recall Exhibit 58, do you, Mr. Spear?

A. I do not know what it is—the number.

Q. (Counsel indicates exhibit.)

A. Yes.

Q. And you recall Exhibit 59, which was introduced at the same time Exhibit 58 was?

The Master: How is that entitled?

Mr. Neumann: Sir?

The Master: How is 59 entitled?

Mr. Neumann: I have not it here. If the Judge would produce his original, why, I will show it to the witness.

The Master: He gives you copies in order to facilitate your work.

Mr. Neumann: Yes, and we immediately give them to our department in order to facilitate the cross-examination.

The Master: All right, get them back.

Mr. Ransom: That is why we give you two copies, one for you and one for them.

Mr. Neumann: I may have it here. No, I have not.

Mr. Ransom: What one is it you want?

Mr. Neumann: Exhibit 59.

Mr. Ransom: The very purpose of giving you two copies is to enable you to give one to your department.

Mr. Neumann: It is very kind of you.

Q. Having looked at Exhibit No. 59, do you recall it?

A. I do.

1002 Q. Did you make up Exhibit 59 from Exhibit 58?

A. No, I did not.

Q. Where did you obtain the data upon which you based Exhibit 59?

A. From the vouchers.

Q. I do not want to mislead you, Mr. Spear, but look at sheet second of Exhibit 58.

A. That has nothing to do with this.

Q. No part of the information of Exhibit 58 has anything to do with Exhibit 59?

A. That is right.

Q. Is that correct?
A. That is correct.
Q. What did you use as the basis for Exhibit 58?
A. The payrolls.
Q. For those years?
A. That is right.
Q. What did you use as the basis for Exhibit 59?
A. The vouchers rendered by the coal and oil companies and the stevedores.
Q. Exhibit 58, sheet 2, was intended by you, was it not, to indicate the increase in wages, for the years therein set forth, in the various departments?
A. Yes.
Q. Take the sixth column under the subheading "Boiler Coal," do you see the figure there 1.1635?
A. I do.

Mr. Ransom: That is dollars.

Q. How did you arrive at that figure?
A. Dividing the amount shown in the fifth column by the number of tons shown in the second column.
1003 Q. Will you just do that on paper?
A. (Witness makes computation.) Yes.
Q. Is there an error in that figure?
A. In the fourth decimal place, yes.

The Master: What is the figure?
Mr. Neumann: It should be 1.1631.
The Witness: 1.1631.
Mr. Neumann: Instead of 1.1635.
The Witness: In the fourth decimal place.
Mr. Neumann: I am just trying to show that the exhibits are not correct, that there are errors in them.
The Master: Go on.
Mr. Neumann: It does not make any difference whether they are small or large, the witness has testified the exhibits were correct and he computed them, and I am showing that he has not properly computed them.
The Witness: That may be a typographical error.
Mr. Neumann: But it is an error, nevertheless, isn't it?
The Master: Go on.

Q. Using that same line, that same last line under "Boiler Coal," you have the increase under the column Year 1911, 138%, is that correct?
A. Right.
Q. How did you reach that figure?
A. By taking the difference between that 1911 cost and the 1920 cost, and dividing by the 1911 figure.
Q. Will you demonstrate that, please.

The Master: What is the difference there, Mr. Neumann?

Mr. Neumann: Seven per cent.

1004 The Master: What is your answer, Mr. Spear?

A. (After computation.) 138%, the same as the sheet shows.

The Master: You do not find an error of 7%.

The Witness: I do not.

Q. Take Exhibit 58, Mr. Spear. Have you in any way computed the operating payroll per thousand cubic feet of gas from 1914 to 1919, for each year?

A. On this exhibit? No.

Q. Could you do that quite readily?

A. No.

Q. In your opinion would not the operating payroll per thousand cubic feet for the years 1914 to and including 1919 be a better and correct reflection of the increase than the method which you have adopted?

A. No, I do not think so. This exhibit was gotten up to show the rate, the increase in the rate of pay of the men.

Mr. Neumann: Are those payrolls here?

Mr. Vilas: They are on the way.

Q. Mr. Spear, is there any record of time kept so far as you, Mr. Raynor, or Mr. Woods are concerned?

A. No.

Q. By none of the three is there any record of the time kept?

A. No.

Q. Have you any other business interests?

A. I have not.

Q. In addition to the position you hold with this company?

A. No.

1005 Q. You spend all your time with this company?

A. I do.

Q. Beginning with August, 1919, there was part of your salary that was put in Suspense Account; is that correct?

A. August, 1919?

Q. Yes. Would you like to refer to the book to look it up? I can tell you the amount: $187.50 was only charged, instead of $250.

A. Oh, that was an adjustment for the time that I was in the Ordnance Department.

Q. That still remains in Suspense Account, does it?

A. I don't think so. I think that has been taken out by this time.

Q. Where did it go?

A. Into Salaries.

By the Master:

Q. Into what?

A. Into salaries, General Office Salaries.

Q. As a credit?

A. As a charge.
Q. No, this amount that went into Suspense, that you did not get—Oh, you got it all, did you?
A. Yes.

By Mr. Neumann:

Q. Why was it charged to Suspense Account, then, and not to your salary account?
A. To spread it over a period of more than a month.
Q. Those items occur each month from August, 1919, on?
A. Yes. While I was in the Ordnance Department the company paid me the difference between the salary the Government 1006 paid me and the salary I was receiving from them.
Q. Did you ever look at the items in your books with reference to these salaries—this salary that I am talking about?
A. I do not think I did, no.
Q. Would you not like to look at it?

The Master: What is the point?
Mr. Neumann: The point is we would like to know what became of those moneys; they are charged to Suspense Account and that is the end of them.
The Master: All right, have your men find out what became of them.
Mr. Neumann: Mr. Spear is the man who had charge of these books.
The Master: It is not important enough; I will not take any more time on it.

Q. You have charged up as an expense, operating expense of the year 1919, the sum of $15,518.73, and the item is "Rate Case."

The Master: For what?
Mr. Neumann: Rate Case.

Q. (continued.) Does that mean this present case?
A. It does.
Q. What does that include?
A. It includes Bartlett-Hayward's examination and appraisal, and——

By the Master:

Q. Mr. Teele?
A. No, that is not in that.
Q. Will the vouchers show?
A. Yes, the vouchers will show; they will all show.
1007 Mr. Neumann: We have not been able to find them.
The Witness: The largest part of it is Bartlett-Hayward.
The Master: We will not waste any more time on it.

By Mr. Neumann:

Q. Are there any legal expenses in that?

The Master. The vouchers will show, so the witness says. I will not take any more on it.

Mr. Neumann. Does your Honor rule that where we cannot find anything, and where we are endeavoring to point out to the Court a matter that ought to be cleared up, a witness who has charge of the books will not be permitted to clear it up?

The Master. I am making the ruling on the question that you asked. The witness says those are taken from the vouchers, and the vouchers must show it. If the vouchers do not show it, you bring in a witness to prove that fact, in contradiction of what this witness says.

Q. Mr. Spear, was the year 1919 one unusual with reference to repairs, so far as your company is concerned? In other words, did you do a lot of repairing in the year 1919?

A. We did considerable repairing in 1919.

Q. More so than in any previous year?

A. I wouldn't say that.

Q. Well, comparing it with 1918?

A. We may not have done so much in 1918 on account of war conditions, not being able to get materials, and had to make up for it in 1919.

1008 Q. How about 1917?

A. That same condition existed.

Q. How about 1916?

A. Well, I can't recall what work we did as far back as that.

Q. It is fair to say, is it not, that you left a number of repairs to accumulate and that you made them in 1919, which you contend is the first year you were able to make them in?

A. No, I say it might have been that way.

Q. Let me call your attention to some of the items here, perhaps this may refresh your recollection. In the year 1918, repairs of works and station structures, labor $200.36; 1919, $636.32. Do you recall any of those figures?

A. I don't recall the exact figures, no. You want to realize this condition, too, Mr. Neumann, that we paint our holders about every three years. In the meantime it might be necessary to paint part of it so that it might come heavier in one year than in another. You can't take repairs, you can't take an average in any one year.

Q. That is, repairs taken for one year would not be a criterion of the general average of repairs over a period of years?

A. Not necessarily.

Q. That is what I am trying to get at. Take for instance the item of repairs to gas apparatus, under materials, in the year 1918, there was, $4,020.81 spent; and in the year 1919, $12,891.89. How do you account for that?

A. Well, I can't recall the details because I haven't gone into it; some of that might be due to increase in cost of materials.

Q. But the increase in cost wouldn't be 300 per cent?
1009 A. Oh, no.
Q. So that it can only be explained upon the ground that there were more repairs to gas apparatus in the year 1919 than in the previous years by about 300 per cent?
A. I would say that is part of the explanation; part of it is more repairs, and the other part would be increase in cost.
Q. Take repairs to gas apparatus and labor, the amount in 1918 is $2,528.06; and in 1919, $6,327.79.
A. That same condition would apply there, due to increase in labor as well as materials.
Q. And finally going to the totals of repairs of all kinds, in the year 1918 it was $14,326.84; and in the year 1919, $33,642.56; How do you account for that?
A. Only in two ways, that the work done in 1919 was more than in 1918, and also in the increase in cost of labor and materials.
Q. By reason of the fact that repairs were allowed to accumulate?
A. Well, I wouldn't say that.

The Master: Well, do you mean the repairs were allowed to accumulate or that they might not have been necessary?
Mr. Neumann: Either one.
The Witness: Yes, or it might not have been necessary to make repairs in 1918, but I would say that there was some accumulation here, in my recollection of it.

Q. Take this view of it, that the year 1919 was an unusual year with reference to repairs compared with other years, is that it?
A. I wouldn't say that.
1010 Q. Well, compared with 1918, then?
A. Compared with 1918, yes.
Q. It was unusual?
A. Compared with 1918.

The Master: Well, as I understand your testimony, Mr. Spear, in analyzing these figures of the cost of operation in 1919, you say I have got to take into consideration the fact that the cost of this repair item is probably more than it will average during the years.
Mr. Ransom: I didn't understand him to say that.
The Master: I did.
Mr. Ransom: He said as compared with 1918.
The Master: 1919 it was thirty-three or thirty-four thousand dollars.
The Witness: Yes.
The Master: It was very high.
The Witness: Yes.
The Master: It would not be as high as that this year?
The Witness: I won't say this; it might be higher, I don't know.
The Master: Well, pretty nearly five-twelfths of the year has gone; has the proportion this year been as great, indicating that you would have to spend $34,000 this year?

The Witness: I haven't made any comparison for the expenditures this year so far.

The Master: Have the repairs been substantial this year so far?

The Witness: Yes.

The Master: In what respect?

1011 The Witness: On the painting of the holders, painting of apparatus.

The Master: Didn't you paint them last year?

The Witness: No.

The Master: What was this repair work you did last year?

The Witness: I don't recall, but——

Mr. Ransom: Let him finish his answer before the witness Neumann testifies in rebuttal.

Mr. Neumann: Imitation is the sincerest flattery.

The Witness: We overhauled our generator sets, put some new doors on the generators and made repairs to the linings of the generators, carburetters and superheaters; I think on one set we had to put in new linings; in relation to the linings you can't tell how long they are going to last; sometimes they might run a year, and I have seen them give out in three months.

The Master: Well, you didn't do any painting to any extent last year, did you?

The Witness: Not to any large extent.

The Master: You did the overhauling last year and you are doing the painting this year?

The Witness: And we are doing some more overhauling this year, too.

The Master: Let us assume that between the additional overhauling and the painting you will run as high this year as last year; would you say that you will probably run high next year?

1012 The Witness: Repair is an awfully hard item to estimate ahead on; things will happen that you don't foresee.

Now, for example, in running a generator, everything may be going along in fine shape today and a section of the lining will come out just above the doors, and the heat go right out of the lining, without insulation, and you may have to put a big sheet in the generator, besides new doors—that might not happen for a year.

The Master: Well, this is what I am trying to get clear in my own mind. Mr. Neumann has pointed out that the difference between 1918 and 1919 is very wide, some 300 per cent more expense in 1919 than in 1918, and indicates by his questions that the same situation obtains as to prior years.

What I am trying to get clear in my mind is whether there was not some unusual work done last year and perhaps this year because of an accumulation of work that was put off from time to time because of war conditions.

Mr. Neumann: That is what the witness stated, if the Court please.

The Master: Yes, to some extent he said that.
The Witness: I think there was to some extent.
The Master: Now you are catching up with that, aren't you?
The Witness: Yes.
The Master: Won't you get back to the situation more nearly analogous to the years prior to 1918?
1013 Mr. Ransom: But the cost of labor and material would be very much higher.
Mr. Neumann: We understand that.
The Master: But I mean to the extent of the work, not to the cost of it.
The Witness: Here is another condition that would come in there: The nearer you get the capacity of your machines the more repairs you would have on your machines.
The Master: Is it your testimony that for the year 1921, we will say, skipping 1920, you are going to get nearer to the extent of the work of 1918 or nearer to the extent of the work you did in 1919 and 1920?
The Witness: I would say that 1921 it would be more nearly the 1919 figure than the 1918.
The Master: Not figure, extent.
The Witness: Extent, yes.
The Master: You believe that the amount of work that you will have to do in 1921 will more nearly approximate the amount of work you did in 1919 than in 1918, 1917 and 1916?
The Witness: Yes, I would say so.

Mr. Neumann: May I call the Court's attention to Mr. Miller's testimony: According to Mr. Miller's testimony as of January 1, 1920, the only deferred maintenance on this plant amounted to about $6,000, which is very small.
The Master: Go ahead now.
Mr. Neumann: Now the main item that I wanted your Honor to question him about was the repairs to gas apparatus; the
1014 material in 1918 was $4,000, and in 1919, $12,000.
The Master: Suppose you ask him yourself.
Mr. Neumann: That is what I thought your Honor would touch upon; that shows, I think, of itself, that it is unusual.
The Master: Well, go ahead.

By Mr. Neumann:

Q. Now, Mr. Spear, you testified that Exhibit 59 was prepared from the vouchers and that the vouchers from 1911 to 1919 were available?
A. That is right.
Q. And that you did not include the years 1912 and 1913, is that right?
A. Yes, that is right.
Q. And that the reason you did not include the years 1912 and 1913 is that it would make it too many?

A. Yes.

Q. Were the years 1912 and 1913 exceptional with reference to the amount of vouchers?

A. No, I meant getting it on the sheet, typewriting.

Q. And the only reason you didn't put them in the sheet was you didn't have room enough on the one sheet?

Mr. Ransom: May I just bring out one thing in order to clear the record. It is very obvious that Mr. Neumann, in putting before your Honor the $12,000 figure, left out many, many thousands of repair items for the year 1919.

Mr. Neumann: You can show that on redirect, if I am in error. According to my computations here, those are the figures.

1015 The Master: Go ahead, Mr. Neumann.

Mr. Neumann: There is an unanswered question.

The Master: What is it?

Q. (Read by the stenographer.)

A. And I didn't think it was necessary to get so many years in there. I might say here that the reason we started——

Q. One moment, Mr. Spear. Why didn't you then omit the year 1911 and start with the year 1914?

A. Because 1911 was the first year that we went to a dollar.

Q. And isn't it a fact that 1912 and 1913 were years that the prices were quite low and that therefore your exhibit would have shown a lower ratio percentage, and that is why you didn't include them?

A. Absolutely not.

Q. That is not true?

A. It is not.

Q. And the only reason you left them out is the reason you have given?

A. It is.

Q. Do you know whether the years 1912 and 1913 were years low in price?

A. I do not.

Q. You don't know anything about it?

A. No, I haven't looked it up.

Q. You testified as to these years, that you were familiar with the prices that the exhibits cover?

A. I was.

Q. Then you did not take into consideration the years 1912 and 1913 at all?

1016 A. I did not, didn't look into it. Prior to 1911 we had a sliding scale rate and it went down to five cents a thousand per year.

Q. You started with the first year and you left out the next two succeeding years and then jumped to 1914?

The Master: We have got that, Mr. Neumann.

Mr. Neumann: Well, the witness keeps talking.

The Master: We have got that.

Q. Now, Mr. Spear, are you familiar with the number of men that are employed in the works for the various years?

A. Well, I can't recall them from memory but I have been familiar with those conditions right along.

Q. Well you have tables based on that, have you not?

A. Yes.

Q. Was that based on your own knowledge or what was it based on?

A. Taken from payrolls.

Q. Taken from payrolls?

A. Yes.

Q. And when you took that, you had to inform yourself as to the various men that were employed?

A. Yes, I took it right from the payrolls.

Q. Generally speaking, was there any difference in the number of men employed, for instance in boiler labor, in the year 1918, as against the year 1917?

A. I don't recall now.

Q. Well, would you say there was or was not?

1017 A. I wouldn't want to say about any specific period.

Q. Do you know whether you took on any additional men in 1919 over and above what you had in 1918?

A. I would say we probably had more men in 1919 than in 1918.

Q. Do you know how many?

A. No.

Q. Take generator labor in comparison with 1918 and 1919, do you know what the conditions were?

A. No, I can't recall.

Q. Purifier labor, do you know what the conditions were?

A. I don't recall.

Q. Would the Public Service Commission reports for those years indicate to you the number of men that were employed in those various sub-divisions that I have given you?

A. I don't recall just how they are divided in the Public Service Commission's reports.

Q. Did you ever look them over?

A. How is that?

Q. I say, would you want to look those reports over?

The Master: Is there anything in the report that you want to direct his attention to?

Mr. Neumann: There are some things — want to direct his attention to and I would like to have him advise himself as to the reports.

The Master: If there is anything in the reports that bears on the inquiry, show him the reports; it is not a question as to whether he wants to look at them.

1018 Mr. Ransom: We would be glad to have the reports in evidence.

Mr. Neumann: I have heard that before, Judge. Why didn't you put it in, you were on the main case?

Mr. Ransom: I tried, in every case that I have been in.

Mr. Neumann: What I am trying to indicate to the Master is this, that there is a considerable increase in each of those items over the year 1918.

The Master: In amount or in number of men?

Mr. Neumann: In amount.

The Master: That has been proved.

Mr. Neumann: One moment—which is not in accord with the schedule that this witness has put in.

The Master: Call his attention to it, direct his attention to it.

Q. Take for instance the item of boiler labor in the year 1918; your books indicate that you spent $4,597.53 for that kind of labor; and in the year 1919, $7,089.28: How do you explain that, Mr. Spear?

Mr. Ransom: I object to the form of the question as incompetent, not the proper way of proving the contents of the book, and a mere assertion on the part of counsel.

Mr. Neumann: Do you want your witness to look at the items in the books? The books are right here in court.

The Master: I assume that the witness would say, I don't remember what the 1918 figures were; it is simply a waste of time.

1919 Mr. Ransom: The 1918 books are not in evidence.

Mr. Neumann: Does your Honor rule that the objection is well founded?

The Master: I sustain the objection.

Mr. Neumann: In order to make the record, I will just ask one more question along the same line.

The Master: What is the use of trying to make a record of that kind. You say that the expense for 1918 for that same item was a certain sum of money.

Mr. Neumann: That is right.

The Master: You have called for the payrolls, haven't you?

Mr. Neumann: I have called for the payrolls; yes—some of them.

The Master: Are they here yet?

Mr. Vilas: They will be here in a moment.

Mr. Ransom: They went to my office by mistake instead of here.

The Master: I will let you prove by the payrolls that the amount expended for that labor in 1918 was so much money; then I will let you ask him to explain. I don't want you to be misled by my ruling; I am simply ruling as I have now because there is no basis for the question.

Mr. Neumann: Then will all the payrolls be here for 1918 and 1919?

The Master: All that you asked for.

Mr. Neumann: I have asked for four particular months.

The Master: That is probably all you will get.

1920 Mr. Neumann: I want to indicate to the Master that in those particular months there are very substantial errors.

Mr. Ransom: The statement Exhibit 58 is a comparison of given months. I have sent for all of the 1918 and all of the 1919 payrolls, and 1920, and they went to my office.

Mr. Neumann: Then I will go to another subject. In the year 1918, Mr. Spear, your books show a credit for residuals sold, $2,968.76.

The Master: 1918?

Mr. Neumann: Yes.

Mr. Ransom: I object to the question.

Mr. Neumann: I am not through yet, please.

Q. And in the year 1919 only $13.95.

Mr. Ransom: Objected to.

The Master: Let me interrupt you. Do you remember what the residual credits sold was for 1918?

The Witness: I don't remember the exact amount but I know what it was.

The Master: Well, then, answer the question.

The Witness: We sold a lot of tar and drip oil to the Barrett Company for the extraction of toluol and benzol for the manufacture of high explosives.

Q. That was in the year 1918?

A. 1918—there was no demand for it in 1919.

Q. Well, you obtained substantially the same amount in comparison with the amount that you manufactured for the year 1918, did you not?

A. Yes, but that——

1021 Q. Yes or no to that.

A. Yes.

The Master: You mean the quantity of residuals produced was comparatively the same?

Mr. Neumann: Yes, comparatively the same.

Q. Now, what has become of the residuals in the year 1919?

The Master: He has already told us I think: go on, answer again.

A. In the holders.

Q. You still have them?

A. Yes.

The Master: Well, didn't you use some of it under the boilers?

The Witness: That is tar, yes.

The Master: Well, that is a residual.

The Witness: And tar condensation in the boiler is worth more than tar.

The Master: But Mr. Neumann's inquiry covered tar as well as the drip oil.

The Witness: Well, we sold some of it, a very small quantity of it. The major quantity sold was the accumulation of a number of years in our storage holders from condensation.

The Master: The fact is you sold very little in 1919; you sold a couple of thousand dollars' worth in 1918.

The Witness: Yes, and that was due to an accumulation of several years.

Mr. Ransom: Due to the war and the demand for it.

Mr. Neumann: I move to strike out the testimony of the witness Ransom.

1022 The Master: Next question.

Q. Exhibit No. 65, Mr. Spear, contains an item on schedule 3 showing that it is taken from operating ledger No. 2 for the year 1919, page 208, general miscellaneous expense, defensive emergency, $747.46: What was that defensive emergency?

A. That was a contract with the National District Telegraph Company for signal boxes which go to their headquarters, and extra lights which we had installed on the north end of our plant around the oil tanks, and additional watchmen.

The Master: To protect the plant because of the war condition?

The Witness: Yes.

Q. That was charged as an operating expense for the year 1919?

A. Yes.

Q. Are you familiar with that resolution of the Board of Directors of October 17, 1916?

A. I presume so.

Q. With regard to contingencies?

A. Yes.

Q. You remember it, do you, without showing it to you?

A. No, I don't recall it exactly.

Q. The Public Service Commission reports for the year December 31, 1916, page 36, the typewritten sheet (showing witness paper)?

A. That is right.

Q. You recall it now?

A. Yes.

Q. Why was not this item charged in accordance with that resolution of the Board of Directors to that account?

1023 Mr. Ransom: Objected to on the ground that the question presupposes that it should have been charged to that account.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: Because this was not due to damages.

The Master: And it was to prevent damage, was it?

The Master: The resolution speaks about——

The Master: Well, this item was to prevent damage?

The Witness: Yes.

Mr. Neumann: I offer in evidence that resolution, which is contained on page 36 of the Public Service Commission reports by the New York & Queens Gas Company for the year December 31, 1916.

Mr. Ransom: What is the date of the resolution?

Mr. Neumann: October 17, 1916.

Mr. Ransom: I have a copy of it, and I am willing to have it spread on the record.

The Master: Give it to the stenographer and he will spread it on the record.

(The resolution referred to is as follows:

"On motion, duly seconded, it was

"Resolved: That the resolution adopted by this Board at a meeting held November 16th, 1915, be amended by striking out the words "Operating Expenses" and inserting in lieu thereof the words "Net Earnings," so that the resolution, as thus amended, will read as follows:

1024 "Resolved: That the title of the account heretofore designated as Renewal and Contingency, be from and after December 31, 1914, designated as Contingency and that, for each month thereafter, there shall be credited thereto and charged to Net Earnings an amount equal to five cents (5¢) per thousand cubic feet of gas sold during said month, for the purpose of providing for contingencies or casualties, such as those caused by fire, flood, earthquake, insurrections or riot or any other hazards, no charges against the said Contingency account nor any appropriations therefrom to be made, except by authority of the Board of Directors."

Q. Now, having heard the resolution, or having seen the resolution, Mr. Spear, what is your answer as to why the particular amount in question was not charged to Contingencies instead of Operating Expenses for that year?

The Master: Question not allowed. The witness already answered it.

Mr. Ransom: I don't just see why this witness should be interrogated, in view of the language of that resolution.

Mr. Neumann: Exception.

Mr. Ransom: There was no resolution of the Board of Directors, in fact there was an affirmative resolution of the Board of Directors that there should not be any such charge during either 1918 or 1919.

Mr. Neumann: I have shown a certain condition to exist, it is up to you to show the contrary.

Mr. Ransom: Well, you know the contrary, why don't you——

1025 Mr. Neumann (interrupting): I do not; if I did I would prove it.

Mr. Ransom: You have the 1918 and 1919 reports there.

Q. I now show you Complainant's Exhibit Nos. 60 and 61. You testified, did you not, that you made these exhibits up?

A. I did.

Q. And what did you make them up from?

A. Original vouchers.

Q. Exhibit 61 is made up from Exhibit 60?

A. Yes.

Q. And you intended to show by these exhibits the prices of the

various materials from the years 1914 to 1919 and the ratio or percentage of increase?

A. Between 1914 and 1919, yes.

Q. Well, that is what I am asking.

A. Yes.

Q. Now, then, have you in Exhibit 60 set forth all of the materials that are used in a gas-making plant?

A. Oh, no.

Q. You have picked out certain ones?

A. Yes, picked those that we could get a direct comparison of.

Q. Why did you pick them out?

A. Because we could get a direct comparison on those items.

Q. Which ones did you leave out?

A. In the first place, the coal and oil is left out because it is on another exhibit.

Q. Yes. Outside of coal and oil, what other are the materials that you use around a gas-manufacturing plant, that you have omitted from that exhibit?

1026 A. Other sizes—Oh, the gas plant?

Q. Yes.

A. Other sizes of packing.

Q. What else.

The Master: Have you got a memorandum, Mr. Neumann, of some of the things he has omitted?

Mr. Neumann: Well, I will try to find it in a minute.

The Master: I think it will be very much better if you will say, "You have omitted the following items, haven't you?"

Mr. Neumann: Yes; your Honor sees the point I am driving at.

The Master: Yes. You must have or I assume you must have a list of the items he has omitted, and I think you might say, "Now, Mr. Witness, you did not include the following items," and if you want to show those items have gone down instead of going up, it is perfectly simple to get at it.

Q. Well, take for instance the item of lead; have you shown that?

A. No.

Q. Have you shown yarn?

A. No.

Q. Have you shown lumber?

A. No.

Q. Have you shown brick?

A. No.

Q. Have you shown generating apparatus?

A. No.

Q. Of any kind?

A. No.

Mr. Ransom: I object to the question. These things, generating apparatus is not anything that is—you do not buy a carload

1027 of generating apparatus and charge it—or a bushel or a barrel, and charge it to operating expenses.

The Master: Overruled. Go ahead, Mr. Neumann.

Q. You have shown brooms on that schedule, haven't you.
A. Yes. The reason——
Q. (Interrupting.) Now, lead and yarn are used to a considerable extent in a gas plant, are they not?
A. No.
Q. How about laying mains?
A. They are in mains.
Q. Well, didn't you show in the year 1919 that there was a considerable amount of mains laid?
A. Yes.
Q. And you must have used a lot of lead and yarn during the year 1919?

Mr. Ransom: Objected to, no relation to operating results, the laying of mains is——
The Master (interrupting): A capital expenditure, isn't it?
Mr. Neuman: The witness has attempted to give us a sort of a composite picture here of prices and comparisons. My contention is that he has taken the non-essentials and has left out the essentials, and I am trying to show it.
Mr. Ransom: Mains are laid by contract, and are part of capital account, nothing to do with operations.
The Witness: We used so little, that we did not put in lead, and that is the reason I left lead out; and brick, I tried to get a comparison on brick and could not, because for a number of
1028 years we did not buy brick; and on lumber I could not find any two sizes that there would be comparison on.
Mr. Ransom: Well, is not both white and red lead there? What kind of lead do you mean by your question?
Mr. Neumann: Mr. Spear, isn't lead both red and white used in all of the joints around a gas plant?
Mr. Ransom: Objected to on the ground it is immaterial, because both red and white lead are shown in the exhibit.
Mr. Neumann: Well, then, he can say so, if that is so.
Mr. Ransom: Well, even you should know it.
The Master: Go on. Answer the question. You use red and white lead, don't you?
The Witness: Yes.

Q. Have you shown that on the exhibit?
A. I did.

The Master: The exhibit speaks for itself. I will read it: "Red lead, Atlantic; white lead Atlantic." 4th and 5th items on Exhibit 60.

Q. Well, that white lead and red lead that is referred to on that exhibit is lead paint like, isn't it, not caulking, used for joints?
A. That is right.
Q. Well, you have not shown the white and red lead that is used for caulking joints, that is what I mean?
A. No.

1029 The Master: The witness says he has not; he says they buy so little of it that he could not make any comparison.

Mr. Ransom: Main work is done by contract.

Q. Now, let me get this clear, Mr. Spear. I do not want to mislead you. There is certain lead that is used for caulking joints, isn't there?

A. That is right.

Q. Now, that is different and distinct from white and red lead?

A. That is right.

Q. Now, you have not shown that item on this exhibit.

A. No.

Q. And you have not also shown lumber?

A. No.

Q. Nor brick?

A. No.

Q. And what was your reason for not taking those in?

The Master: He has already given them. Now, I do not want you to go over it again. He said he bought so little lead he said he could not make a comparison, and could not get a comparison of sizes in lumber and could not make a comparison with brick, he had bought so little of it and did not have any.

Q. So that you do not pretend by this exhibit to indicate that these are all the raw materials that are used in a gas plant that you have included in your exhibit?

A. No, only that we could get a comparison on.

Q. That exhibit in that respect is not intended to be complete?

A. No.

1030 Q. Was that list intended to be the prices that you paid?

A. Yes.

Q. Well, now, you get your percentages in Exhibit 61 from the figures in Exhibit 60, is that correct?

A. Right.

Q. Now, wouldn't that largely depend upon the amount that was purchased in each year at the various prices? Take a concrete example, we will take the first item there, Iron Oxide Sponge, if you purchased 10 barrels in 1914 at .135, and 100 barrels in 1919 at .27, wouldn't you get a different average than you have for that on Exhibit 61?

A. We never buy sponge in such small quantities.

Q. Well, I used that as a comparative figure, and illustrative figure.

A. No, because oxide we always buy in either carloads——

Q. (Interrupting.) Well, I will take some other subject that will illustrate the point I want to make. You have not taken into consideration in arriving at these percentages whether you purchased one amount in one year and another amount in another, but you have taken it upon the same amount purchased in each year, is that correct?

A. Taken it on the amount purchased in that year, yes; taken the high and low point that we paid for it.

Q. Irrespective of the quantity?

A. If this is what you mean——

1031 Q. (Interrupting.) Do you know what a weighted average is?

A. A weighted average?

Q. Yes.

A. No.

Q. You take merchandise that you have purchased over a number of years, in order to get a weighted average you must know how much you purchased in each year, that is correct, isn't it?

A. Yes.

Q. Do you recall now what a weighted average is?

A. Well, I have never used it.

Q. You did not use it in this exhibit?

A. Oh, no; we took the high and low price that we paid for these materials in those respective years.

Q. And that is true of every item, is it?

A. Yes.

Q. And you have arrived at these figures of percentage here not according to what is called weighted average, but a straight average?

A. A straight average, yes.

Q. Irrespective of the quantity?

A. Yes.

Mr. Neumann: Are the payrolls here now?

Mr. Ransom: Yes.

The Master: Hand them over to Mr. Neumann.

Q. Now, Exhibit 58, you say was made up from the payrolls of your company?

A. That is right.

Q. Now, then, calling your attention to Exhibit 58 under the classification Laborers, which is the 9th item down, your ex-

1032 hibit indicates that you had in your employ on January 1, 1916, 6 men at 36 1 9 cents per hour?

A. Yes.

Q. Will you please refer to the January Payroll and indicate whether those men were employed during that month as laborers.

A. Yes, they were.

Q. That is 38 (indicating on payroll)?

A. That indicates the change. That was changed later.

Q. Now take this man here, A. Paga, when was he employed in that month?

A. He started on the 22d of January.

Q. He was not employed on January 1st, then, was he?

A. No.

Q. Nor the second week in January?

The Master: He was on the 31st of January?

The Witness: Yes.

The Master: So that that statement would be more nearly accurate as of January 31st than as of January 1st?

Mr. Neumann: Well, it is a comparison of months, as I understand.

The Master: Well, I will take them all as comparisons of months.

Mr. Ransom: It shows the rate and number of men.

The Master: These figures are based on the January Payroll, are they?

The Witness: Yes. That would increase the rate there (indicating) too.

Q. Well, what I mean is this, Mr. Spear, taking your payroll as you now have it before you, one of those six men was not
1033 employed during the month of January until the 21st or 22d of that month?

A. That is right.

Mr. Ransom: And then was employed at that rate of pay.

Q. Now, take the next item immediately underneath that. Laborers 3 at 33 1 3 cents per hour.

A. Yes, 3.

Q. When was Martens engaged?

A. On the 12th of January.

Q. So that for the first two weeks he was not there?

A. Well, say the first week and five days.

Q. All right.

A. Yes.

Q. Now, then, take the next item on Exhibit 58, 3 laborers at 38 8 9 cents per hour?

A. Yes.

The Master: Can't we save a little time? You have got certain points that appear from this payroll sheet, haven't you?

Mr. Neumann: Yes.

The Master: Now, why don't you say, Just look at that payroll sheet and tell me if this is not the fact? Then you will get it.

Mr. Neumann: The paper that was given me to explain these discrepancies I have lost. I know that there are certain discrepancies, but I cannot point them out, because, frankly, I lost the paper.

Mr. Ransom: There is no discrepancy at all.

Mr. Neumann: We think there is, because it indicates quite clearly the comparisons are not fairly made up and not proper.

1034 The Master: All right, go ahead; 38 8 9 cents.

Q. 38 8 9 cents, 3 men. How many do you find on the payroll, laborers only?

A. Three.

Q. That last one is 38 1 9?

A. 38 8 9.

Q. Was that man, Italian No. 63, employed during the whole month?

A. No he started in on the 8th of January.

Q. Was not employed for the first week?

A. No.

Q. Now, laborers at 44 4 9 cents?

A. One.

Q. When did he commence work?
A. On the 8th.

The Master: How many have you got at 41 6/9 cents now?
The Witness: One laborer.
The Master: When did he start?
The Witness: Same day, the 8th.

Q. Now, coming down to foreman under that first subdivision Exhibit 58, one foreman at 50 cents, right underneath the word inter?

The Master: The fourth item from the bottom?
A. Yes.
Mr. Neumann: The fifth item from the bottom?
The Master: I figure the fourth item.

Q. When did he commence?
A. On the 8th.
Q. Now, getting down to mains and services department, which the last subdivision on Exhibit 58, one foreman at 66 5/9 cents, when did he commence?
A. In this mains and service, they are taken from the original vouchers of Sullivan Brothers.
Q. You mean you do not carry those on your pay roll?
A. No.
Q. I call your attention to Exhibit 58, heading "Wages paid by he New York & Queens Gas Company in 1911 to 1920, compiled om the pay rolls of the company gas works," is that correct?
A. It is.
Q. Well, then, this item you did not take from the pay rolls?

Mr. Ransom: That was all explained when the exhibit was put in.

A. Not the mains and service department.

Mr. Neumann: I ask that Mr. Ransom's statement be stricken out: at is incorrect
Mr. Ransom: That is true; it was.
Mr. Neumann: We ought to have a clear record in this case, and e will get it if you will only not inject these extraneous matters. ou are testifying yourself.
The Master: Go ahead.

Q. Now, getting down to the last item under mains and service epartment, one laborer 36 1/9 cents; do you find that on your pay oll?
A. No. All those items, those six items, are taken from the bills.
Q. Not from the pay rolls?
A. They are not, no.

Mr. Neumann: Will your Honor just give me a moment's time? have given the wrong citation here and I want to call the witness' ttention to it.
The Master: Yes.

1036 Q. I now show you Public Service Commission reports of the New York & Queens Gas Company for the year ending December, 1914, and direct your particular attention to page 69 thereof.

Mr. Ransom: What year?
Mr. Neumann: December, 1914.
Mr. Ransom: What is the question?

Q. Does the figure there given as the total indicate the total wages paid to employees during the year 1919, of all kinds?
A. I would say yes.
Q. And that figure is what?
A. $57,930.17.
Q. I now show you Public Service Commission reports of the New York & Queens Gas Company for the year ending December 31st, 1919, and I direct your attention to page 70. Likewise, does the total there give the total amount paid for that year?
A. I presume so.
Q. Well, do you know whether your reports are correct or not?
A. Whose report is this?
Q. It is the New York & Queens Gas Company's, isn't it?
A. Yes, but these figures here in lead pencil, I was wondering at that. What you are speaking of, these employees and wages, are in lead pencil.
Q. Yes. That is the way you submitted it, was it not?
A. To the Public Service Commission?
Q. Yes.
A. No.
Q. This is taken from our files; I just went over and obtained it.

1037 Mr. Ransom: There are the initials of the member of your staff to the lead pencil notations.

Q. What does it say there in lead pencil?

Mr. Ransom: Objected to as immaterial.
Mr. Neumann: You brought it out in the record now I will show what it says there.
Mr. Ransom: They cannot put in stuff in lead pencil and then try to swear it onto us in court—not even the Public Service Commission.
Mr. Neumann: I do not think we have fallen into your class yet, Judge Ransom.
The Master: What does the inquiry relate to?
Mr. Neumann: Whether that indicates the total amount paid.
The Master: For employees?
Mr. Neumann: Yes.
The Master: What was it for the year before?
The Witness: This is 1914 (indicating), $57,930.17. There is a difference there.
The Master: I am not going to allow that question in that form.

By the Master:

Q. Mr. Spear, would you say that this report as produced here would indicate that the lines 21 to 44 on page 70 were not filled in, under "Gas"? I mean on the side of "Gas", when you filled it in.

A. Yes, it looks that way.

Q. Do you remember being telephoned to by anybody for the figures?

A. I do not recall it.

Q. Do you recognize the handwriting of those figures?

1038 A. No, I do not.

Q. Are they yours?

A. They are not. They might have gotten those figures from Mr. Raynor's department. I do not recall any telephone conversation with me.

By Mr. Neumann:

Q. Who makes up these reports?

A. Mr. Raynor does most of the detail work, and some of the detail work I do.

Q. Do you know whether in the year 1919 you or Mr. Raynor made up the reports?

A. Mr. Raynor made up the reports in 1919. Oh, that is for the year 1919.

Q. For the year 1919.

A. We both made parts of it.

Q. Do you recall whether you signed it or not?

A. I did.

Q. You signed it as correct?

A. To the best of my knowledge and belief, as it says there.

Q. Do you want the Court to understand that you did not fill in that particular page, page 70, with any figures?

A. It looks as if it had been missed.

Q. It looks as if it had been missed?

A. Yes.

Q. Do you recall any conversation with anybody with reference to that page?

A. No, I do not.

Q. The books would indicate whether the figure there given as the total was correct or not, would they not?

A. Yes.

Q. And if the book figures of the total annual pay roll agreed with that, that figure would be correct?

1039 A. It would.

Q. Where is the total annual payroll in your books?

A. In the ledger.

Q. Can you turn to it? The ledger is in court.

A. (Examining book.) $35,261.72.

The Master: What is the figure that you have got there?

Mr. Neumann: $84,208.95.

The Witness: $85,212.34, I make that in 1919.

The Master: What are the various subdivisions? Are they not subdivided here? You have accounts payable in there.

The Witness: This total here is for the year 1919 (indicating).

The Master: That includes the accounts payable?

The Witness: Yes. There is a difference of about a thousand dollars.

The Master: You have got it subdivided over there; does not this book show the same subdivisions, somewhat? Does not your ledger show what the total production expense was—labor?

The Witness: Yes.

The Master: Suppose you just check it that way and see where the variance is—production expense labor. Look at general and miscellaneous expense, $1,259.

Mr. Neumann: That would be about the difference.

The Master: Then there is fixed capital $6,435 and other accounts specified suspense. Are you assuming this to be the correct figure for your question?

1040 Mr. Neumann: Yes, it is the correct figure.

The Master: Ask your next question: it is not so important.

The Witness: Perhaps he is correct, and they got it over the telephone from me afterward.

The Master: Upon analysis it would probably be found to be correct. Let us get to the point now. It was $84,000 in 1919?

Mr. Neumann: $84,208.95.

The Master: As against $57,930.17 for 1914.

Mr. Neumann: Yes.

The Master: Now what is the question?

Q. The next question is, taking the year 1914, the report for 1914, can you from there state what the portion of the payroll is that is charged to gas operation only?

A. $54,456.37.

Q. And in the year 1919 that amount was what?

The Master: According to these lead pencil figures it was seventy-seven.

Mr. Neumann: $419.27. Now, if there is any question about these figures I would like to have him straighten them up first.

The Master: Let us assume they are correct, what is your point?

Q. In the year 1914, can you tell how many cubic feet of gas were sold?

Mr. Ransom: Objected to as immaterial and not within the issues in this case.

The Master: I will allow it.

Mr. Ransom: Exception.

The Master: He wants to show how much it cost per thousand cubic foot, I suppose.

Mr. Neumann: That is exactly it, and we will show what this difference is.

1041 A. 240,583,400.

Q. No, 239.
A. Oh, yes; 239,178,800.
Q. Take it for the year 1919, what is that figure, 336,246,400?

The Master: Let us have the figure; you have it there.

A. 336,241,400. You said 246.
Q. 336,241,400. Can you figure from that what the operating payroll would be in the year 1914?

The Master: Per thousand cubic feet.
Mr. Wheat: Per thousand cubic feet, and in the year 1919.
The Master: Of course he can, and you can figure it.
Mr. Neumann: 22.77 in 1914 and 23.02 in 1919. That is the point I was trying to demonstrate.
The Master: You have your facts on the record, and if there is any error in that computation, Judge Ransom, call my attention to it; otherwise I will assume that it is a correct computation.
Mr. Ransom: For anything that it may be worth.
Mr. Neumann: It may be very valuable before we get through with it.

Recess.

1042 Afternoon Session.

MAYNARD H. SPEAR resumed the stand:

Cross-examination.

By Mr. Neumann:

Q. Now, Mr. Spear, just before we adjourned for recess I had directed your attention to the amounts reported in the Public Service Commission reports of the New York & Queens Gas Company for the years 1914 and 1919, and you identified certain figures therefrom, from which I stated the ratio or percentage of increase in labor from the period 1914 and 1919; do you recall that?
A. Yes.
Q. Bringing you back to your Exhibit 58, from where did you compile the figures in that exhibit?

Mr. Ransom: Objected to, several times covered.
The Master: I think so, but I will allow it once more.
Mr. Ransom: Exception.

The Witness: No. 58 you are asking about?
Q. Yes.
A. Gas works and shop department are taken from the payrolls of the company; mains and service department taken from the vouchers.
Q. Then it is not correct to say that Exhibit 58 is taken from the payrolls?

Mr. Ransom: Objected to as fully covered.

The Master: He has already said that, but I will let him say it once more.

Mr. Neumann: All right, if it is covered I won't press it.

Q. Now, then, Sheet No. 2 of Exhibit 58 is intended to indicate the percentage of increase from the years 1911 to 1920, is that correct?

1043 A. Yes, there is a comparison there.

Q. What factors did you take into consideration in making up Exhibit 58, either Sheet 1 or Sheet 2?

The Master: What do you mean by factors?

Q. Outside of the payroll, or, as you say, the fact that certain men are not on the payroll but are on the contractor's payroll, did you take any other factor into consideration?

A. Well, Sheet 2 is a recapitulation of Sheet 1.

Q. Yes.

The Master: Referring to both sheets, did you take anything else into consideration except your own payroll and Sullivan Brothers, or whatever it was.

The Witness: No.

Mr. Neumann: Now, if the Court please, I do want to go a little further with the witness, but I haven't my books here now. I think Mr. Tobin is ready and prepared to go on for some length of time.

The Master: All right, go ahead.

Mr. Ransom: I thought Mr. Tobin was through?

The Master: Well, if he is not I will let him get through. Go on, Mr. Tobin. Have you anything else to ask, Mr. Tobin?

Mr. Tobin: Yes, sir.

Cross-examination.

By Mr. Tobin:

Mr. Ransom: Mr. Tobin took up a great deal of time.

The Master: Well, we will let him take up some more time.

1044 Mr. Neumann: You introduced a new exhibit today and I haven't had a chance to analyze or go through it.

Mr. Ransom: On the matters I asked him about today, of course, anybody should have the privilege of cross-examination.

Q. You have seen Exhibit 90 when that was introduced in evidence this morning, Mr. Spear; that is the present cost of distribution, taxes, and renewals and replacements?

A. Yes.

Q. Taking the items of stable expense and automobile repairs, can you tell us whether you have displaced any of the stable equipment, that is, horses or things of that sort, for automobiles in the year 1920?

A. No, we have not.

Q. In other words, your equipment as to stable expense and auto-

mobile repairs is the same in 1920, as of the date that this table was made up, as it was the date in 1919 with which you make your comparison?

A. We have within the last two weeks added one truck, which of course would not figure in here as an expense.

Q. That is a new motor truck?

A. Yes.

Q. Is that included in this table?

A. No.

Q. In any way?

A. No.

Mr. Ransom: The cost of the truck or the expense of its operation?

Mr. Tobin: My particular question was whether they had changed at all their equipment, that is what I was anxious about.

1045 The Witness: No. We had one horse in 1919 and still one horse.

The Master: Sort of a one-horse concern.

The Witness: Pretty near it.

Q. This amount of $25,000 that you have here, gas rate appeal; has any part of that money been paid?

Mr. Ransom: I have no objection to going into that if the Master wants to take it as a basis, but in view of the fact that your Honor has indicated that you would not take it as a basis, I object to it.

The Master: I will let him answer the question.

The Witness: I think it is approximately $2,000 that has been paid in.

Q. And down further in the same exhibit you have taxes paid and interest thereon; can you tell us what interest there was accrued, was it interest on old taxes, or interest on——

Mr. Ransom: Those taxes are the same as in 1919; they are down on Exhibit 65, the details.

Mr. Tobin: I am talking about this particular case.

The Witness: Yes, the amount is just the same as 1919.

Mr. Ransom: He has taken identically the 1919 figures.

Mr. Tobin: I didn't hear his answer.

Q. You were manager of the company on January 1 1908, sir?

A. 1908, yes.

Q. There was introduced in evidence at the beginning of this trial the various franchises owned by the company, that is, as they have come into the ownership of this particular company

1046 today?

A. Yes.

Q. Was there any change or any additions, that is, any additional franchises granted to the company since January 1, 1908?

A. Not that I can recall.

Q. Well, you would know about it if there had been any new franchises?

A. I didn't have anything to do with the books from 1908 to the latter part of 1913, but I don't recall any change in franchises.

Q. Well, you are familiar with the reports as made to the State Tax Department?

A. Yes.

Q. And in those reports you have to indicate any additions to the capital account in the way of franchises?

A. Yes.

Q. Do you recall whether, in the reports, the 1919 report to the State Tax Department, there was any addition to the capital account in the way of franchises since January 1, 1908?

A. I don't recall any.

Q. I am not sure just what amount you stated was due to the Consolidated Gas Company or the New York & Queens Gas Company as of May 1st, 1920.

The Master: He didn't say the exact amount; he said between five and six hundred thousand dollars.

Mr. Tobin: I am anxious to know, if your Honor please, if he could give it to us a little more definitely.

The Master: Ask him.

1047 Q. Can you give us a little more definitely the figure that was due the Consolidated on May 1st, 1920?

A. Yes, I think I can get it from the ledger.

Q. Is the ledger here at hand?

Mr. Ransom: Your Honor knows that the defensive emergency service is eliminated from that Exhibit 90.

Q. Have you that amount?

A. $540,000.

Q. And on January 1st it was what?

A. $490,000.

Q. And are bills rendered quarterly for the interest on those various sums, sir?

A. No.

Q. How is that interest paid, I mean in what manner is it paid as far as the charge on the books of the company is concerned?

A. We figure up the interest and the accounting department of the Consolidated Company figures the interest; we check with them, then make out a voucher and send them a check for it.

Q. How often is that done?

A. Quarterly.

Q. That is, on the 1st of April, on the 1st of July?

A. No, the 1st of May.

Q. And the 1st of February?

A. Yes.

Q. And so on throughout the rest of the year, quarterly?

A. Yes.

Q. Can you tell just to what purpose the $50,000 was spent that you received from the Consolidated Gas Company between

1048 January 1 and May 1 of this year, that is, not in detail necessarily?

A. To pay the interest on our bonds and some current bills.

Q. Were those current bills due the Consolidated Gas Company and its sub-companies?

A. Oh, no.

Q. Or were they outside corporations?

A. Outside companies.

Q. You placed on the record this morning an exhibit as to the alleged increase in labor in the shop?

A. Yes.

Q. That is, 1920 over 1919. Can you tell us how you took care of the item Sundays and how you took care of the item of overtime so far as making up your figures for 1920?

A. I took the total hours that the men worked for the first full week in May and divided into dollars paid them; that gave me the average, the rate per hour. There is no Sunday work in the shop and there may have been a little overtime, but not very much.

Q. Well, with the experience that the company had in 1919, was there not considerable overtime and Sunday work, I mean more than the average?

A. Not in the shop, except during the very cold weather, when we thawed out services.

Q. And that would happen any year except where you would have an unusual winter and then you would have more than the previous year?

A. Yes.

Q. In other words, that was entirely worked out on the average as far as the overtime and Sunday work, that is, you didn't
1049 go into the detail of the exact Sunday work and the exact overtime work as far as 1920 is concerned?

A. No; as I say, in 1920, there is no Sunday work and very little overtime.

Q. You are familiar with the requirements of the uniform system of accounts, Mr. Spear, are you?

A. Yes.

Q. Are you familiar with the item which calls for general amortization, gas, known as G-842 as contained in the uniform system of accounts?

Mr. Ransom: Objected to as incompetent and purely a question of law as to what the Commission may have intended it to mean.

Mr. Cummings: He is asking if he is familiar with it.

The Master: I will let him state on the record as to whether he keeps that account—do you know that account, general amortization?

The Witness: Yes, sir.

Q. How differently does your company keep the same item on its books today, that is, the item of general amortization?

A. We charge three cents a thousand to renewals and replacements.

Q. And is that all you charge off in that way?

A. Yes, it is.

Q. Under what instructions or under what order is that charged off in that way as concerns your company?

A. The action of the Board of Directors.

Q. Is that action in accordance with the resolution that was introduced in evidence this morning by Mr. Ransom?

A. Well, I am not sure——

1050 Mr. Ransom: I didn't introduce any resolution in evidence this morning.

Mr. Neumann: Who introduced it?

The Master: You.

Mr. Neumann: Oh, yes—you produced it, that is right—part of the Public Service Commission's reports.

Mr. Ransom: I think the resolution which was put in this morning related only to the Contingency Account; the resolution relating to the Renewals and Replacements was a resolution of November 16, 1915, which I have.

The Master: The paper you now have, Mr. Tobin, is not the one introduced this morning.

The Witness: I think the stenographer might have that.

Mr. Tobin: What I want to have Mr. Spear tell us about is not only that particular resolution which, as I recall——

The Master: Was 1916.

Mr. Tobin: Required 5 cents for every thousand cubic feet of gas made or sold be charged——

The Master: Be set up to a contingent fund.

Mr. Tobin: To a contingency fund, but I wanted Mr. Spear, if he might explain——

The Master: What is the date of this resolution?

Mr. Tobin: 1915.

The Master: Now, as I understand it, there was a resolution in 1915 fixing a replacement fund of 3 cents.

The Witness: Yes.

1051 The Master: And that there was a resolution in 1916 fixing a contingency fund of 5 cents.

The Witness: Yes.

Mr. Ransom: But the resolution of 1916 also contained a slight modification of the 1915 resolution with respect to the contingency.

The Witness: That was my impression, that there is something in the resolution about it.

Mr. Tobin: I wanted to see if I could get it straightened out; that was my reason for asking it.

The Master: Do you want to spread that on the record?

Mr. Tobin: I think we will offer this in evidence.

The Master: All right, give it to the stenographer and he will spread it on the record at this point.

The resolution referred to is as follows:

(No. 1.)

"*Copy of Resolution Passed by the Board of Directors of the New York & Queens Gas Company at Their Meeting on Tuesday, November 16th, 1915.*

"'On motion, duly seconded, it was

"'Resolved: That the title of the account heretofore designated as Accrued Amortization, be from and after December 13, 1914, designated as Contingency, and that, for each month thereafter, there shall be credited thereto and charged to Operating Expenses an amount equal to five (5c) cents per thousand cubic feet of gas
1052 sold during said month, for the purpose of providing for contingencies or casualties, such as those caused by fire, flood, earthquake, insurrection or riot, or any other hazards; no charge against the said Contingency account nor any appropriations therefrom to be made, except by authority of the Board of Directors.'

"'Resolved, That, in providing hereafter for the expenditures, required from time to time for renewals and replacements of property of this Company, retired from service (due to normal causes, obsolescence, inadequacy or changes, made in conformity with discoveries or improvements in methods of generating or distributing gas) the officers of this Company be and they hereby are authorized and directed to charge each month after January 1, 1915, as a part of the operating expense of this Company, under the designation of Renewals and Replacements, a sum, equal to three (3c) cents per thousand cubic feet of gas sold during said month, the same to be credited to Renewals and Replacements account; no charges against the latter account nor any appropriations therefrom to be made, except by authority of the Board of Directors.'"

The Master: Now there was this resolution just spread on the record, under what date, Mr. Spear?

The Witness: November 16, 1915.

The Master: Then following that, did you set up the three cents?

The Witness: Yes.

The Master: For replacements?

1053 The Witness: Yes.

The Master: Then in 1916 there was a resolution——

Mr. Tobin: If I may int-rrupt you, this not only covers three cents, but it also covers five cents.

The Master: Yes, two things are covered by this resolution of November 16th—Amortization fund of five cents and Replacement fund of three cents.

The Witness: Contingency fund, isn't it?

The Master: Well, it says, "The title of the account heretofore designated as accrued amortization be changed and called contingency," and you set up five cents there, and then an additional three cents for replacements.

The Witness: Yes.

The Master: Is that set up on your books?

The Witness: It was.

The Master: Now, following the year 1916 there was a modification of this resolution.

The Witness: Yes.

The Master: As appears by the resolution spread on the record this morning?

The Witness: Yes.

Mr. Ransom: Then in 1918 and 1919 there were three further resolutions.

The Master: Wait a minute, the witness is testifying. Following the 1916 resolution, did you continue with your five cent contingency and three cent replacement?

The Witness: We did until, I think it was, through the year 1917, and in 1918 or 1919 the Board of Directors passed resolutions not to write that in for those two years.

1054 The Master: Not to write what in?

The Witness: The contingency.

The Master: But you continued writing in the renewals and replacements.

The Witness: Yes.

The Master: So during 1917 you charged off, you set up the five cents for contingency and three cents for replacements.

The Witness: That is right.

The Master: And in 1918 and since then you have set up three cents for replacements, but nothing for contingency.

The Witness: That is right.

The Master: And there are some resolutions with reference to that?

The Witness: Yes.

Mr. Ransom: Those are the three.

The Master: Show them to Mr. Tobin and see if he wants to offer them.

Mr. Tobin: Do I understand, Mr. Ransom, that if we have these three additional resolutions, with the one that we put in this morning and the one that was handed in this afternoon, that we have the complete story as to amortization, and renewals and replacements?

Mr. Ransom: From 1915 down.

Mr. Tobin: I mean we have the complete story?

Mr. Ransom: From 1915 down, yes.

Mr. Tobin: Now, if your Honor please, I think it might be better to take them in order.

This is January 15, 1918.

The Master: Are you offering this?

Mr. Tobin: Yes.

1055 The Master: The January 15, 1918, resolution will be spread on the record.

The resolution referred to is as follows:

"On motion, duly seconded, it was

"Resolved, That the resolution adopted October 17th, 1916, be and the same is hereby so modified that, for the year 1917 and there-

after until further action by the Board, there shall be credited as of December 31st of each year to Contingency account and charged to Profit and Loss account an amount, equal to five (5¢) cents per thousand cubic feet of gas sold during the preceding twelve months for the purpose of providing for contingencies or casualties, such as those caused by fire, flood, earthquake, insurrections or riot or any other hazards; no charges against the Contingency account nor any appropriations therefrom to be made, except by authority of the Board of Directors."

Mr. Tobin: And here is January 21, 1919:

The resolution referred to is as follows:

"On motion, duly seconded, it was
"Resolved, That action on the part of the Officers under the resolution of this Committee, adopted January 15th, 1918, providing for a credit to Contingency account and a charge to Profit and Loss account, be and the same is hereby suspended for the period of the calendar year 1918."

Mr. Tobin: And December 16, 1919:

The resolution referred to is as follows:

"On motion, duly made and seconded, it was
1056 "Resolved, That action on the part of the Officers under the resolution of the Board of Directors adopted January 15, 1918, providing for a credit to Contingency Account and a charge to Profit and Loss Account be, and the same is hereby, suspended for the period of the calendar year 1919."

Q. You followed the respective resolutions, as far as the book accounts were made up in accordance with these resolutions?
A. We did.
Q. And the book accounts will show these various amounts either set aside or not set aside as the resolutions read?
A. Yes.
Q. You said you were familiar with the requirement of the Public Service Commission as to the account of general amortization; can you tell us the reason why you failed to follow the Public Service Commission requirement and that the company set up its own method for taking care of items of this kind?

Mr. Ransom: Objected to as incompetent and improper in form.
The Master: Let me see the Public Service Commission's report.
Mr. Ransom: The company did not fail to comply with any lawful requirement of the uniform system of accounts, as this court has held in the Consolidated Gas Company case.
Mr. Neumann: What has that got to do with this company?
Mr. Ransom: The same system exactly, the same resolutions.
The Master: Read the question.

(Question read by the stenographer.)

1057 Mr. Ransom: That is objected to on the ground it calls purely for a question of law from this witness and it assumes that the company did not follow the lawful requirements of the commission, which it did.

The Master: Well I will let that question remain unanswered for the moment.

Do you know whether or not, Mr. Spear, the methods pursued by your company were or were not in compliance with the requirements of the Public Service Commission as you understand them.

Mr. Tobin: Well, if your Honor please, I think the record of the Public Service Commission will be the best proof as to whether they have complied with the requirements or not.

The Master: Then I think that answers your question. Objection sustained.

Mr. Ransom: The company says it did comply and this Court so held in the Consolidated case.

The Master: If you think it differs in any way from what the Public Service Commission required——

Mr. Tobin: I am asking him to explain, which he can very well do; he said he is familiar with these accounts, with the general amortization account and the accrued amortization account, and I am asking him to explain the difference. I think that is a fair question, whether he complied with the requirements of the Public Service Commission or not.

The Master: I just asked him whether he complied with it and you said the record ought to be the best evidence and now
1058 you are asking him to explain.

Mr. Tobin: To explain the difference, if your Honor please.

The Master: Well, is there any difference?

Mr. Tobin: I am asking him to explain the difference.

The Master: Let us find the difference first, what is the difference, what do you say is the difference between what you did and what the Public Service Commission required?

Mr. Tobin: These various changes that you find throughout the resolutions of the Board of Directors is with one purpose in mind, and that is to indicate, at least to have the books indicate that there is no depreciation in the property whatever.

The Master: That doesn't necessarily follow. You say the Public Service Commission required them to set up an amortization account, don't you?

Mr. Tobin: Yes, sir.

The Master: You say they have not done it?

Mr. Tobin: Yes, sir.

The Master: Then I don't care why they didn't do it or what the reason for it is. Your argument is just as forceful that it was done for one purpose as it was for another.

Q. Under the system as called for by the resolutions of the Board of Directors, you set up nothing for depreciation in your book accounts?

Mr. Ransom: Objected to as incompetent.
The Master: I will let him answer that.

A. No, we set up an account renewals and replacements to take care of that.

1059 Q. I asked, do you set up anything under the title of depreciation?

A. Under the title of depreciation, no.

Q. In other words, the situation of it is you have in that particular account only covered what might be termed extraordinary casualties?

Mr. Ransom: Objected to as quite contrary to the fact.
The Master: I will sustain the objection. I think your record is perfectly clear, that since the beginning of 1918 this company, this plaintiff company carries no account in which it sets up anything that might cover what might be said to be depreciation other than the renewal and replacement account. Is that so, Mr. Spear?
The Witness: That is right.
The Master: Now, what more do you want?

Q. Mr. Spear, you are familiar with the properties of the company as of January 1st, 1908, as to their physical condition?

Mr. Ransom: Objected to as immaterial, not within the scope of the present issues.
The Master: I will allow it.
Mr. Ransom: Exception.

A. I was at that time, yes.
Q. You were in immediate charge of the mains and services and the distribution system at that time?
A. Yes.
Q. What would you say the condition of the mains and services was on January 1st, 1908?

Mr. Ransom: Objected to as immaterial, not within the scope of the present issues.
1060 The Master: I will allow it.
Mr. Ransom: Exception.

A. I do not recall at this time.
Q. Well, tell us——
A. (Interrupting.) That is twelve years ago.
Q. Yes, I understand that.

The Master: What do you mean by that, were they in good repair or bad repair, or obsolete or what?
Mr. Tobin: Whether they were in good repair or bad repair, or just what condition they were in.
The Master: As to repair?
Mr. Tobin: Yes. Well, condition not only as to repair, but also the condition of the mains themselves as they found them from time to time, in the operations of the company at that date.
The Master: I don't quite know what you are driving at, unless

you mean what their condition was as to condition of repair. You do not expect the witness to say they were falling apart, do you?

Mr. Ransom: Or that he took them up and looked at them.

Mr. Tobin: You don't need to inject that in here, Mr. Ransom. What I am trying to bring up is this, that Mr. Spear was in charge of the mains and services at that time.

The Master: Yes.

Mr. Tobin: And there has been an entire change of position on the part of this company as to the condition of this property, as to the condition of this property that was in the ground and was in use at that time. In other words they have attempted to prove
1061 that the property is quite 100 per cent. of efficiency, including this old stuff that was in the ground, and I am trying to ascertain what condition the property was in at that time, which was just prior to the——

The Master: The fixed capital account being set up?

Mr. Tobin: Just prior to the fixed capital account set up by the Public Service Commission.

The Master: What you want to know is what the condition of repair was of those mains and services when this fixed capital account was set up; whether they were rotten and falling apart, or whether they were in good efficient operating condition. How about that, Mr. Spear?

The Witness: The plant has always been in good operating condition.

The Master: I expected you would say that. What else could Mr. Tobin expect? Does that refer to mains, what you have just said?

The Witness: Yes; we have taken up mains that were laid by the original company way back in 1856, I think, and they are in splendid condition.

The Master: What else could you expect from a witness of the gas company? Did you expect him to say they were rotten and falling apart?

Mr. Ransom: You would not expect the witness to lie, would you?

The Master: Well, not necessarily that, but in the light of what has gone on here, it would be the most surprising thing in
1062 the world for me to hear from a witness of the gas company that this plant or any part of it was falling apart ten or twelve years ago.

Mr. Ransom: You would expect any witness to testify the mains were in excellent condition, irrespective of age.

The Master: Yes, I think that is so.

Mr. Ransom: That is what Little testified to.

Mr. Tobin: Well, I am here to get information, if your Honor please.

The Master: I am not here to get information, but I want facts, and I have given you the opportunity to attack any statement made by Mr. Spear, not to go fishing for some other purpose.

Mr. Tobin: What I have particular reference to is that the fixed capital account as of December 31st, 1908, showed that there were mains set up to the extent of $172,993.89.

The Master: Yes.

Mr. Tobin: I am trying to ascertain as to what condition those mains were in at that time, at that date, or on December 31, 1908.

Mr. Ransom: Well, may the record show that Mr. Tobin is reading from what purports to be a tax report produced by the Attorney General?

The Master: Yes, I so understand.

Q. Now, what was the condition of mains at that time?

A. Good.

Q. You came with the company at what time, Mr. Spear?

1063 The Master: Originally?

The Witness: In 1902.

Mr. Ransom: With the predecessor company?

Q. Now, this merger came into existence, this Newton & Flushing Company was merged into the New York & Queens Company in 1904?

The Master: August 1st, 1904.

The Witness: Right.

Q. Do you recall the number of miles of mains that the company had at that time?

A. No, I do not.

Q. Would you recognize the signature of Mr. Thomas as an officer of this company, appended to the report to the State Tax Department of June 30th, 1904?

A. Would I recognize the signature, you say?

Q. Yes.

A. Yes.

Q. Is that Mr. Thomas' signature (indicating)?

A. Yes, it is.

Q. Do you know whether this is a report of the company to the State Tax Department as of June 30th, 1904?

Mr. Ransom: Objected to as immaterial, not within the scope of the issue in this case.

The Master: I will assume that it is, from its appearance.

The Master: If the Attorney General states it is produced by him, I will admit that it is.

Mr. Tobin: What?

Mr. Ransom: If the Attorney General states that it is produced by him from the files of his office, or the office of the State Tax Department, I will admit it is the report.

1064 Mr. Tobin: Yes.

Mr. Cummings: Yes.

The Master: All right, having had two yes's, what is the next question?

Mr. Tobin: We ask that that be marked for identification.

The Master: You don't have to mark it for identification; it is identified.

Mr. Tobin: I will offer it in evidence.

The Master: For what purpose?

Mr. Tobin: Why, we want to show the condition of the property, that is particularly the mains and services, as of that particularly the mains and services, as that particular date as indicated by the company itself.

The Master: Do you say that it contains any admission against interest of the complainant?

Mr. Tobin: I say it indicates the value of their mains and services as of that particular date.

The Master: Is that against their interest?

Mr. Tobin: I don't know.

The Master: Well, unless you are prepared to say it is an admission against interest, I am not going to take a useless paper. It has got to be for some purpose. What is the purpose of it?

Mr. Tobin: Yes.

The Master: Yes? Yes what. What is it offered for?

Mr. Tobin: It is against interest.

The Master: It is an admission against interest?

Mr. Tobin: Yes.

The Master: All right, then, I will take it.

1065 Mr. Ransom: One moment. May I see it?

Mr. Tobin: Yes (handing paper).

Mr. Ransom: I object to this on the ground that it is incompetent, irrelevant, immaterial, it is not in any way binding upon the complainant company, it is a report not of the New York & Queens Gas Company, but a report of the Newtown & Flushing Gas Company, verified by the vice-president of the Newtown & Flushing Gas Company, it is made under the tax laws as they existed at that time, under which the basis of valuation prescribed for tax purposes under the decisions as they then stood in the courts of intermediate appeal was a very different basis than was later adopted by the courts of last resort and followed in later reports of gas and other public service corporations; that so far as the question of condition of property as of August, 1904, a report of the Newtown & Flushing Company verified by one of its officers under the tax laws as they stood at that time, could have no bearing; and the report on its face contains nothing which indicates the conditions, all that it attempts to do is to assign certain values to property of the Newtown & Flushing Company at that time.

Mr. Tobin: This report is made by the New York & Queens Gas Company.

Mr. Ransom: It surely was not.

Mr. Tobin: Well, read the title of it.

Mr. Ransom: It is verified by the Newtown & Flushing Gas Company.

Mr. Tobin: Read the title of it.

1066 Mr. Ransom: Schedule A shows the title of the company and the names of the officers and directors, and this covers a period down to June 30, 1904; no portion of the period covered by

this report was within the corporate existence of the New York & Queens Gas Company.

Mr. Neumann: But the New York & Queens took over the Newtown & Flushing in the year 1904.

Mr. Ransom: But the report was for a period which ended before——

Mr. Neumann: Well, it took over all of its property and it had to make a report.

Mr. Tobin: If you will look at the date of acknowledgement, you will see, Mr. Ransom, that it was made when only the New York & Queens Gas Company existed, and not the Newtown & Flushing Gas Company.

Mr. Ransom: It was made for a period ended June 30, 1904, and was made by the Newtown & Flushing and verified by its officers.

Mr. Cummings: May I submit, the declaration of the predecessor company would be binding upon the succeeding company end of it.

Mr. Neumann: Here is the situation: This company took over the Newtown company in that year and made a report, and some one had to make a report, either the Newtown & Flushing or the New York & Queens.

Mr. Ransom: And the Newtown & Flushing did.

Mr. Neumann: The Newtown & Flushing undertook to make a report—the Newtown & Flushing was out of existence when
1067 that report was made and had to be made.

Mr. Ransom: But the vice-president of the Newtown & Flushing did make the report.

Mr. Neumann: And one of the officers of the New York & Queens.

Mr. Ransom: No; it affirmatively appears the report——

Mr. Cummings: Since you are the successor, it is binding upon you.

Mr. Ransom: Not in the slightest.

Mr. Tobin: And you cannot take the good of a company and leave the bad.

Mr. Ransom: This one had no bad.

Mr. Neumann: Well, why object to it, then?

Mr. Cummings: That is true of every declaration against interest.

Mr. Ransom: It has no possible bearing, or anything in it.

Mr. Cummings: It is made in accordance with the statute.

The Master: I will take this for what it is worth as an admission against interest. The Newtown & Flushing Gas Company, as I understand it, was merged with the New York & Queens Gas Company on or about the 1st of August, 1904. The date I find on this paper is July 18, 1904. In November of that year a report was filed as of the year ending June 30, 1904, for the Newtown & Flushing Gas Company.

Mr. Ransom: And verified——

The Master: That company having been merged with the New York & Queens Gas Company, the New York & Queens Gas
1068 Company undertook to make that report.

Mr. Ransom: Does that show it was an officer of the New York & Queens that made that report?

The Master: Yes, but he was likewise an officer or connected with or authorized by, and must have been, with this company which had succeeded to the Newtown and Flushing, and the report as filed, bearing the stamp December 30, 1904, of the State Board of Tax Commissioners, is, the stamp is, "Newtown and Flushing Gas Company"—Report of the Newtown and Flushing Gas Company by New York & Queens Gas Company into which the Newtown and Flushing Company was merged July 18, 1904."

Mr. Ransom: Will your Honor state by whom is it verified?

The Master: Yes, verified by Charles Thomas, vice-president of the Newtown and Flushing Gas Company; and the affidavit of tangible property was verified by Mr. Thomas as vice-president of the Newtown and Flushing, but the latter—it will appear from this paper that it was filed by the New York & Queens for the Newtown and Flushing. I will allow it.

Paper marked Defendants' Exhibit I.

Mr. Ransom: I take it that the Attorney General will furnish us with copies of this.

Mr. Tobin: Yes, we will be glad to do that.

Mr. Ransom: Within two or three days.

Mr. Tobin: If we have these blanks. I don't know whether it is possible to get them or not.

1069 Mr. Ransom: Have it copied.

Mr. Tobin: There is no doubt but what the company has a copy of it.

Mr. Ransom: There is a very great doubt.

Q. Do you recall the separation that was made of the capital expenditure on December 31, 1918? I do not mean the detail of it, but do you recall that there was such a separation made on December 31, 1908, in order to comply with the requirements of the Public Service Commission?

A. Well, I do not recall that because I had nothing to do with the books at that time.

Q. You had nothing to do with the books in 1908?

A. No.

Q. Who had charge of the books at that time?

A. I do not recall just who it was.

Q. Well, what office did you have with the company at that time?

A. Manager.

Q. Well, to whom was the bookkeeper responsible at that time?

A. I think Mr. H. L. Snyder had charge of the books at that time he was President and Treasurer.

The Master: He was what?

The Witness: President and Treasurer.

Q. Would he as such officer of the company direct how the separation should be made as to these capital expenditures as required by the Public Service Commission—these capital accounts?

A. Why, I don't know positively, but I think so.

Q. Well, who passes on the proper alignment of separation of the capital expenditures, so far as going into the books today? That is, the separation between capital and operation, who is the per-
1070 son that does that?

A. I do.

Q. How long have you had charge of that separation, so far as the books of the company are concerned?

A. The latter part of 1913.

Q. Can you tell us anything about the capital account as made up December 31, 1908, in the way of separation of items?

A. No.

Q. You don't know under whose direction that was carried forth or ordered?

A. No, I do not, except that I would say that Mr. Snyder probably had charge of that.

Q. Back in 1913 you did have charge of the books, and you had the say as to the separation to be made between capital charges and operating expenses?

A. Yes.

Q. At that time what method did you follow as to amortization and accrued amortization?

Mr. Ransom: Objected to as immaterial, not within any issue of the case.

The Master: I will allow it.

Mr. Ransom: Exception. If you are going to try the entire history of this and predecessor companies, we will take a long time.

A. I do not recall just what rule we did use.

Q. I am asking that question for this reason, Mr. Spear: I have brought in here on the record a resolution of the board of directors as of 1915, which had to do with such items as I referred to, and I would like to have you tell us just how you cared for capital ex-
penditures in operation, that is, the separation of money pr-
1071 to the date of that first resolution. Did you follow the classification and requirements of the Public Service Commission?

A. I do not quite get you on the difference between capital expenditures and operation.

Q. Where it is to be charged?

Mr. Ransom: Objected to as immaterial, what they did in 1908; it has no bearing on the issues.

Mr. Tobin: 1913.

The Master: We have moved up a bit, it is 1913 here.

Mr. Ransom: Well, 1913 has no bearing with respect to the requirements of the uniform system of accounts.

The Master: I do not think Mr. Tobin has asked the question that he says he has asked. Beginning 1915, you set up a five per cent contingency?

The Witness: Five cents.

The Master: And three cents replacement?

The Witness: Yes.

The Master: Prior to that time how did you take care of those items.?

The Witness: That is what I am thinking of. I cannot recall just what we did there, whether it was just prior to that or not, but at one time we did set up a certain amount per thousand, less repairs, I think twelve cents a thousand less repairs. I do not recall just at what time that was done.

Q. And that was the rule at the time you came in to take charge of the books, in 1913; that was the rule you followed?

The Master: What rule?

1072 Mr. Tobin: The rule of twelve cents less renewals and repairs.

Mr. Ransom: Objected to as not cross examination of this witness. The witness has not undertaken to testify definitely to that, and it is not within the scope of any matter on which he was examined in chief.

The Master: Overruled.

Mr. Ransom: And should not have been gone into at this time.

The Master: I understood the witness to say he did not recall whether it was just prior——

Mr. Tobin: He did state that his recollection was that they charged twelve cents less repairs.

The Master: At one time.

Mr. Tobin: Yes, prior to 1915.

The Master: Some time prior.

The Witness: I do not recall whether it was just shortly prior thereto.

Q. Can you recall whether it was the rule when you took charge of the books in 1917?

A. No, I cannot recall.

Mr. Ransom: The defendants have the annual reports of the company here for the various years.

Mr. Neumann: Do you want to use them? They are right here.

Mr. Ransom: And annexed to those reports are shown the various resolutions.

Mr. Neumann: They are right here, if you want to use them.

Mr. Ransom: If they want to use the reports, let them use them.

The Master: Next question, Mr. Tobin.

1073 Q. Referring to this exhibit, which is Defendants' Exhibit I, the supplemental sheet which is attached to that, a supplemental report as it termed, known as Form A-1, 1904, Gas, it would indicate that the company had at that time 223,197 feet of mains——

Mr. Ransom: Cast-iron mains.

Mr. Tobin: Yes, cast-iron mains. That would be all cast-iron mains, yes.

Q. (Continuing:) And that the statement of the present value reproduced new was $60,047, and the present value, allowing for depreciation, was $24,829.

Mr. Ransom: What is the question?

Q. Would this indicate to you that those mains and services were not in good repair?

Mr. Ransom: Objected to as incompetent.
The Master: Let him answer it. Go on, Mr. Spear.

A. I do not know what they made those figures up from.

By the Master:

Q. Does it indicate to you that they were in good repair or in bad repair?
A. I do not think they have ever been in bad repair.
Q. Then it does not indicate anything to you?
A. No.

By Mr. Tobin:

Q. These figures do not indicate anything to you, then, as to the condition of the property?

The Master: As to the condition of repair of the property.

A. No, I do not know what they base the figures on.
1074 Mr. Ransom: They indicate somebody blundered on the law for a while.
Mr. Tobin: That is all. Mr. Neumann: I suppose there is no use asking that that statement of the witness Ransom be stricken from the record, about a blunder of the law. Mr. Ransom should not be permitted to make any such statements in the record.
The Master: What difference dooes it make?
Mr. Neumann: It makes all the difference in the world.
The Master: To whom?
Mr. Neumann: It creates an atmosphere, that is all, that is not fair.
The Master: Where?
Mr. Neumann: In the record.
Mr. Ransom: Is Mr. Tobin finished?
Mr. Tobin: No, I just have several more questions.
The Master: I thought he was finished.
Mr. Neumann: Yes, so did I.

Q. Will you be good enough to clear us up on what the company intends to include or does include in the term known as renewals and repairs, as set forth——

The Master: Renewals and replacements.

Q. (Continued.) Renewals and replacements, as set forth in the books of the company?

By the Master:

Q. How is that account handled? What do you charge to it and what do you debit it with? I mean what do you credit it with and what do you debit it with?

A. We charge to it 3 cents a thousand for the gas made, and then credit—we credit it with 3 cents a thousand, and then charge
1075 it with the replacements made during the year.

Q. What do you mean by that, replacements?

A. For instance, we might replace an engine, take an engine out.

Q. What do you do, withdraw that from capital?

A. Yes.

Q. And put the new engine to capital account?

A. Yes.

Q. And if there is a difference there you charge it against this replacement account?

A. Yes.

Q. If there is a loss there?

A. Yes.

Q. Is that the idea?

A. Yes.

By Mr. Tobin:

Q. Then if you have a replacement, an entirely new replacement, we will say in the year 1918, you charge that against capital for that particular year?

A. I do not quite get you.

Q. We will say you replace an engine, just as the question of the Master indicated; you credit fixed capital with that particular amount?

A. We take the one engine out of fixed capital and charge the new one in, into fixed capital.

Q. How do you do that?

A. I think I was a little wrong in a statement I made, saying yes to the Master in answer to his question. Anything that we write off during the year would come out of that Renewals and Replacements.

The Master: Do you mean to say that the Renewals and Replacements is not the loss on the replacements but the entire prop-
1076 erty retired?

Mr. Tobin: That is what he said.

The Witness: Anything that is retired during the year is charged against that replacement account. For example, there might be some stoves in our rental stove account, and if they are condemned they are charged against that Renewal and Replacement. Condemned Meters, and an old holder that we had; I think it was in 1919 we charged out part of it.

Q. In what year, Mr. Spear?

A. 1919.

The Master: Those things are not replaced?

The Witness: No.

Q. The only thing that you take out would be junk value; isn't that the idea?

A. No.

Q. Well, you do not even take that off.

A. If we can find the exact original cost we deduct it at the original cost; if not we estimate it.

Q. As to the contingency fund, can you tell us about the debits and credits of that? There is a debit and credit in that account?

The Master: They do not carry that any more.

Mr. Ransom: There has not been any since 1917.

Mr. Tobin: They always carried the account, if your Honor please.

The Master: Not since 1917.

The Witness: We carried the account, but there is not anything charged to it.

1077 Mr. Tobin: They have been carrying it, but there is nothing charged to it, that is the only thing. The account exists in their books today; the only thing is they have been directed not to charge anything to it. He has already explained to us the debits and credits of that particular account.

The Master: That are not charged or credited to it?

Mr. Tobin: Well, it happens that they are directed not to charge, but still it exists. They may change about tomorrow.

Mr. Ransom: They would have to get some profit and loss account to do it out of.

Mr. Neumann: I move to strike that from the record. That is not fair.

The Master: I would like to get this clear off the record.

(Discussion not reported.)

Q. How do you take care of wear and tear and obsolescence, as far as the accounts of the company are concerned?

Mr. Ransom: Objected to as vague and indefinite.

Mr. Tobin: That is, those accruing. It is not vague.

Mr. Ransom: Why, of course.

Mr. Tobin: That item is accruing all the time, and I am asking the witness how they take care of it. It is something that is occurring all the time.

Mr. Ransom: You have mixed up wear and tear with inadequacy.

Mr. Tobin: We will ask it in pieces—how does he take care of wear and tear?

Mr. Ransom: Of what?

1078 Mr. Tobin: Of the property.

Mr. Ransom: Of the land?

Mr. Tobin: You know well it is not land. Do not inject yourself in here; I am asking the question. We will take any piece of property that you care to take, such as an engine, a boiler or anything else of that sort. I am asking how the accounts are charged to wear and tear.

Mr. Ransom: Take a generator set, which has wearing parts.

Mr. Tobin: The witness testified, I think, that one of their tanks——

The Master: How do you take care of the obsolescence on a piece of machinery?

Mr. Tobin: That is, I mean the accruing amount, if your Honor please.

The Witness: We have not had any for a great many years.

Q. I mean how do you take care of it?

Mr. Ransom: I object to the question. He is asking a question based on some theory of somebody that there is an accruing obsolescence. What in the name of law or theory——

The Master: I am going to dispose of it on this ground: The witness has made it perfectly clear that there is not any account that they carry, since 1917, of whatever name or of whatever kind, that will comprehend or cover in it obsolescence, depreciation or any other thing except this three cents renewal and replacement.

Mr. Tobin: That is not entirely true, if your Honor please. The account exists in some way, but they have not charged anything to it. That is, they have not used it. That does not mean that it does not exist.

1079

Mr. Ransom: Is it the claim of the Attorney-General that the contingency account is to provide for accruing obsolescence, whatever that may mean?

The Master: Do I understand, Mr. Tobin, that you contend they have two accounts—renewals and replacements and this contingency account?

Mr. Tobin: Yes, sir.

The Master: And that in the contingency account there have been no credits or debits since 1918?

Mr. Ransom: Since 1917.

The Master: Since 1917; is that correct?

Mr. Tobin: Yes, that is what I understand from the witness.

The Master: Is there any other account on your books, of any kind, Mr. Spear, that would cover obsolescence or depreciation or amortization, or whatever else you want to call it?

Mr. Neumann: Since 1917?

The Master: Since 1917, except this account that is on the books under the head of contingency and this renewals and replacement?

The Witness: No, there is not.

The Master: Nothing else?

The Witness: Nothing else.

Q. Take the holder that you retired in 1919, had you set aside anything to take care of the replacement of that particular piece of property?

A. Renewal and replacement account—it is charged against it.

1080

Q. Renewal and replacement account?

A. Yes.

Q. Is there anything else in the account besides renewals and replacements?

A. Yes, everything retired during the year is charged against that account.

Q. Do you recall how much was placed in that account in the year 1919, Mr. Spear, the renewal and replacement account?

The Master: $10,086 and odd.

Q. $10,086, and what was the replacement?

A. I think it was pretty nearly the same thing, if I recall the figures.

Mr. Ransom: Only a matter of a few cents one way or the other.

The Master: I have looked into that from the exhibits. You do not need to bother with that from this witness. $10,087 was the actual amount of one and $10,088 was the other.

Mr. Ransom: There were a few cents between the actual amount and the amount set aside.

Mr. Tobin: I am showing the amount set aside to take care of the big plant and property they have.

Mr. Ransom: How much does the Attorney General contend should be set aside?

Mr. Tobin: Well, we will tell you that later.

Cross-examination.

By Mr. Van Steenburgh:

Q. Mr. Spear, in the exhibit that was submitted to you this morning, put in evidence, you make use of this item Work on Consumers' Premises $14,284.22?

1081 A. Yes, sir.

Q. Have you vouchers covering that item?

A. And payrolls.

Q. Giving in detail how that is made up?

A. That is mostly all payrolls; some vouchers.

Q. What does that work consist of, Work on Consumers' Premises, $14,284.22; does that cover a period of one year ending May 25, 1920?

A. Yes, that is one year.

The Master: That is an estimate, Mr. Van Steenburgh; that is his estimate of what it will be this year.

Mr. Ransom: With present cost of labor and materials.

Q. Why, Mr. Spear, was that put in payroll in part and part in vouchers, that item of $14,284.22?

A. Why was it put in?

Q. Yes, why was it separated in that way?

A. I do not think it is separated.

Q. Part of it appears in vouchers and part of it is a matter of payroll charges?

A. Part of it is material and part for labor, but mostly labor.
Q. But, I say, how much is for labor?

The Master: For last year that total item was $11,996.66, and he estimates that this year it is going to be over $14,000.
Mr. Van Steenburgh: From that time up to May 25th?
The Master: Yes; it is a mere estimate.
Mr. Van Steenburgh: I wanted to get some idea, because it did not seem to be quite clear as to what that represented.

By the Master:

Q. Have you got the details of 1919?
1082 A. No, but it represents an increase of 20 per cent in the labor, because it is shop labor, and the increase in our pay, average pay, is 20 per cent over the average price in 1919, and 10 per cent for materials.
Q. What Mr. Van Steenburgh is trying to bring out is, what percentage of the total represents labor and what percentage of it represents material, work on consumers' premises?
A. It was about $13,000 in labor and $1,200 in materials.
Q. What was it last year, do you know?

Mr. Neumann: Are you reading that from a memorandum, Mr. Spear?
The Witness: Yes.

A. Last year it was $10,800 in labor and $1,100 in material.

By Mr. Van Steenburgh:

Q. When you use the words "Work on Consumers' Premises," do you mean installation of service mains?
A. No, no. That service mains would be under the head of Services, New Construction.
Q. Then what does this work consist of; what is the kind and character of this work? You might just briefly answer that.
A. The setting of appliances, attending to complaints—work of that character.
Q. And that has nothing whatsoever to do with the installation of services, mains or extensions, or anything of that kind?
A. Oh, no.
Q. You have also estimated for the year ending May 25, 1920, repairs to street mains, $7,121.28?
A. Yes.
1083 Q. What did you make the actual cost of making the repairs to street mains for last year?

The Master: That is in the exhibit.

A. I think that is in Mr. Teele's exhibit.

Mr. Van Steenburgh: Is it in the exhibit?
The Master: Yes.

Mr. Van Steenburgh: I thought that he would state that and then compare it with this, and show the increase, if any.

The Master: Last year it was $5,697.

Mr. Van Steenburgh: Last year, I found in the exhibit, it was $5,697.

The Witness: And this is $6,121.

Q. And the difference is due to the increased cost of labor?
A. It is.
Q. And materials as well?
A. Yes.

The Master: Of course, Mr. Van Steenburgh—I do not recall whether I made the statement while you were in the room or not—I am taking this estimate of 1920 merely as an estimate, and I do not intend to base any finding on that; except that, assuming the evidence is not contradicted, assuming the record when it closes bears that out, that it would appear this year it was going to cost a good deal more than last year. But following the practice I undertook in the Consolidated case, I am going to base my finding on 1919.

Mr. Van Steenburgh: I assumed you would.

Q. I think one item, Mr. Spear, needs some explanation, because it seems to be uncertain in my mind whether you intended
1084 to charge up the entire item of $25,000 to gas rate appeal; is that fair?

The Master: He intends to, yes.

Q. Is that a fair estimate, I mean—a fair disposition of that item?
A. I think it is very conservative.
Q. But I am speaking about you making that chart; it is made in one year's operation, isn't that so?
A. Yes.

The Master: The Master is not going to allow it, so you need not concern yourself with that. I mean I am not going to allow it in one year anyway.

Mr. Van Steenburgh: In the matter of legal expense you make the same ruling, too?

The Master: I do not know, that legal expense may have been an expense incurred in other directions and properly applicable to the year. You might ask him about that and find out what that is.

Q. Mr. Spear, will you examine the item "Legal Expense," which you estimate for the year to May 25th, $5,497.19. What was that, actually for the year 1919?
A. I think I added $2,500 as the legal expense for this year.

The Master: Last year it was $2,997.
The Witness: I only added $2,500 to that item.
Mr. Ransom: I am able to testify that is very conservative.
The Master: This $2,900, Mr. Spear, for last year, was for legal services other than and entirely different from any rate making appeal legal services?

1085 The Witness: Oh, yes.

The Master: It was for the usual legal service?

Mr. Chambers: I object now. What was it? Why should he draw the conclusion? What legal service was it? You are asking him was it outside the rate appeal. What was it? Why let him draw the conclusion?

The Master: Mr. Chambers, I cannot very well find out what it was unless I find out whether it was included in the rate appeal.

Mr. Chambers: Let us see what it was. I did not want him to draw the conclusion.

Mr. Ransom: Three counsel for the Attorney General have so far participated in the last five minutes.

The Master: Tell Mr. Van Steenburgh the character of the legal service included in the last year's charge.

The Witness: General consultation with our attorneys over all matters, drawing contracts—anything we wanted to consult them about.

Q. Under a general retainer? Was it under a general retainer?

A. Yes, the general retainer is included here.

Q. And what was the name of the counsel?

A. Shearman & Sterling.

Q. They are also counsel for the Consolidated Gas Company?

A. They are.

Q. And it was under the general retainer, as you understand it?

A. Yes.

Q. Mr. Spear, you have been a gas expert or a manufacturer of gas for a considerable period of time?

1086 A. I have.

Q. It is suggested that I inquire as to the item pro rated for legal expense. Is that pro rated, I mean among the different companies, or chargeable and charged to and exclusively to the New York & Queens, this complainant?

A. No, it is charged direct to us.

Q. To this company?

A. Yes, the New York & Queens Gas Company.

Q. None of it is charged or pro rated, then, among the other companies?

A. No.

Q. And you have been engaged in the gas business for a considerable length of time?

A. For about twenty-four years.

Q. You are familiar with the state of the art at the present time as affecting the improvements in gas making devices?

A. Yes.

Q. Have you in use at your operating plant at Flushing the most economical and efficient method of manufacturing water gas?

A. We have.

Q. And that is known as the Lowe process?

A. It is.

Q. Is that at the present time the most efficient and the most economical method of manufacturing water gas?
A. It is.

The Master: In your *po*inion?
The Witness: Yes.

Q. And so considered by gas experts generally?
A. Yes.
Q. And you do not know of any improvements or changes that you might make in your plant which would tend to produce
1087 gas more economically to the consumer than you are using at the present time?
A. I do not.
Q. You have testified, have you not, in reference to the cost of what is known as the Douglaston Extension, Mr. Spear?
A. Yes, sir.
Q. You gave that figure at how many thousand dollars?
A. I think it was $143,000.
Q. Is that charged up to operating expenses for the one year, the year 1919, or part of the year 1919 and part of the year 1920?
A. No, it is capitalized.

Mr. Ransom: No part of it is operating expense.

Q. There is no part of it operating expense?
A. No part of it an operating expense.

Mr. Van Steenburgh: I think Mr. Neumann wanted to inquire about that, as to the cost of that; so I will defer if you desire, Mr. Neumann.
Mr. Neumann: Are you through, Mr. Van Steenburgh?
Mr. Van Steenburgh: I am not, but I did not want to pursue that.
Mr. Neumann: Exhaust your own examination, never mind me.

Q. You were examined in the case of the people of the State of New York against the Public Service Commission as a witness for the New York & Queens Gas Company, which had to do with the Douglaston Extension?
A. I was.
1088 Q. Those hearings took place in the beginning or the middle of the year 1914, and ended in 1915, did they not?
A. I think those are the dates.
Q. The final order was given in March, 1915. And you testified as to what the cost of making that extension out there was, did you not?
A. I did.
Q. When I say out there, I mean to Douglaston.
A. Yes.
Q. Do you recall what you made that cost, the entire cost?
A. I do not recall now.
Q. Did you not make it $66,000 odd?
A. My recollection is around $80,000 at that time.

Q. You made it $80,000?
A. Yes, but we did not make the installation exactly as we figured on at that time, and also we laid more mains than we figured at that time.

The Master: In addition to which the price went up?
The Witness: Oh, it went up terrifically in the meantime.
Mr. Chambers: Well, they were delaying it for that reason; they did not go forward with it.
The Master: What Mr. Van Steenburgh is trying to bring out is the fact that if you had done the work when you were ordered to, it would save the company a lot of money.
Mr. Van Steenburgh: That is the point.
Mr. Neumann: Do you want the figure, Mr. Van Steenburgh?
Mr. Van Steenburgh: Yes.
1089 Mr. Neumann: It is right here (handing counsel book). Ask him the specific question.

Q. Mr. Spear, did you not testify to a question put to you by Mr. Patterson of counsel for the Gas Company:

"Q. Have you estimated the cost of extending the mains so as to serve this territory, the trunk line main and the various other mains which would be required?
A. Yes, sir."
Did you so testify?
A. Well, I presume I did if the record shows it.
Q.—

"Q. And what do you estimate as the total cost of that construction?
A. $66,731.69?"

A. Yes.
Q. You so testified?

The Master: Do you recall that?

Q. Do you recall that testimony?
A. Yes. I think it was that way; and then I think further on the question came in there, on the question of engineering and supervision and contingency, and——

The Master: Interest during construction?
The Witness: Yes, and the taxes during construction
The Master: Which you think brought it up to $80,000?
The Witness: That is my recollection of it.

Q. Your recollection is that you made the other items going to make it up, as you testified now, superintendence, construction and cost of financing the operation, and so forth—you claim it made up the difference between $66,000 and the $80,000?
1090 A. That is my recollection.
Q. The gas engineer for the Public Service Commission was examined in those hearings?

A. Yes.

Q. Do you recall what he estimated the entire cost of that operation to be?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial, and not a proper way of proving it.

The Master: I do not see very well how that is competent, Mr. Van Steenburgh.

Mr. Van Steenburgh: It is objected to, and you sustain the objection?

The Master: I sustain it.

Mr. Van Steenburgh: Exception.

The Master: I take it from the line of this inquiry you represented some public body over there?

Mr. Van Steenburgh: Yes, the Douglaston Association, of which I am president now.

The Master: You were pressing the situation so as to get this service out to Douglaston; is that the idea?

Mr. Van Steenburgh: We were; that is the idea.

The Master: It took you how long to get it?

Mr. Van Steenburgh: Five years.

The Master: What became of it; did it go up to the Court of Appeals?

Mr. Neumann: The Supreme Court of the United States.

Mr. Van Steenburgh: It did, and the first time we got the law settled as to the duties, rights and preprogatives of the Public
1091 Service Commission, as to whether they could make an order which would be obeyed or not.

The Master: You represented the people over in Queens in that proceeding against that company?

Mr. Van Steenburgh: Yes, sir; I did.

Mr. Chambers: They were using the courts as a hippodrome, Mr. Ransom says.

The Master: What is that?

Mr. Neumann: Mr. Ransom's affidavit says they were using the courts as a hippodrome.

The Master: I do not know what that means.

Mr. Neumann: It may be we will have him explain it some time during the course of this case.

Mr. Chambers: He was under oath there as assailing them bitterly for having litigated foolishly on that question.

The Master: Anything else?

Mr. Van Steenburgh: Yes, just one thing more.

Q. The item paid for Relief Department and Pensions, that is a variable quantity, is it not, Mr. Spear?

A. It is.

Q. And for the year 1919 it was how much, do you recall from the exhibit here, or have you got it?

A. $581.15.

Mr. Ransom: The company having been compelled by law to make this extension, they are now entitled to a fair return.

1092 Q. You estimated this year $697.38, and that is based upon no special figures, but just a general estimate, Mr. Spear?

A. It is based on the increase in pay for the men, as also the increase to the doctors.

Q. You are paying this year more to the doctors than you did in 1919?

A. Yes.

Q. What percentage of increase?

A. We paid them formerly a dollar for a visit at the office or a visit to the house. This year we pay them a dollar for a visit to the office and two dollars for a visit to the house.

By Mr. Neumann:

Q. Mr. Spear, when you were testifying about the general legal expenses every year, does that include anything with reference to advice given with reference to stocks and bonds, or dividends or the like?

A. I do not think that I can recall ever asking advice on any of those items; but it includes general advice.

Q. It includes general advice on all subjects appertaining to your business?

A. Yes.

Q. Whether it is with reference to stocks and bonds or tax reports or things of that kind?

A. That is right.

Q. Mr. Spear, you recall at the last hearing, May 18th, 1920, we were discussing the question of the daily works reports and how the entries got into the books, and in answer to one of my questions you stated that you took the quantities from the works reports, but not the amount. Is that correct; do you recall that?

1093 A. Yes, there were no dollars figured on the works reports.

Q. You did not want the impression to prevail that the amount is on those work sheets?

A. Oh, no.

Q. That is what I wanted to clear up; the reason you did not take the amount is that it is not contained on those sheets?

A. Well, the works superintendent has not the information to fill that in.

Q. Yes, but that is not contained on those sheets, the amount?

A. Oh, no, it is not.

Q. That is, the amount in dollars. The quantity is, but not the amount in dollars?

A. That is right.

By Mr. Van Steenburgh:

Q. Mr. Spear, there is a difference in the cost of distribution of a high pressure plant as compared or contrasted with a low pressure plant, is there not?

A. There is.
Q. You are operating on both, are you not, in Flushing?
A. Not in Flushing; at Bayside we have the low pressure. We are pumping in Flushing.

The Master: By "pumping" you mean the high pressure?
The Witness: Yes.

Q. That is, at Bayside the low pressure, and Broadway and the intermediate territory?
A. Yes, everything else is low pressure, except any consumers we might take up on that high pressure line between Flushing and Douglaston, where there was not a low pressure main to connect them with.
1094 Q. Is there an appreciable difference in the cost of the two methods of operation or distribution?
A. Well, the difference is in the cost of compressing the gas, and boiler coal.
Q. I say, is that an appreciable item?
A. Yes.
Q. Would it be in the course of a year?
A. Yes, it would be.
Q. How much would you estimate it to be?
A. I do not know; I have not any of the figures.
Q. Confining your answer to the present plant?
A. I haven't the figure in mind, now, on it.

The Master: I think the record shows it sufficiently; it requires several pounds more of coal.

By Mr. Neumann:

Q. I now show you a paper, Mr. Spear, that was produced by counsel for the complainant, and will ask you to state what that is.

The Master: Oh, don't waste time, it is the pay-roll—for what month?
The Witness: Shop Payroll for January, 1919.
Mr. Neumann: I offer this inevidence.
Mr. Ransom: No objection.
The Master: Mark it.
Marked Defendants' Exhibit J.
Mr. Neumann: I offer in evidence the statement for January, 1918.
The Master: What is it, a shop payroll?

Q. Is that correct?
A. That is right.

The Master: Mark it.
Marked Defendants' Exhibit K.

1095 Q. This morning when I was interrogating you with reference to Exhibit 58, you explained that the items under Mains

and Service Department were not contained in the Sales of the company, is that correct?

A. That is right.

Q. Well, now, just look at Defendants' Exhibit J, January 31, 1919.

The Master: What is the question?

Q. (Continuing:) You stated, did you not, that the reason these were not on the payrolls was because they were paid for by the contractor?

A. Yes.

Q. Now, let me direct your attention to the fact that in the first column you have the words "Sullivan Brothers," that is the contractor you had in mind, is it not?

A. Yes.

Q. Following along the first item of Foremen, 55 5/9 cents per hour—do you get the item I have in mind?

A. Yes.

Q. Does that payroll indicate that that foreman was paid or not?

A. No, he didn't receive anything that month.

Q. And still he is in your Exhibit No. 58, 1 foreman, 55 5/9 cents?

A. That is right.

Q. Now, the item one laborer, 36 1/9 cents, that I called your attention to this morning, and I now call your attention to Defendants' Exhibit J under the title Sullivan Brothers, one laborer, 36 1/9 cents; what does the exhibit show with reference to his pay for the month?

A. He didn't draw anything that month.

1096 Q. For the whole month?

A. That is right.

The Master: How does Sullivan Brothers get on those payrolls at all?

The Witness: At one time we used to put their time on the payroll, and my recollection is that that was until about May, April or May of 1919, and then since that time he has rendered bills for them instead of putting it on the payroll—that applies to the shop payroll, which would be for repairing mains and services, attending to leaks in streets and so on—not to construction or installation of mains and services.

Q. Now, I show you Defendants' Exhibit K, January 31, 1918, Sullivan Brothers in the first column, for one foreman at 50 cents; one foreman at 36 1/9 cents; horse and wagon 33 1/3; laborer 33 1/3 and laborer 30 5/9 cents; is that correct?

A. That is right.

Q. Those items that I have indicated to you, how much time during that month was spent by those various men according to this payroll?

A. One week.

Q. For the entire month?

A. Yes.

Q. Now, then, Mr. Spear, at page 885 of the record, folio 2654, you testified to the number of cubic feet of gas sold on the Douglaston Extension, which was January, 1920, February, 1920, and March, 1920, and April, 1920, is that correct?

A. That is right.

Q. When did you first begin to serve the Douglaston Extension?

A. In the latter part of November, 1919.

1097 Q. When was the construction of the Douglaston Extension commenced?

The Master: Oh, we have had that.

Mr. Neumann: No, it has not been testified to.

The Master: Early part of 1919.

The Witness: About July.

Q. About July, and completed——

The Master: In time to turn on the gas in November.

The Witness: It was not completed; it has only been completed this year. We had four consumers connected on Thanksgiving Day, as to which we are very proud.

Q. And does your testimony at folio 2653 contain the cost of building that extension taken from the books of the company?

A. Yes.

Q. That is $145,735.71, is that correct?

A. Yes.

Mr. Neumann: With reference to the exhibit that Judge Ransom introduced in evidence this morning by this witness as to Distribution Expense, I will say I am not ready to cross examine this witness and I would like the privilege of suspending his cross — at this point for that purpose only, for that exhibit.

The Master: All right.

Mr. Ransom: I think they ought to advise us when they wish to recall him for further cross examination.

Mr. Neumann: I will do that.

Mr. Ransom: He probably won't be here during the remainder of the term.

Mr. Neumann: I'll be glad to do that.

Mr. Ransom: Mr. Teele, take the stand.

1098 ARTHUR W. TEELE recalled.

Mr. Ransom: Mr. Teele is now produced for cross examination.

Cross-examination.

By Mr. Tobin:

Q. Will you refer to the first page of Exhibit 65, Mr. Teele.

A. Which is 65, Mr. Tobin?

Q. As to the item of Sales of Gas, marked as Schedule 1, $334,-

614.83. Will you tell us just how you arrived at that particular sum?

A. The particular sum of $334,614.83 is the aggregate of the three sums, $255,196.63 appearing on Ledger, folio 204; the sum of $1,165.50, appearing on Ledger, folio 200; and the sum of $78,252.70 appearing on Ledger, folio 202.

Q. Taking the item of Commercial Meter Lighting, which is shown on the second page, amounting to $255,196.63, is that the amount of sales as charged on the books of the company?

A. That is the amount of sales as charged on the books of the company, less the deductions and allowances as shown in this schedule, of $1,235.77 which amount is charged against the Ledger account shown on folio 204.

Q. Take those deductions and allowances; what deductions and allowances go to make up that item of $1,235.77?

A. Various items that are shown in the Ledger account, the nature of which is allowances made on account of fast meters and overcharges in bills, and so forth, which were made in the settlement of the accounts.

1099 Q. Then you simply accepted those allowances and deductions as they appeared on the books of the company?

A. No, I traced them back to the original vouchers and records.

The Master: But you didn't exercise any judgment as to the allowance?

The Witness: I did not.

The Master: Your exhibits, as I understand it, are tabulations taken from the books?

The Witness: They are tabulations taken from the books.

The Master: Have you with respect to any item attempted to change the figures in the books?

The Witness: I do not now recall that I have changed any figures in the books. There is one case of interest on taxes charged to office expenses, where I have deducted it from the amount shown on the books, and it is so shown on this schedule, and added it to the other items of interest on taxes—that is not changing any of the figures as they appear in the books.

The Master: Mr. Tobin, in the Consolidated Gas case I took the position that I was not going to permit a long line of what I called fishing questions of Mr. Teele. These exhibits were given to you and to other counsel quite some time ago. I had supposed that in the meanwhile—and I suspended Mr. Teele's cross examination for that purpose—that you and your engineers would fa-

1100 miliarize yourselves with the exhibits to the point of being able to bring out, sharply, in a very few questions from Mr. Teele, any false basis on which he worked, or any error made by him, or any particular point you wanted to bring out.

Mr. Tobin: But his own testimony is the best as to that, if your Honor please, as to just how far, for example, as to these particular allowances and deductions, he went back to satisfy himself.

In other words, he said here he simply accepted the amount as it

appeared on the books and he didn't go any further, and he afterwards stated that the only change he made, as I recall the testimony, was concerning an item of interest on taxes.

The Master: What Mr. Teele said was that he looked back at the entries supporting those Journal credits or those allowances that were made. He simply proved here a tabulation that he says is a correct tabulation from the books; instead of my analyzing these books and checking off from the books and making the computation, he has brought to me a tabulation. Now any cross examination which would indicate that he has not done that or that he has omitted any items or added items that do not appear in the books, I will let you bring out, but I will not allow any fishing expedition.

Mr. Tobin: Well, I don't intend to do that, your Honor.

1101 Q. Did you examine the reports that the company had made from time to time to the Public Service Commission, more particularly the report as made to the Public Service Commission for the year 1919?

A. I have not seen any report made by the company to the Public Service Commission.

Q. Taking the item in Schedule 3, Operating Expense, Ledger No. 2, folio 215, you have an item of "Rate Case," G-876, $15,518.73. Was that particular item taken off the books of the company?

A. That amount appears on Ledger, folio 215, of the Operating Expense, Ledger No. 2.

Q. Did you look at the voucher number?

A. I did.

Q. Will you tell us as to the make-up of that voucher.

A. I can, if you will allow me to refer to my analysis of the account—shall I read the items making up the total?

The Master: Yes.

The Witness: The total, $15,518.73 is made up of the following items:

$14,397.81, for an invoice in favor of the Bartlett-Hayward Company;

$73.80 for an invoice in favor of the Bartlett Hayward Company;

$300.0 for an invoice in favor of the Douglas Robinson, Charles S. Brown Company;

$90.00 for an invoice in favor of the Bartlett-Hayward Company;

1102 $250.00 for an invoice in favor of the Brown-Wheelock Company;

$61.28 for an invoice in favor of the Bartlett-Hayward Company; Payroll items amounting to $56.10.

Q. Those payroll items are for moneys paid to employees of the company?

A. They are moneys paid to Miss Louise Mold and Edna Allen, both employees of the company.

Q. What does it indicate as to any overtime?

A. The information given to me was that it was for overtime put

in by these employees in reporting vouchers, and so forth, used by the Bartlett-Hayward people in making their analysis as to the class of property and so forth.

The Master. And charged by the company against the rate case?

The Witness. As part of the cost in the rate case.

Q. Is there anything in the voucher to indicate that it is overtime?

A. I do not now recall—it only amounts to $56.10.

Q. Does that make up the total?

A. No, there is one further item of $287.74, which is also labor employed in connection with the work of the Bartlett-Hayward Company, sounding foundations, &c.

Q. Take that big item.

A. And is cleared out of their suspense account, originally charged to the suspense account from payroll, and the total amount is $287.74.

Q. Take that big item of the Bartlett-Hayward Company, does the voucher indicate what the service was for which this large amount was paid?

1103 A. Yes. The notation which I have made from the voucher indicates that it was for services rendered to September 10, 1919, in connection with the valuation of the New York & Queens Gas Company plant.

The Master. Wait a minute. Mr. Tobin, I let you ask this line of questions as illustrative of what I do not want done.

You have had your men on these books, they have had access to these vouchers, they should know perfectly well what these items represent.

It does not at all bear on this witness' testimony, that his tabulation is a correct tabulation from the books.

Mr. Tobin. The reason I am asking these particular questions, if your Honor please, is that it is my information that this item of rate case set forth here at 215, is merged on the books under General and Miscellaneous Expense, and I asked for a separation of it, that was all, an explanation of the separation.

The Master. Well, bring that out—is that so, Mr. Teele?

The Witness. No. It appears on folio 215 of the Operating Expense Ledger No. 2. The General and Miscellaneous Expenses are on other folios.

Q. Well, of course I do not want to dispute you, Mr. Teele; the way I have the information is that it is carried as Miscellaneous General Expense and here it appears to be separated into
1104 these items, that is the reason I asked the question.

The Master. Well, Mr. Teele's statement is that that is the way he found it on the books. The books are here and if your information is that he is not correct, get the book and confront him with it, that is the way to handle the cross-examination as to that.

Mr. Tobin. All I want to do is to clear it up and Mr. Teele can take the book and clear it up.

The Master. The way to clear it up is to get the book, get the General Expense Ledger and see if you haven't got it in there.

Q. Is it carried any other place?

Mr. Vilas. Let the record show that the witness looks at page 215 of Operating Expense Ledger No. 2.

The Witness. Operating Expense Ledger No. 2, folio 215, the account is headed "Rate Case, 27-A."

Mr. Tobin. And I have Miscellaneous and General Expense.

The Master. Look at it and see if it is duplicated, look at the page and make sure.

The Witness. It is not—I think perhaps Mr. Tobin is misled in regard to it, because all of these items are charged to one account, which is a control account of this ledger, on the General Ledger.

The Master. What is that?

The Witness. Operating expenses; that is the control ac-
1105 count of this ledger, and this is a segregation of the items that are charged in that one account.

The Master. The same items do appear in what other folio?

The Witness. The total of items charged in here go to the control account, of course, each month.

The Master. What folio are you looking at, Mr. Teele?

The Witness. I am looking at folio 208.

The Master. What is that?

The Witness. General and Miscellaneous Expense.

The Master. Is that the control account?

The Witness. No; the control account is not in this ledger; this is the operating expense ledger.

The Master. Well, now, this rate case item of fifteen odd thousand, does that appear at folio 208?

The Witness. It does not; it appears at folio 215.

Q. There is still another ledger in which those amounts are contained, merged under what item?

A. All operating expenses are charged to the account operating expenses on the General Ledger, which is the control account for this Operating Expense Ledger, in which the items charged in that one account are segregated under the various captions set forth in this ledger, and they are set forth in this ledger.

Q. Taking the book before you and taking the items that
1106 you first referred to, $15,518.75, did you accept that as a proper charge in operating expenses?

Mr. Vilas. Objected to.

The Master. Objection sustained. I don't care whether he did or not, he is simply testifying to a tabulation as to what the book shows. It is not for him to say whether it is proper or improper.

Q. Take the item of bad debts, 298, in Schedule 3; was that the exact amount as set forth in the book account?

The Master. Have you looked at the book—is it, Mr. Tobin?

Mr. Tobin. I am asking him, if your Honor please.

The Master: I am asking you; that is what you had this exhibit for, for weeks and weeks.

The Witness: General Ledger, folio 298.

The Master: What is the amount?

The Witness: $156.25.

Mr. Vilas: Folio 298 of the General Ledger is produced and the witness points to the entry to which he is referred.

The Master: You are referring to an item at folio 298, No. 6, are you, Mr. Tobin?

Mr. Tobin: I am referring to this particular exhibit.

The Master: Well, you are referring to the item in the General Ledger at folio 298, $156.25; is that what you are reading?

Mr. Tobin: Yes, sir.

The Master: And you want to know whether it appears in the books?

1107 Mr. Tobin: Yes, sir.

The Master: If you had looked at Exhibit No. 52 before you asked that question you would have found it on page 298.

Mr. Tobin: I don't find that particular item, under that particular item as I have got it here.

The Master: What do you mean you don't find that particular item?

Mr. Tobin: I don't find just that particular item.

The Master: That particular item I find as the total during the year 1919, and he has written that off at folio 298.

Mr. Vilas: I would suggest that the Attorney General look at the books in evidence instead of some report.

Mr. Tobin: I don't need any suggestion at all.

Q. Referring to the first page of the Schedules 1, 2, 3 and 4 in this particular exhibit, taking the item of $25,340.89 Net Loss in Gas Business. I do not find that particular item on the books.

The Master: Is that a question, or a statement?

Mr. Tobin: I am asking Mr. Teele if that is a calculation he made himself, or how he arrived at that particular sum.

The Master: Well, that is your computation, is it?

The Witness: It is; it is the deduction between the expenses shown on this sheet, and the revenues as shown on this sheet.

1108 Q. And the expenses shown on this sheet, that is the deduction that you made yourself, sir?

A. It is.

By the Master:

Q. The expenses on this sheet are the deductions you made yourself?

A. Expenses and revenues.

Q. Well, those expenses that you have got on that sheet are expenses that appear on the books?

A. They are.

Q. The total is the total that you figured it at?

A. This figure is the deduction which I made of the expenses from the revenues.

Q. But the question was inaccurate. As I understand it, you have here a series of figures showing revenues?

A. Yes.

Q. That is taken from the books?

A. Yes.

Q. The total revenues applicable to the gas business does not appear in the books in this form?

A. No.

Q. That is your computation?

A. Yes.

Q. Then you have various expense items?

A. Yes.

Q. These are all taken from the books?

A. Yes.

Q. The total expenses are your computation?

A. Yes.

Q. From which you have deducted total revenues?

A. Yes.

1109 Q. And the net loss is your computation again?

A. Yes.

The Master: All right, next question.

By Mr. Tobin:

Q. As to the items going to make up Schedule 2, Mr. Teele, Cost of Production, did you go back to the daily work reports to check up as to whether they were accurate or not, sir?

Mr. Vilas: Objected to as already covered.

The Master: I will allow it.

Mr. Vilas: Exception.

A. I don't know what you mean by the check.

Q. Take the item of Labor, in checking up the item that appeared on the books of $7,089.28, did you check back to the daily work report as to how that amount was made up as appears on the books of $7,089.28?

A. I checked back from the Ledger to the Journal to find that it was a distribution of the payrolls; and then I tested four months of the payrolls.

Q. Take the Gas Oil, $107,192.16, how far did you trace back as to whether it was correct or not?

A. I went back to the original invoices and the original inventories of the inventory at the beginning of the year.

Q. Did you check it as against the daily work reports as to the amount of gas oil used in the manufacture of gas?

A. We tabulated the reports on the daily work reports, showing the consumption during the year, and compared that with my computation of inventories plus oil purchased less inventory on

1110 hand at the end to find out whether they were in agreement or not.

Q. Did you find any errors at all in that daily work report as to the amount of gas oil on hand?

A. The total aggregate of the quantity reported by the daily work reports agrees with the quantities of oil on hand at the beginning of the year plus the oil purchased during the year, less the oil on hand at the end of the year.

Q. In other words, you simply took the summaries as they appeared on the books, and did not go into an examination to ascertain for yourself whether that gas oil was actually used or not?

Mr. Vilas: That is objected to; contrary to the fact, not a fair statement.

The Master: I will allow it.

Mr. Vilas: Exception.

A. I summarized the quantities as shown on the work reports in order to compare the total of it with the computation as I just testified.

Q. In other words, you do not pretend to say that this exhibit here of revenues and expenses, that you personally checked as to the actual consumption of gas oil, or the actual consumption of coal in the making of the gas?

A. I do not know that I understand your question as to whether I personally checked the consumption.

Q. Do you know of your own personal knowledge as to whether the gas oil charged and the coal charged in these calculations which appear on the books were actually consumed by the company in the manufacture of gas?

1111 Mr. Vilas: That is objected to, already gone into fully.

The Master: Overruled.

Mr. Vilas: Exception.

A. From the records of the company which I examined, they appeared to be the actual amounts consumed.

Q. How do you know that?

A. They are reported by the works manufacturer as having been consumed. The works manufacturer reports that he had on hand a certain quantity of oil at the beginning of the year, the vouchers duly approved and endorsed as showing the quantities of oil received during the year were submitted to me and examined by me, and starting with the admitted quantities of oil on hand at the beginning of the year and adding thereto the amount of oil acknowledged by the responsible authority as having been received during the year, less the quantity of oil which that same authority admits as having on hand at the end of the year, I arrived at a quantity of oil which is to be accounted for, and that quantity of oil is the quantity of oil reported by the manufacturing department as having been used during the year, and I therefore have taken it for granted, or I have taken that quantity of oil as being the quantity of oil that has been used.

Q. You did not go any further than that to verify that quantity of oil already stated?

Mr. Vilas: Objected to, already covered.
The Master: Overruled.
Mr. Vilas: Exception.

A. I did not go beyond that point, no. I do not know how I could.

1112 Q. Take the item of labor, you accept the payrolls as the basis of checking, or you used the payrolls of certain months to check the items as those payrolls went into the Journal and subsequently into the Ledger account?

A. I used certain months of the year, that is, January, June, July and December of 1919 as test months to satisfy myself as to the accuracy of the distribution of the payrolls and as to the amount of the payrolls, those payrolls being endorsed by the works superintendent, he being the responsible authority for the engagement and payment of labor.

Q. You accepted the pay roll as the evidence of the work performed?

A. I did, with the exception of the four months which I tested, and those four months I went back to the record immediately behind the pay roll, which is the monthly distribution sheet of the individual workmen. That record is made, however, by the same man who endorses the pay roll and is responsible for it.

Q. What I am asking particularly is, you did not know of your own knowledge as to whether the work had been performed or not?

A. I was not present and did not see the work performed by any of the laborers.

Q. Well, then, we are to accept your statement that you took the book figures as they appear, and from those book figures you have made up these schedules which are known as Exhibits 64 and 65?

Mr. Vilas: Objected to as not a proper statement of what the witness has testified to.

1113 The Master: Overruled.
Mr. Vilas: Exception.

A. I do not think that I made a statement that I took the book figures as they appeared.

Q. Well, what changes did you make in the books?

A. I have not changed any of the figures as they appeared.

Mr. Tobin: That is all.

Mr. Vilas: Is the Attorney General through with the cross-examination?

Mr. Tobin: I think Mr. Neumann has got something yet.

Cross-examination.

By Mr. Neumann:

Q. I call your attention, Mr. Teele, to Exhibit 55, and especially Schedule 2 under "Cost of Production," and I direct your attention

to the word "deduct." Underneath there you have under the items residuals produced, "credit residuals produced sold," is that correct?

A. It is.

Q. Now, the first item of residuals produced credit $15,960.36 will be found in the total amount of $257,151.15, it is in under the last single item that goes to make up that total, is that correct?

A. There is such a figure there.

Mr. Neumann: I move to strike out the witness' answer.

The Master: Disallowed.

Mr. Neumann: Exception.

Q. Does the figures $257,151.15 mean that it is the total of the entire column of schedule 2?

1114 Q. I does. Not the entire column, it is the total of the items under which it appears. There is another item in the column.

Q. Which item?

A. This item.

Q. I am not talking about that, I am talking——

The Master: It is the total of the items above it?

The Witness: Yes.

Q. That is what I mean. And there is included in that item $15,960.36?

A. There is such an item in that total.

Q. Now, the second item residuals produced $13.95, is that amount anywhere included by you in the total figure $257,151.15?

A. It is not. ——

Q. Why not?

A. Well, because it is not and should not be.

Q. Upon what theory?

A. Why, because the $13.95 represents the proceeds of the sales of residuals. These residuals which were sold do not enter into any part of the production, whereas the other item of $15,960.36 represents not only the residuals produced, but that portion of the residuals produced which is used in production.

Q. And that is not true of the item of $13.95?

A. No, that is not true of the item of $13.95 which is sold.

Q. Now then, take the figure $15,960.36 which is immediately above the total of the column "boiler fuel tar used," who fixed the price as to that, do you know?

1115 A. That is the price which appears on the company's books, I cannot say. I had nothing to do with the fixing of it.

Q. And the same way of that item residuals sold, you had nothing to do with that?

A. No.

Q. You took that from the books?

A. That is what the company realized.

Q. Now, referring again to Exhibit 65, Schedule 4, you have not shown upon that schedule the pages that these various items were taken from regarding taxes?

A. No.

Q. Are they contained in more than one ledger account, or are they usually in separate accounts under the titles that you have here stated?

A. They are contained in the ledger account of accrued taxes.

Q. All these items?

A. Accrued taxes and interest on accrued taxes.

The Master: General ledger account?

Q. General ledger account?

A. Yes. No, let me see. Just a minute until I refer to that. The item of $1,749.10 is in the account of accrued taxes. The item of $7,382.54 is in the accrued taxes.

Q. Is that a computation of two figures?

A. It is the various amounts which are set up monthly to equal the amount of the taxes accrued during the year.

The Master: How much?

The Witness: $7,382.54, which is the amount of the franchise tax.

Q. Where is that?

1116 A. They set up these monthly amounts (indicating) in January. That is the balance of the unpaid taxes brought forward at the beginning of the year.

Mr. Vilas: Referring to general ledger folio 176.

Q. And that amount $2,868.81 is a balance brought forward from the year 1918, is that correct?

A. That is right; and then they sent up an estimated amount each month to cover the taxes accrued during the year, and at December 31st they make an adjustment entry, which adjustment entry is in amount necessary to make the total credited in this account during the year equal the total amount of the taxes assessed against the company during the year.

The Master: Where does the $7,000 item show?

Q. $7,382.54?

A. The $7,382.54 is the sum of the items paid during the year, and charged to the debit side of this account.

The Master: Which two items?

The Witness: May 25, 1919, on cash book 80, check No. 3541, Receiver of Taxes, New York City, $3,691.27.

The Master: Where is that in the ledger?

The Witness: The $3,691.27 is included in that figure.

Q. That is November?

A. Yes.

Q. That isn't May?

A. The other was May, and is in here, it is in this May 31st

1117 Accounts Payable, $10,305.13, which includes the first half and this includes the second half. There is the second half of the real estate tax and the second half of the franchise tax, $3,691.27, making the figure, and the second half of the real estate tax is in that and the first half of the franchise tax.

Mr. Vilas: May the record show the witness indicates on folio 176 of the General Ledger.

The Witness: In other words, the taxes paid during the year applicable to the year 1919 are charged in this side of the account.

The Master: Meaning in the left hand column?

The Witness: Meaning in the left hand column.

Q. What do you mean applicable?

A. I mean the taxes which are assessed against the company by the various taxing authorities for the year 1919.

Q. Irrespective of whether they are paid or not?

A. Irrespective of whether they are—no; mounts which are paid are in here.

The Master: They set up an arbitrary account every month to cover it in.

Mr. Neumann: Yes.

The Master: What is this last column here.

Q. What is the last column on page 176?

A. That is a balance column. They simply keep a continuous balance in the account. Here is the analysis of the account right here (indicating). The balance at the beginning of the year
1118 of $2,868.81 is made up of three things, it is made up of the unpaid Federal income tax of 1917, $332.54; the unpaid Federal income tax of 1918, $867.46; and the unpaid gross earnings tax of 1918 of $1,668.81, a total of $2,868.81. Now, there have been credited during the year as accruing during the year 1919 an aggregate of $23,533.25, made up of these items: Gross earnings tax for 1919, $1,749.10; real estate tax of $13,103.16; real estate of corporations tax $28.20; special franchise tax of $7,382.54; capital stock tax of $827 and Federal income tax on bond interest coupons of $443.25, which are not included in here as being a part of the gas business.

Q. You mentioned something about capital stock tax in Exhibit 65?

Q. There is an additional item here of $471, being the additional capital stock tax assessed in 1919, based upon the 1918 figures.

Adjourned to Thursday, May 27, 1920, at 9:30 A. M.

Last Complainant's Exhibit 90.
Last Defendant's Exhibit L.

94298

Vol. II

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 296.

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, AND ALFRED M. BARRETT, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT, APPELLANTS,

vs.

NEW YORK & QUEENS GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 11, 1921.

(28,225)

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VOLUME II.

1119 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 27, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.
Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.
Mr. Van Steenburgh, of Counsel for Defendant Dennis O'Leary.

ARTHUR W. TEELE resumed the stand.

Cross-examination continued.

By Mr. Neumann:

Q. Mr. Teele, Exhibit 65, Schedule 4, relates to the various taxes?
The Master: Yes, it appears that it does.
Q. Take the item of Special Franchise Tax, $7,382.54, that item as it appears on this schedule will not be found in the operating ledger or in the general ledger as of that particular amount which is indicated, but in some other amount—is that correct?
A. It is made up of different amounts appearing in the account.
1120 Q. In other words I want to develop the facts here. Neither the general ledger nor the operating ledger will show that figure of $7,382.45 as a separate figure, distinct and by itself?
A. That is right.
Q. That is true also, is it, of the item of real estate, $13,103.16?
A. Yes.
Q. And that is true also of the item of capital stock, $1,298?
A. Yes, that is made up of two items.
Q. Now, that capital stock is made up by two items consisting of what?

Mr. Ransom: I think the record might well show that counsel for the Commission went over these matters with Mr. Teele last night, with his working papers.

Mr. Neumann: I think that is a very ungentlemanly thing for Mr. Ransom to say.

The Master: I do not think that it was ungentlemanly, it was not particularly necessary. The fact is that on adjournment last night I suggested to counsel that time would be saved in this way. Counsel adopted the Master's suggestion and is saving time in this way. That is all there is about it.

Mr. Ransom: For which I am very glad.

A. It is made up of two items of $827 and $471.

Q. Now, you are reading, Mr. Teele, from the——

A. I am reading it from the General Ledger 4, folio 176, account entitled, "Accrued Taxes," the two items appearing on the debit side of that account.

1121 Q. Now, likewise, page 176 contains these other amounts that I was speaking of, $7,382.54, and $13,103.16, in conjunction with other amounts?

A. It does.

Q. And not by themselves?

A. Not by themselves.

Q. And what I have illustrated as of the capital stock tax is typical of the other two?

A. It is typical of the other two, but it is not typical of the gross earnings tax, which does appear as an item in this account.

Q. As separate and distinct by itself.

A. Separate and distinct by itself.

Q. And that amount is $1,749.10?

A. It is.

Q. That is correct, is it?

A. Yes, sir.

Q. Now, Mr. Teele, Exhibit 65, particularly referring to Schedules 1, 2 and 3, contains in the first column the words "Operating Expense, Ledger No. 2, Folio," and opposite each item is the corresponding page of the ledger that that item will be found on?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And after each item—take, for instance, the first one on Schedule 3, "Transmission Pumping," there is in brackets a figure of 631. What does that figure refer to?

A. It refers to the Public Service Commission uniform system of accounts number which, in my opinion, corresponds with the account "Transmission Pumping" as carried on the books of this company.

1122 Q. In other words you have indicated by that figure the uniform system of accounts subdivision that covers this particular subject?

A. I have.

Q. Now, will you please state for the record why you did not do likewise with reference to the page of the ledger, and with reference to the Public Service Commission account that these taxes should

have appeared under that are specified by you in Exhibit 65, Schedule 4?

A. My recollection is that the Public Service Commission's uniform system of accounts does not give any number to taxes.

Q. Let me see now if it does. Have you the uniform system of accounts before you?

A. I have.

Mr. Ransom: Page 54.

The Witness: No, page 52.

Mr. Ransom: Pages 52 and 54.

Q. Page 52, G-853?

A. G-853 relates to duplicate gas charges, credit.

Q. And a subdivision under that, 17, expenses outside of operation?

A. No, I do not so interpret it.

Q. And then the next is 18, Tax Account?

A. The next is 18, Tax Account. I do not interpret that as being a subdivision of G-853.

Q. What do you interpret that as?

A. I interpret that as being a section of the whole instructions.

Mr. Ransom: That is not a subdivision of G-853.

Mr. Neumann: What do you characterize it as, Mr. Ransom?

1123 The Witness: However, I had no purpose or reason in not designating any corresponding account in making up this Schedule 4, I simply didn't do it.

The Master: I will get this right on the record. I have before me the uniform system of accounts. It is cut up into various subschedules. Schedule B starts off with paragraph No. 1, "Income and Indicant Accounts Compared." The next paragraph, paragraph 2, is entitled, "Division of Income Account," and it so goes on until we get to 12, which begins to refer to setting up various accounts, and starts with 431, Municipal Street Lighting, Gas. After going through with all these various accounts we then strike No. 13, which it is quite clear does not refer to setting up an account, because no account is set up there; 14 and 15 set up no account. 16-A sets up no account. 16-B begins to set up accounts again, or definitions under numbers, and that goes on for pages until we strike 17, and then 18, which quite clearly has nothing to do, in my opinion, with duplicate gas charges. I think Mr. Teele was right in his interpretation of it, but we may be both wrong.

Mr. Neumann: To which I respectfully except. Now, Mr. Teele states he wanted to make some statement.

The Master: Do you want to make a statement, Mr. Teele?

The Witness: I have not seen this edition of April, 1919. I don't know if it is any different from previous editions or not.

1124 Mr. Ransom: I think it is not in that respect.

Mr. Neumann: I move to strike out Mr. Ransom's statement. Of course the uniform system of accounts is introduced here in evidence. If he has introduced the one of April, 1919, it will of course be controlling.

The Master: However that may be, I do not think there is any

point in the question raised by counsel that Mr. Teele could have intended any purpose in omitting account numbers, because as I read it there is no account numbers for taxes.

Mr. Neumann: May I not have the witness' answer to that question?

The Master: I did not know there was an unanswered question. What is it?

Mr. Neumann: To make it perfectly clear on the record I will ask him.

Q. The reason you have not, upon Schedule 4 of Exhibit 65, placed either the folios of the ledger or the account which we contend it should go under the uniform system of accounts is that you did not believe there was any account that covered it in the uniform system of accounts?

A. I did not even consider it.

Q. You did not even consider it?

A. I did not even take it into consideration, because the schedule "Taxes" speaks for itself, and I did not think it necessary to earmark it.

Q. Now, Mr. Teele, are there any taxes of any kind, nature or description included in Schedule 4 which were paid in the year 1919, but related to taxes of prior years?

A. No.

1125 Q. How about a part of this $1,298? Wasn't that part of that, $471, for a prior year, a retroactive tax for a prior year?

A. I do not so consider it. The law under which the tax was paid was not passed and did not become a law until the year 1919, and the tax was assessed in the year 1919.

Q. For what year?

A. It was based upon the capital stock return made in the year 1918.

Q. For the year 1918?

A. No, the tax was assessed in the year 1919. The law became effective February 1, 1919, and I construe it as being a tax assessed by the taxing authorities in the year 1919, and applicable to 1919, and I have so contended in every case where I have had to deal with it.

Q. That is your interpretation of it.

A. That is my own interpretation of it.

Q. Now, coming down to the question of interest on taxes set forth in Schedule 4 of Exhibit 65, are there any items of interest on unpaid taxes for years other than the year 1919?

A. Well, the item of $233.71 is the interest accrued at 7 per cent. for the period of 1919 during which taxes assessed prior to 1919 remained unpaid.

The Master: Just one minute. I should like to have, in this connection, the original vouchers or bills for the 1919 taxes. Will you see that I get them? What I have in mind is this: I think that this will be clearly a case where I shall estimate the operating expense, or calculate the operating expense as including the taxes assessed,

without an allowance for any interest, and without deduct-
1126 ing anything or giving any credit for possible deductions. In other words, I am going to work on the theory that if there is a reduction of taxes the interest will offset the saving to some extent.

Mr. Ransom: That is a very unfavorable basis to this company, because this company does not have taxes of a controversial kind to any appreciable extent.

The Master: But I am going to take the taxes in the amount assessed against you on the theory that you ought to pay them when due. Taking the very point that you raise that none of these taxes are subject to controversy to any extent, there is no reason why there should be interest.

Mr. Ransom: There are some 1917 taxes that are in controversy.

The Master: Based on the 1919 operating results I am going to take the exact amount of taxes assessed against you for that year. That is why I would like to have the bills, to get these figures clearly on the record and mark the bills separately in evidence.

Mr. Ransom: Does your Honor hold to the view that you expressed formerly in the Consolidated case with respect to the fact that any sums by which taxes once assessed may be reduced are not to be credited to the benefit of consumers?

The Master: No, I do not think I ever made that statement. If I did I was not accurate, or perhaps I have been misunderstood. I am not dealing here with the method of keeping your accounts.

I am dealing here with the cost of making gas, for the pur-
1127 pose of determining the validity or invalidity of a statute. In another form I perhaps am attempting to fix a rate. Now, I say that for the purpose of determing the validity or invalidity of a statute, or for the purpose of fixing a rate, we must have a definite basis, namely, something that we absolutely know about. Now, the public authorities assess this company a certain sum for capital stock tax, real estate of corporations, franchise tax, and gross earnings tax. As a public officer I must assume, in determining what rate the company must charge to protect itself, that those taxes are correct in amount, and in determining how much it costs you to make gas, that that is the amount of taxes that ought to be figured.

Mr. Ransom: That is, you must assume the regularity of the act of the taxing authorities represented by these defendants.

The Master: Exactly, and assume that there is no reason for not paying the bills, and there is no reason for an interest item. Now, once you get away from that, and you begin to operate your company, then I say you have an entirely different question. Then, of course, the amount you save goes to the credit of the company as an operating credit. The amount of interest which you accumulate must be an expense of operation, but that is an entirely different thing. That may indicate in two or three or four years from now that you saved more than I figured on, and that therefore you ought to charge a little less for the gas, but now I think I have got
1128 to take the amount the public authorities have assessed against you as a basis for fixing the amounts.

Mr. Ransom: Of course that rule in the Consolidated case has worked to lead your Honor to find a figure which is substantially less than the actual sums we are having to pay out, and for which we have no alternative.

The Master: In that case there was a little different situation. All general rules are subject to exceptions. In the Consolidated case I was confronted with the situation that there was in my judgment a duplication, in the first place because of the method of conducting the two companies——

Mr. Ransom: That was one question.

The Master: That was one question. Second, the real estate of corporations, in my judgment was so clearly a duplication, that in order to be perfectly safe, and to play on the safe side, although counsel for defendants thought I was not giving them enough, I felt it was safer for the complainant to give the defendant the benefit of the doubt, and I was breaking the rule that I thought was applicable to be sure that my judgment was right.

Mr. Ransom: It was a perfectly safe thing to do to the complainant, because it cut our taxes about two cents, that we have no alternative but to pay.

The Master: I don't think you will ever have to pay the real estate of corporations tax.

11:29 Mr. Ransom: We will have to pay that or the special franchise tax, and we do have to pay the interest.

The Master: Because you are saving money in other ways. At any rate you know my views about it. I know that neither side is satisfied.

Mr. Cummings: I think you are right. The presumption always exists in favor of the assessment until the contrary is shown.

Mr. Tobin: Did Mr. Ransom have reference to the interest on the Special Franchise Taxes as assessed?

Mr. Ransom: I think the rule is that any taxes——

Mr. Neumann: Why don't you say what you had reference to? Why don't you give us a straight answer for once?

Mr. Ransom: Any taxes which the company in good faith contests on the advice of counsel, with some reasonable prospect of success, the company is entitled to charge to its operating expense in this kind of a case or any other, to interest accrued, and on the other hand the consumers are entitled to the benefit of the reduction. That is the law. Now, the question whether your view is reasonable, I think there is a great deal to be said on that.

Mr. Neumann: You mean that is what you contend is the law?

The Master: I am frank to confess that in the Consolidated case I hesitated to follow strictly the rule that I have laid down here, and I found too much uncertainty in attempting to deter-

11:30 mine the actual amount of taxes based upon the rule as you contend it to be, and which perhaps is the correct rule from that angle, and so I reached a result that I thought was what you would ultimately and actually pay.

Mr. Ransom: I wish I could make an arrangement with you to pay these taxes, we paying you 7½ cents and you paying all the taxes and interest.

The Master: Well, in this case I am going to take the taxes as assessed.

Mr. Cummings: Mr. Ransom knows that as concerns real estate taxes, which includes all taxes on special franchises, that if there are any refunds he will get back a refund of the six per cent interest.

Mr. Ransom: The rule as I understand it is that with respect to any portions of taxes which are reduced, the interest on the amount by which the tax is reduced is omitted, and as to the portion of the tax which stands, the State authorities have not even the power, if they wished to, to remit the interest on that.

Mr. Cummings: My point is, if you get any reduction in——

Mr. Ransom: You mean if we pay voluntarily?

Mr. Cummings: You don't even have to pay it in under protest any more. If you get a reduction which you claim you are entitled to, the law says that you are also entitled to six per cent on the taxes that you recover back, so that you are amply protected.

The Master: Let us get along now.

1131 Q. Now, Mr. Teele, on Exhibit 65, Schedule 4, are there any other items of interest, any unpaid taxes that are applicable to taxes assessed for other years than 1919?

The Master: He answered that, he said yes, he thought there were some unpaid taxes in 1917—didn't you, Mr. Teele? Or was that Mr. Ransom's statement?

The Witness: I stated what the $233.71 for interest accrued during the year 1919 was on.

The Master: That was 1917 taxes?

The Witness: That was 1917.

Q. I asked you whether there are any other items in this schedule?

A. Of interest on taxes, none.

Q. Special Franchise Interest amount, $32.55 is an unpaid tax on Special Franchise for what year?

A. For 1917.

Q. Then that statement was not correct, your last statement, that there were none others?

A. You asked me if there was any other interest, or I so understood you.

Q. Then I am still asking you and I am calling your attention to the Speacial Franchise Tax Interest of $32.55.

A. The interest, $233.71——

Q. Is inclusive of those two items?

A. Is inclusive of these two items.

Q. Now, coming back to Schedule 1 of Exhibit 65, Sales of Gas, the total amount that you set out there is for private consumers and also the municipality, is that correct?

A. It is, and so shown on Schedule 1.

Q. And they are subdivided in Schedule 1?

A. Schedule 1.

1132 Q. Now, Mr. Teele, you recognize transmission pumping as a distribution charge, do you, under the Uniform System of Accounts?

The Master: Well, do you say it is not, Mr. Neumann?
Mr. Neumann: I want the witness to say.
Mr. Ransom: Objected to.
The Master: I don't think that that is a proper line of cross-examination of this witness.
Mr. Ransom: It is the first item under the Uniform System of Accounts——
The Master: I am reading now from page 44 of the Public Service Commission's Uniform System of Accounts, April, 1919:

"Transmission and Distribution Expenses. First subdivision, 631—Transmission Pumping.
"Charge to this account the cost of pumping gas through mains to the distribution system, including inspection and regulation of booster governors."

I don't see any purpose in cross-examining the witness; he said he took that as he understood it from the Uniform System of Accounts; whether he has properly segregated the items or properly indicated them by account numbers is not specially important, is it?
Mr. Neumann: I haven't any hesitancy in telling the Master what is in my mind.
The witness Woods, in one of those exhibits, put in transmission pumping as a part of the——
The Master: Operating Expense?
1133 Mr. Neumann: Operating Expense, and the point was that it was part of the Distribution Expense.
The Master: But it is an expense.
Mr. Neumann: That may be.
The Master: What difference does it make?
Mr. Neumann: On the question as to whether these exhibits conform to the Uniform System of Accounts, and whether the books correctly reflect that.
The Master: I will sustain the objection on that if it is made.
Mr. Ransom: It has already been objected to.
Mr. Neumann: I didn't hear the objection.
Mr. Ransom: I not only objected but I made a speech.
The Master: That is usual.
Mr. Neumann: Exception. Perhaps we will give you a chance to make a good speech.
Mr. Ransom: I usually am able to create my own opportunities.

Q. Mr. Teele, you made a study of the Uniform System of Accounts to an extent, have you?
A. I couldn't say that I have made a study of it; I have read it.
Q. You have read it and are thoroughly familiar with it?
A. I am more or less familiar with it.
Q. Would you say that the Uniform System of Accounts was well designed to bring out, in a concise and clear manner, the operating expenses and the revenues of the gas business?
Mr. Ransom: Objected to as not cross-examination.

1134 The Master: I will take Mr. Teele's answer on this.

Mr. Ransom: I think it is a very vague question; some parts of it may be and some parts may not be—some parts perhaps nobody will be able to understand.

Mr. Neumann: Why not let the witness explain?

Mr. Ransom: I am making an objection.

Mr. Neumann: He may know better than you do even though you were counsel to the Commission.

The Master: I think the same question was asked of Mr. Teele in the Consolidated case.

Mr. Ransom: But you will remember in and in this case you would not let me qualify him as an expert on the Uniform System of Accounts.

The Master: I will take this one answer. What do you think about the Uniform System of Accounts, do you think it is well designed or poorly designed?

Mr. Neumann: No, I must except to the Master reframing my question.

The Master: Isn't that your question?

Mr. Neumann: No. I press my previous question in the manner and form as I stated it.

The Master: What is your question, how does it differ from mine?

Mr. Neumann: Let the stenographer read it and I will stand on the record as I have made it.

Mr. Ransom: The witness answered fully.

The Master: Read the question.

1135 Q. (Read.)

Mr. Ransom: Exception.

The Witness: I should say that generally the Uniform System of Accounts is well planned to bring out the revenues and expenses. There are some things in it that are ambiguous; there are some things which I think, in the light of the experience of the corporation, the Commission itself would probably change.

I have not made a detailed study of it with a view to expressing an opinion as to its operation, but my observation, based upon my acquaintance with gas accounts, leads me to the opinion that it is generally well planned.

Q. Mr. Teele, at page 137 and 138 of the printed stenogrpahic minutes, you testified that you checked the monthly and daily time slips showing the workmen's time distributed against the compilations of same, the journal and the ledger, and so forth, is that correct, do you recall that?

A. In the shop reports I believe——

Q. (Showing witness record.) A slip showing the workmen's time distribution.

A. Yes, that is true for the shop pay rolls, which is what I was talking about at that time, because that is the only place where there is a daily workmen's sheet.

Q. And that is what you meant by that?

A. Yes.

Q. You didn't mean by that, that those figures were correct; you didn't see them put down there; you don't know whether the time was actually spent, you took the figures as you found them?

1135 A. I took the figures as I found them on the reports signed by, or bearing the signature purporting to be the workman himself.

Q. And that is how those sheets are made up?

A. Yes.

Q. You have no knowledge of the handwriting of the person?

A. No.

Q. You simply took these sheets as being correct and as having been signed by the person whose name purports to be written thereon?

A. I did.

Q. These sheets form the basis of the pay roll, do they not?

A. They do.

Q. Now then, at page 138, folio 413, you testified that these workmen's sheets are distributed by symbols and later transformed to the uniform system of accounts of classification, is that correct?

A. Yes. The original sheets made out by the individual workmen indicate the kind of work that they are actually engaged upon and they are symbolized also.

Q. Who does this symbolizing?

A. It is printed on the sheets.

Q. I mean who does this symbolizing, does the workman who puts it down there?

A. No. The sheet which they fill out is a printed form on which different kinds of work are printed, and against the different kinds of work are printed the symbols which will be used later in classifying that work.

Q. Who makes the entries on that sheet, if you know?

A. They purport to be signed by the workman himself.

1137 Q. Would that lead you to suppose that the workman himself put the figures down as against the symbols?

A. The figures which he puts down are against the symbols, because the symbols are printed on the sheet.

Q. And so far as you know that is done by the workman?

A. As far as I know that is done by the workman.

Q. What checks if any did you make to show that this money had been actually received by the persons who signed these sheets and placed the time as against the different symbols?

Mr. Ransom: Objected to as incompetent and fully covered.

The Master: Overruled.

A. I did not check any individual vouchers against individual names appearing upon the pay rolls; I did check the cash disbursements as reported by the company against the total pay rolls.

Q. Now Mr. Teele, at page 142 of the stenographic minutes, folio 425, you testified with reference to rental of gas appliances, and

you stated that "We accept the amount of cash they have recorded and turned into their bank account as rentals on appliances;" is that correct; do you recall that?

A. The rental charges are made out on bills, which bills are aggregated and charged to accounts receivable, sundry debtors accounts, and against those accounts the cash collections are made. The uncollected balance outstanding at the end of the year on the sundry debtors ledger represents not only uncollected rentals,
1138 but it represents uncollected charges of other kinds that are charged to sundry debtors account. To that extent the cash which has been collected is a verification of the rentals charged.

Q. Now, I call your attention to this question and answer appearing in the stenographer's minutes, printed, at page 142, folios 424 and 425.

Mr. Ransom: Whose testimony is this?
The Master: This witness, as I understand.
Mr. Neumann: Why, of course.
Mr. Ransom: Of whose testimony?
The Master: This witness' testimony.

"Q. Now the rentals of gas appliances, what did you do to check and verify the figures which you have shown on this tabulation, Exhibit 55 for Identification as to that item."

Then there were objections, objection overruled and exception and then your answer:

"A. The total amount of cash collected by the company during the year is reported as rent of appliances. We accept the amount of cash which they have recorded and turned into their bank account as rentals on appliances. We do not go back of that."

A. Well, I——
Q. One moment, do you recall that question and that answer?
A. I do.
Q. And that was correct as you gave it?
A. What I had in mind, in making that answer, was just exactly what I have now stated, that the collections of cash against the charges made represent the realization, by the company, of its rentals on appliances.
1139 Q. Then that question and answer does not correctly reflect what you now think?
A. It does correctly reflect what I now think and correctly reflects what I had in my mind when I made that statement.
Q. And if there is any inconsistency between the two, which is controlling, the answer you gave as of April 30th to that question or the answer which you now give?

Mr. Ransom: Objected to on the ground there isn't any inconsistency.
The Master: Objection overruled.

A. I don't recognize any inconsistency.

Q. What knowledge if any did you have, from what sources the money that went into the bank was received, I mean personal knowledge?

A. I didn't handle any of the company's cash.

Q. You took it from the books?

A. Took it from the company's books and the bank accounts.

Q. So that taking, as an illustration, if for instance one day the company received $100. in cash and paid out $100. in cash, there would be nothing from which you could make any such deduction?

A. I don't understand your question.

Q. Well, you say in your aswer of April 30th, that you took the amount they turned into their bank account as rental on appliances. Suppose you didn't turn the cash in but spent it for a petty disbursement?

A. But they deposit all their receipts.

Q. Suppose they had to use this cash immediately, and instead of sending to the bank for that cash, they had that cash on hand that day and they took the cash that had been received as
1140 rental for appliances and used it for legitimate expenditures in the business. How would you know that?

A. Well, either one transaction or the other was on the books and I would know if from the record; if neither transaction was on the books I would not know it.

Q. But you stated that you took as the amount of rental on appliances the amount that they turned into their bank account?

A. Well, I had in mind there that we took the cash collections against the sundry debtors the same as a man would in selling goods and charging them to his customers; the cash that he collects is the proceeds of his sales.

Q. Can you now say, in substance, to be fair with you, that your answer of April 30th as contained in the stenographer's minutes at page 142, folio 425, is not complete or correct?

A. No, I don't say so.

Q. What knowledge, if any, Mr. Teele did you have as to whether the amount received as rental for gas appliances was reasonable?

A. I have no knowledge as to whether it was reasonable—I haven't expressed any opinion as to whether it was.

Q. You simply took the book figures?

A. Simply took the book figures.

Q. Now, you testified as to the gross profit over the sale of gas appliances, at page 142, folio 426.

The Master. Yes, he took that from the books, too.

Q. You checked the income price against the outgoing price and you took the balance as correct, is that correct?

A. Taking into account the inventories.

1141 Q. Is that contained in your answer as given of April 30th?

A. I do not now recall what my answer was at that time.

Q. You have no direct knowledge of the quantites of appliances sold, have you?

A. I took the quantities of appliances sold based upon the copies of bills rendered for appliances sold and referred to the invoices for those same appliances or for similar appliances to determine the cost.

Q. How could you identify them?

A. By the description of the appliances as sold, contained in the carbon copy of the bills or charges.

Q. How was that indicated?

A. That is indicated by a description of the appliance.

The Master: The appliance has a name and a number?

The Witness: A name and number.

Q. And you checked each one of those?

A. I will have to refer to my audit sheet to see how they were checked; we checked every large numbers of them.

The Master: You didn't check them all?

The Witness: I am not sure, your Honor, whether they were all checked or not. I gave instructions to have them all checked and I haven't looked at the sheet to see whether they were completely checked or not (papers handed to the witness).

They checked a considerable number in each month, January, February, March, &c., right through, made tests on them.

1142 Q. Did I understand you to say just a short while ago that you gave instructions to check all of these?

A. I gave instructions to check on them and my recollection is now that the instructions were to check the larger items, large enough quantity in each month to satisfy them as to whether there were any differences arising, and if there were differences arising, they were to report any to me and I would give furthr instructions in regard to it.

Q. At folio 426 the answer I speak of contains these words: "Having satisfied ourselves as to the correctness of the cost of appliances sold, we have taken the balance of that account as correct, and have recorded it as the profit on sales of appliances. That is what you meant?

A. That is what I meant.

Q. When you used those words?

A. I examined the invoices to satisfy myself as to the cost of the appliances sold.

Q. What check did you make of the payrolls?

Mr. Ransom: I think that has been covered twice.

The Master: I think so but I will allow him to say.

Mr. Neumann: All right; if it has been covered I won't go any further with it; I will submit it in the form of a schedule. That is all of Mr. Teele.

The Master: Anything else from the defendants?

Redirect examination

By Mr. Ransom:

Q. Mr. Teele, reference was made to the number of tons
1143 of coal sold to the employees; are you able to state the number of tons as shown by the books and records as examined by you to have been sold to employees during 1919?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent and not the proper way of proving it—not by this witness.

The sheets upon which those items are contained are already in evidence.

The Master: I will let the witness answer.

Mr. Neumann: Exception.

The Witness: I am.

Q. What is the number of tons and the amount of money realized?

Mr. Neumann: Before this witness is permitted to answer I would like to know whether those daily records of manufacture are in court here?

Mr. Ransom: I sent some of them back yesterday.

Mr. Neumann: I think it is manifestly unfair to ask this witness this question without having those records here so that we may cross-examine him.

The Master: I will let the witness answer, and if you want to call him later for cross examination I will let you do that.

Mr. Neumann: Exception.

Mr. Ransom: It is clearly a summary of what is in the record.

The Witness: The tons sold were 60.354.

The Master: During the entire year 1919?

The Witness: During the entire year 1919.

The Master: According to the books?

The Witness: According to the books.

1144 Q. Have you the figure as to amounts of money?

A. $567.52.

Mr. Ransom: That is all.

Mr. Ransom: I produce Mr. Raynor now for cross-examination by the defendants.

Mr. Neumann: I just want about five minutes to look over his direct testimony before I proceed.

The Master: Very well.

Mr. Rasom: Are you willing that I should read in the testimony of Mr. McMillin now?

Mr. Neumann: I have no objection to that, provided it is done in accordance with the correspondence that has passed between us. We should get Mr. Chambers here, because he agreed to it.

Mr. Ransom: I will state the arrangement. Owing to the illness of Mr. McMillin, Mr. Emerson McMillin, I asked counsel for the defendants if they would be willing that the testimony of Mr. McMillin

as a witness in the Consolidated case be read in evidence in this case, with the same force and effect as though Mr. McMillin had testified herein, subject to the right of the defendants to read any portions of the cross-examination, subject also to the right of the defendants to call for the production of Mr. McMillin as a witness——

Mr. Neumann: One moment now.

Mr. Ransom: : Let me finish it.

Mr. Neumann: No, you have not put in what we have stated. Why not produce the entire correspondence and spread it on
1145 the record, and that will be the best proof of what arrangement we have entered into.

Mr. Ransom: I will put it in, then. I will send to my office; I have not got it here. There were four letters; I will send for them.

WILLIAM RAYNOR, resumed.

Cross-examination.

By Mr. Neumann:

Q. Mr. Raynor, during the year 1919 did this company keep any other books of account other than the books that have been produced here?

A. No.

Q. That is without any reservation of any kind?

A. Yes.

Q. You were with the company in 1915, were you not?

A. When?

Q. 1915?

A. Yes.

Q. In what capacity?

A. As Chief Clerk and general bookkeeper.

Q. You were working on the books in 1915 to some extent?

A. Yes, to a great extent.

Q. Beginning with the year 1915 what has been this company's position, so far as the bookkeeping end is concerned, as to charting operating expenses for depreciation?

Mr. Vilas: Objected to, not cross examination.

The Master: I will allow it.

Mr. Neumann: If your Honor please, I am asking him from the bookkeeping end, that is all.

1146 The Master: You may answer it.

A. We have made no arrangement for depreciation.

By the Master:

Q. You run a renewal and replacement account?

A. We run a renewal and replacement account, yes.

Q. Other than that you have not any?

A. No other account that we take care of depreciation in.

Q. You have a contingency account to which no entries have been transferred?

A. That is right.

Q. Outside of those two accounts is there any other account that takes up depreciation at all?

A. None at all.

Q. That is, since 1915.

A. None at all.

By Mr. Neumann:

Q. Have you a general account under Amortization-Gas?

A. We have not since 1915.

Q. When did you cease carrying such an account?

Mr. Vilas: I object to the question, on the ground of the assumption contained therein.

The Master: I will allow it. Did you at any time carry an Amortization account?

The Witness: Yes.

The Master: Up to when?

The Witness: 1915, I think.

Q. And since 1915 you have not carried any such account?

A. No.

Q. Are you familiar with the accounts in 1908 of this company?

1147 A. 1908?

Q. Yes.

A. No.

Q. In 1915 this company transferred the balance that was in the Accrued Amortization of Capital account to a new account called Reserve Contingency, did it not?

A. It was transferred to an account called Contingency.

Q. And at the same time you started a new account called Renewals and Replacements?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Under whose direction did this change come about?

A. The action of the Board of Directors.

Q. Was that by resolution?

A. Yes.

Q. In the minutes of the Board of Directors?

A. Yes.

Q. And you have those minutes?

A. Yes.

Q. Is there anything contained in those minutes as to the reasons for the Board making this change?

Mr. Vilas: Objected to. In the first place, it has been fully covered.

The Master: Sustained.

Mr. Neumann: Upon what ground?

The Master: The minutes will show, if you will call for it.
Mr. Vilas: They are in the record—incorporated in the record yesterday.
Mr. Tobin: Not those asked for in the question by Mr. Neumann.
1148 The Master: The resolution will speak for itself.

Q. Have you the minutes, Mr. Raynor?
A. No, I have not them with me.

Mr. Chambers: They do not show the reason for the change, do they, your Honor?
The Master: Mr. Neumann's question is what reason appears in the resolution for the change. The resolution speaks for itself.
Mr. Neumann: I said is there any reason? I think the Master misunderstood the question. It is not very often that it happens. May we have it read?
The Master: Yes, read that question.

The stenographer read the question as follows: "Is there anything contained in those minutes as to the reasons for the Board making this change?"

The Master: You mean in the minutes, outside of the resolution?
Mr. Neumann: Yes.

The Master: The minutes will speak for themselves. You may call for the minutes. Do you recall—it may save time—whether any reason was assigned in the minutes for making the change?
The Witness: There was a wording in that resolution previous to the explanation of setting up the Contingency account and the Renewals and Replacements, but I do not recall just what that wording was, whether it was explanatory or——
Q. I mean outside that resolution itself, is there anything contained in the minutes given as the reasons for the Board's action?
A. Not to my knowledge.
1149 Q. I mean in adopting that resolution.
A. Not to my knowledge.

The Master: You can call for those minutes and see what they did.

Q. Who in your company determines what is meant by the terms contingencies and replacements?

Mr. Ransom: Objected to as incompetent; the resolution will speak for itself.
The Master: Overruled.
Mr. Ransom: Exception.

A. The officers.
Q. Which officers?

Mr. Ransom: I object to the question. The matter of contingencies does not enter into this question at all, and neither as to 1918

or 1919 was there any amount set aside for contingencies in profit and loss account; it is not cross-examination of this witness, this witness did not testify to any such matter on direct.

The Master: I will overrule the objection.

Mr. Ransom: Exception. I do not think on a matter of this sort they should be permitted to roam into that. They had officers of the company before them who had more direct dealing with this

The Master: Let us have an answer, Mr. Raynor. What officers act on that or make that determination?

The Witness: Well, that action was taken by the Board of Directors, but I do not know what officers prompted it.

Mr. Neumann: No, that was not the question.

1150 The Master: This is the only question I am going to allow, I think: During 1915, 1916 and 1917——

Mr. Neumann: One moment, if the Court please; that question of mine has not been answered.

The Master: No, I am going to try and get an answer.

Mr. Neumann: Yes.

By the Master:

Q. During 1915, 1916 and 1917 there were charges and credits to the contingency account, were there not?

A. Yes.

Q. Who made those entries?

A. I did.

Q. Who told you to make those particular entries in those accounts?

A. That instruction I got from Mr. Spear.

Q. So that Mr. Spear would tell you what items were properly chargeable to contingency account and which to renewals and replacements?

A. Yes.

Q. Or did you determine that yourself within the lines of the resolution?

A. Well, I did by referring to him, and he approved anything——

Q. You had set up the items that you were going to put to contingency and to renewals and replacements?

A. Yes, there was nothing charged against contingency, but anything charged to renewals and replacements was always made up by me and presented to Mr. Spear, who approved or disapproved.

1151 Q. Weren't there any items put into contingency at all during 1915, 1916 and 1917?

A. None at all.

Q. Not one?

A. Nothing charged except to reserve.

The Master: Then what is the use of wasting any more time on this?

Mr. Ransom: It is a mere segregation of profit and loss.

Mr. Neumann: Mr. Ransom may not think this is important now, but he will some time.

The Master: Let us go ahead now.

By Mr. Neumann:

Q. I understood you to say that you placed nothing at all under the account marked Contingency during the years 1915 to 1919?

Mr. Ransom: Charges to it, he said.

Mr. Neumann: Well, charged to that account.

The Master: I understand that account is perfectly bare of any entries, is it not?

The Witness: Yes.

Mr. Ransom: Not bare of charges.

The Master: What?

The Witness: We have got the credits in the contingency reserve account and we have the debits in the contingency account, which was a part of our operating expenses during the years that it was active.

Q. Did you have two accounts, one contingency and one contingency reserve?

A. One offset the other.

Q. Yes, there were two accounts, then?

A. Yes.

Q. One was contingency and the other was contingency reserve?

A. Yes.

1152 Q. In the contingency account there were no entries from 1915 to 1919?

A. There were in 1915, 1916 and 1917.

Q. Did you not in answer to a question of the Master say that that account was bare of entries from 1915 to 1919?

A. I explained that there were not charges to the contingency reserve account.

Q. What do you mean by saying there were no entries then, and now saying there were charges; where do you draw the distinction between entries and charges?

A. I did not intend to say there were no entries.

Q. Then in giving that answer to the Master's question, that was erroneous?

A. No, it was not.

Mr. Ransom: Mr. Neumann is confusing two accounts, and confusing debits and credits.

Mr. Neumann: If you will just leave me alone, Judge, I will get this thing straightened out. If you are after the facts, I will get them for you.

Mr. Ransom: I am, and I have seen to it they are already in the record.

Q. Let us get clear, Mr. Raynor, what you are testifying to. From 1915 to 1919 this company carried two accounts, one under the head-

ing Contingency and the other under the heading Contingency Reserve or Reserve Contingency; is that correct?

A. They are both called contingency, but one is a reserve.

Q. I am asking you how they were set up in your books.

A. One as contingency.

1153 Q. And the other as what?

A. As contingency, as a reserve, but not so called.

Q. Not so what?

A. Not so called. It is not labeled contingency reserve.

Q. How is it labeled in your books?

A. Contingency.

Q. These two accounts you are talking about, they are both labeled under the one word "contingency"?

A. Yes.

By the Master:

Q. I have before me Complainant's Exhibit No. 52, which is the general ledger, is it not?

A. Yes.

Q. General ledger No. 4. I find that you have got a printed index here, one general subdivision of Reserves; is that correct?

A. Yes, sir.

Q. You have certain accounts under Reserves?

A. Yes.

Q. You have a renewal and replacement account; is that right?

A. That is right.

Q. And a contingency account?

A. Right.

Q. Is there another account under Reserves?

A. Not for contingency.

Q. Page 188 is entitled "Reserves, Renewals and Replacements"?

A. Yes.

Q. On the right hand side, "Plant Withdrawn from Service." Page 190 is "Reserve Contingency, January 1, 1919, Balance $101,149.66," and then in the next column, "$101,149.66"?

1154 A. Yes, that is the balance.

Q. Yes; and where did that come from?

A. That came from the journal entry. It does not show in this ledger.

Q. On page 300 I find another account without the word "Reserve" but the word "Contingency." What is that intended to be?

Mr. Neumann: And the page is absolutely blank.

A. The account as used in connection with our operating expenses is now inactive, consequently there are no entries in that account.

Q. What I want to get clear is this: Is the account which appears on page 190, entitled "Reserve," and under that "Contingency," an entirely different account than the one appearing on page 300, which simply says, "Contingency"?

A. Oh, yes.

Q. What is the difference?
A. The one on page 188——
Q. 190.
A. On 190, is a reserve. When that account was active and we were charging five cents per thousand cubic feet of gas sold to produce that contingency reserve, we charged that amount each month in our cost of operation and distribution; we credited the reserve account.

Mr. Neumann: Five cents per thousand?
The Witness: Five cents per thousand cubic feet sold. Since the beginning of 1918, I think it was, we discontinued making that charge, and consequently discontinued accumulating any amount in our reserve account. So that that accounts for this page of this account being empty, and it accounts for no entry in there (indicating)

1155 Q. I have not got it clear yet. What difference is there between Reserve Contingency and Contingency? You have two accounts here, one on page 190 and one on page 300. What entries would you make in contingency, to illustrate?
A. If that was active this month we would figure five cents per thousand cubic feet of gas sold for the month.
Q. And you would put it into Contingency?
A. We would charge it to contingency. It would be considered one of our operating expenses, or practically an operating expense.
Q. Then would that be carried into the reserve?
A. And to offset that there would be a credit carried into the reserve account.
Q. Then there is to the credit of the reserve account $101,000 yet?
A. Yes, that was the balance of that account on——
Q. January 1, 1919?
A. January 1, 1919, or January 1, 1918, when we discontinued the practice.

By Mr. Neumann:

Q. Why is not that carried into contingency account at page 300, that balance?

The Master: Well, he has already explained that.

A. That account is inactive.

The Master: He has explained that.
The Witness: We discontinued the practice of setting it up each month.

Q. And you do not carry the balance forward?
A. No, the balance at the end of 1917 was carried into profit and loss account—closed it out.
1156 Q. And at the end of 1919 the figures in Reserve Contingency, found on page 190 of the general ledger——

The Master: Ledger 4, Exhibit No. 52.

Q. (Continuing:) —should find its way into the profit and loss account, too.
A. No, because that is a reserve.
Q. That is a reserve?
A. Yes.

The Master: Anything else?
Mr. Neumann: Yes, there is quite some more.

Q. Is it fair to say of your testimony, Mr. Raynor, that the company now has on hand to the credit of Reserve Contingency the sum of $101,000 odd?
A. It is.
Q. And that is on hand?
A. Yes.
Q. And to be accounted for by the company?
A. Yes.
Q. Mr. Raynor, will you turn to Operating Expense, Ledger No. 2, folio 84?
A. I have it.
Q. The total for the year, January, 1919, is $15,960.36?
A. It is.
Q. Is that correct—and that is for boiler fuel, tar used?
A. Right.
Q. And the totals appearing above that total amount of $15,960.66 are the monthly totals; is that correct?
A. Right.
Q. And those items find their way into this ledger from Journal No. 5?
1157 A. They do.
Q. From Complainant's Exhibit No. 53?
A. They do.
Q. Who fixes the price?
A. I think that price was given to me by Mr. Carter.
Q. Which Mr. Carter?
A. Rudolph A. Carter, our treasurer.
Q. Did anybody else have anything to do with that price, that you know of?
A. Not that I know of.
Q. He just gave you that price and you put it in the books; is that correct?
A. I put it in under his instruction.
Q. Under his instruction?
A. Yes.
Q. You had no personal knowledge of it yourself—the price?
A. Oh, no.
Q. You simply took the figure that Mr. Carter gave you as the price?
A. Yes.
Q. The basic price?
A. Right.
Q. And you put it in the books?

A. Right.
Q. Is that correct?
A. Yes.
Q. Now folio 88 of the same book, the ledger.
A. I have it.
Q. That is with reference to residuals sold Where did you get the price that that is based on?
A. From Mr. Morrison, the superintendent at the works.
Q. Is there any voucher underlying that?
1158 A. He has a book in which he has a memorandum of it and a receipt from the cashier on the date that she received the money, when he turned it over to her.
Q. Did you see that?
A. Yes, I have seen that.
Q. And it was based on that that you put that entry in there?
A. What is that?
Q. And it was based on that that you put that entry in?
A. Yes; that is after it was put through the cash book.
Q. Coming back again, Mr. Raynor, to page 84 of Complainant's Exhibit 54, and speaking of this total of $15,960.36, are there any vouchers or records of any kind underlying that, outside of what Mr. Carter told you?
A. The amount of tar used is shown on the works monthly reports.
Q. Now coming to the price——
A. Oh, the price is calculated on the basis of the number of gallons used, shown on that monthly report.
Q. But the figure was given to you by Mr. Carter?
A. Yes.
Q. And there is nothing else except his word as to what the figure is?
A. I have nothing else.
Q. And from that you put those entries in the books?
A. Yes, sir.
Q. Now, page 130 of the Operating Ledger indicates the repairs to gas mains, does it?
A. Yes, sir.
1159 Q. What does it include? Does it include material as well as labor?
A. That is most all labor.
Q. Is all of it?

The Master: Most of it, he says.

A. Practically all of it.
Q. Which items on that page are not labor? Just call them off.
A. There is one of March 31st of $18.75 which might be materials, but it is not materials that would come from our stocks. It might be some we bought outside.
Q. Would it be fair to say that probably 90 per cent of that account, totaling $5,697.02, is exclusively for labor?
A. Yes.

Q. Would these figures find their basis in the payrolls for the various months, indicating the figures on page 130 totaling $5,697.02?

A. Up to the first of June, yes; after that, no.

Q. Why not after June 1st?

A. We changed our practice of paying Sullivan Brothers on our payrolls, and they bill us for every repair that is made.

Q. So that for the first five months your payrolls are made up in one form, and in the next succeeding seven months in a different form?

A. Yes, as regards repairs to gas mains.

Q. You are satisfied, are you, that none of the items here, "Repair, Gas Mains," page 130, up to the items including May 31, 1919, are on the payrolls?

A. I am satisfied that they are.

Q. You are satisfied that they are on the payrolls?

A. Yes.

1160 Q. After that you are satisfied that they are not?

A. Yes.

The Master: Then it is vouchers of Sullivan Brothers?

The Witness: Yes.

Q. Did you make these entries yourself?

A. No.

Q. You mean that if the entries are correctly kept that would be true?

A. Yes.

Q. You have no personal knowledge of it?

A. I have not made the entries in there, if that is what you mean.

Q. So that you don't know it of your own knowledge?

A. If I understand what you mean by the question, I don't know it of my own knowledge.

Q. Now, turn to page 68 of this same exhibit. The heading there is, "Repairs, Gas Apparatus, Station Holder Labor"—is that correct?

A. That is right.

Q. And the total for the year 1919 is $6,327.77?

A. That is right.

Q. Now, are there any items there that will not be found on the payrolls?

A. Yes.

Q. Which items?

A. One in June for $95.22; one in July for $106.37, one in August for $392.56; one in September for $193.18; one in October for $49.37; one in November for $425.99.

Q. Where will that be found?

A. In the Accounts Payable.

The Master: Is that Sullivan Brothers?

The Witness: Some of it.

1161 The Master: You had different people doing that work?

The Witness: There may have been, in working on the station holders

Q. Now, having reference to the journal, Exhibit 53, page 169, and taking the entry from the Ledger, page 68, October 31st, Accounts Payable, $49.37, and directing your attention to the Journal, does the Journal indicate to whom that was paid?

A. Yes.

Q. How?

A. $10.94 to Sullivan Brothers; $38.43 to Sullivan Brothers. That makes up the $49.37.

Q. And that would be true of all these items that you have taken out of this account which you say are not directly traceable to the payroll?

A. Yes, sir.

Q. The course of procedure that you followed?

A. Yes, sir.

Q. What I mean to say is this: Did you put these figures in the book, the Operating Ledger, page 68, yourself?

A. I did not.

Q. You have no personal knowledge of it?

A. Not as to the direct entries.

Q. Now, take page 72. The title there is, "Repair of Gas Apparatus, Materials"?

A. That is right.

Q. And the total is what amount?

A. $12,891.89 is the balance of that account.

Q. Now, what does that account contain?

A. Materials used in repairs of gas apparatus.

Q. Only materials?

A. Yes.

1162 Q. No other items are in there except materials?

A. That is all, unless somebody, some outside person in providing some of those materials may have actually made the repairs.

Q. How would that be indicated on your books?

A. That would show on the vouchers.

Q. I am asking you how it would be indicated on the books?

A. It would appear in here all under the head of "Materials".

Q. And it would be inclusive of some items of labor?

A. It might.

Q. So that so far as this particular account is concerned, although headed "Materials," it may include labor?

A. It may.

Q. You would not be sure of that?

A. No, I would not be sure of any specific item or amount.

Q. Do you know of your own knowledge whether this particular account, referring to page 72 of the Operating Ledger, does contain any item of labor?

Mr. Ransom: I object to that as incompetent. Of course it takes labor to get up materials.

The Master: Objection overruled.

A. I do not know positively.

The Master: Some of these items marked "Accounts Payable" might include some labor, is that the idea?

The Witness: Yes, somebody might perform a piece of repairs for us, but they don't differentiate between the labor and materials.

1163 The Master: They bill it to you as materials?

The Witness: They bill it to us for the job; we don't know how much the labor is.

The Master: Next question.

Q. Now, page 166, that account is headed what?

A. "Commercial Department, Collecting, Regular."

Q. Now, what does that last word, "Regular" mean?

A. That means collecting bills rendered for gas consumed through regular meters.

Q. Not prepayment meters?

A. Not prepayment.

Q. Now, the total of that account for the year 1910 is what?

A. $4,069.67.

Q. And is that account solely and wholly for labor?

A. No.

Q. What other items are in there that are not for labor?

A. Carfare.

Q. And what is the amount of that, roughly speaking? About 10% of the entire amount?

A. It would be less than 10%.

Q. It would be less than 10%?

A. Yes, sir.

Q. So that it is fair to say that about 90% of this account is wholly and solely for labor?

A. It is.

The Master: What is the purpose of this cross, Mr. Neumann? I cannot seem to get it.

Mr. Neumann: The purpose of this cross-examination is, as I understand, to show in a short while, as soon as my people

1164 can match up with the Uniform System of Accounts, that this was an unusual year as to these items.

The Master: What do you mean by an unusual year?

Mr. Neumann: Unusual in the amount that they expended, unusual to this extent, that even taking into consideration the highest percentage that they have shown on their tabulations, that there was an unusual number of men employed for one year as against other years.

The Master: What has this inquiry to do with that, whether 90% of it was labor and 10% carfare?

Mr. Neumann: I want to eliminate any question that we may be wrong, that we have taken into consideration items that are not labor.

Q. Mr. Raynor, you recognize the distinction that the Uniform System of Accounts attempts to draw by keeping separate and distinct items of labor and items of material?

Mr. Ransom: I object to that as incompetent, irrelevant and immaterial, not cross-examination of the witness, in view of the statement just made by counsel.

The Master: Objection sustained.

Mr. Neumann: Exception. Have you Exhibit No. 70?

Mr. Vilas: What is Exhibit No. 70?

Mr. Neumann: It relates to mains and services.

Mr. Ransom: Complainant's Exhibit No. 70 is produced.

Q. Mr. Raynor, did you at any time sell any land to the New York & Queens Gas Company?

1165 Mr. Ransom: I object to that as incompetent, irrelevant and immaterial and not cross-examination.

The Master: I will allow it.

Mr. Ransom: Here is a man who part of the time was bookkeeper, part of the time assistant——

The Master: Did you ever sell any land to the New York & Queens Gas Company?

Mr. Ransom: Himself personally?

The Master: That is the question.

Mr. Neumann: That is the first question, we don't know what will develop. Did you introduce the title in this case, did you introduce Exhibit 45? You ought to know what it is.

The Master: I have overruled the objection, and an exception is allowed to the complainant.

Now, Mr. Raynor, did you ever sell any land to the New York & Queens Gas Company?

The Witness: I never sold any land to the company——

Q. Was the title to some land taken in your name, and then you transferred it to the company?

A. Yes.

The Master: Go ahead. Don't let's waste time on that. I have done that hundreds of times.

Q. Were you the owner of that land?

A. I took title for the company and then transferred it to the company.

The Master: What is the use of wasting time on that sort of thing?

1166 Mr. Neumann: Why not have it on the record what the fact is?

The Master: I could see what the fact is.

Q. Did you ever make any entries in Exhibit No. 70?

A. I think I made two or three.

Q. Can you indicate which ones you made?

A. I made three.

The Master: What are they?

Q. Just call them off.

A. In January, 1919, No. 801, main on 16th Street, Flushing; No. 802, No. 803.

Q. Where did you get the information on which you based those entries?

A. From the voucher rendered by Sullivan Brothers in connection with the order to lay the mains.

Q. What did you do beside getting the voucher, did you do anything else to check it?

A. I had the report of our superintendent showing the quantity of materials used.

Q. By which you mean Mr. Morrison?

A. Mr. McKenna.

Q. You mean Mr. McKenna?

A. Yes. A report was made up in the shop from the report made by Sullivan Brothers of the material put in there, and the prices were put in at the office and then placed in this book.

Q. The prices were put on in the office by whom?

A. I believe they were given to the chief clerk of the shop by Miss Mold.

Q. Do you know where she got them from?

A. From our records of prices.

Q. What do you mean by your records of prices?

1167 A. She keeps a memorandum of prices of various materials.

Q. You mean current prices?

A. Current prices.

Q. And she took those prices from that, and you accepted them?

A. Yes, sir.

Q. And put it in the book?

A. Yes, sir.

Mr. Neumann: That is all.

The Master: Let me get this clear in my mind. Mr. Neumann, what is your point there, that he should have taken the actual prices for materials?

Mr. Neumann: I am simply trying to prove what they did.

The Master: There must be some point in it.

Mr. Neumann: I think it speaks for itself.

The Master: If it did I would not have to speak.

Mr. Neumann: I think the record is quite clear as to what they did with reference to those three items.

The Master: Will you tell the Master what you claim it proves?

Mr. Neumann: I am showing that the records are not correctly kept and cannot be relied on. That is what I am showing.

The Master: Anything else with this witness?

By Mr. Tobin:

Q. Mr. Raynor, referring to Exhibit 52, page 2, which is designated as Fixed Capital, December 31, 1908, in the first line I find it reads, "1919, February 1st Balance, $1,381,953.37"?

1168 A. That is right.

Q. Is that the fixed capital account as it appeared on the books on December 31, 1908?

A. Less any withdrawals from it.

Q. Since that time?

A. Since that time.

The Master: And plus additions?

The Witness: There are no additions to that account, not to fixed capital as of December 31, 1908.

Mr. Ransom: There are two accounts. One is fixed capital since December 31, 1908, which has additions since that time.

Q. Mr. Raynor, can you tell us as to any detail, or where we will find any detail of this amount which was the balance, I will say, of that fixed capital account on January 1, 1919, amounting to, as it appears in this book, page 2, to $1,381,953.37?

Mr. Ransom: I object to that as not cross examination.

A. Where will you find the details of that balance?

Q. Yes, where will the details of that be found?

A. It is shown right underneath it. The total of this equals this figure, which is the balance brought forward.

Q. Will you read into the record the detail?

Mr. Ransom: I object to reading into the record.

The Master: Let us have it.

A. On line 1, the balance of that account is brought forward from the previous ledger, $1,381,953.37, and ruled off.

Under that, Franchises, etc., $1,022,407.52.

Real Estate and Buildings, $75,089.07.

1169 Mains, $172,993.89.

Services, $51,351.93.

Street Lamps, $2,054.16.

Meters, $37,240.37.

Meter Installations, $15,070.93.

Tools, $1,637.67.

Office Fixtures, $2,147.

Stable Fixtures, $262.58.

Arc Lamps, $1,698.25.

The Master: Which makes up the total of $1,381,953.37—is that right?

The Witness: That is right.

Q. Now, referring to the item of Franchises, etc., $1,022,407.52, is there a separation on your books anywhere as to that particular item?

Mr. Ransom: I object to that as incompetent. The books speak for themselves.

Mr. Tobin: Well, we tried to find out, if you please, and that is why I asked the witness.

The Master: Objection overruled.

A. I do not know; I have never gone back that far.

The Master: Now, that fixed capital account of December 31, 1908, on December 31, 1919, was down to $1,376,706.37, is that right?

The Witness: Yes, after withdrawals.

The Master: Those few items were withdrawn during the year, leaving that balance?

The Witness: Yes, sir.

The Master: What is this "Boilers and Accessories," March 31, 1920?

The Witness: It was added to it, because in 1918, I think, that amount was withdrawn, it was overdrawn, it was an over
1170 estimate made on a certain withdrawal, and consequently it was put back.

The Master: Now, where is the capital account other than fixed capital of December 31, 1908?

The Witness: The page following.

The Master: You don't carry them in one account, then?

The Witness: Oh, no.

The Master: All right, what is the next question?

Mr. Ransom: The Commission required the segregation in that form of everything as of December 31, 1908.

Mr. Tobin: That is not necessary, and I ask that be stricken out.

The Master: Motion denied.

Q. How long have you had charge of the books, Mr. Raynor, that is, I mean dating back to when?

A. The latter part of 1913.

Q. In 1913 you took up the charge of the books?

A. Yes, sir.

Q. Do you recall any separation of that item on the books from 1913, on to this date, of the item which I have designated as Franchises, etc.?

A. No.

Q. And you know of no separation?

A. No.

Q. Of that item?

A. No.

Q. Will you be good enough to refer me to the mains and services account? On page 38 of Exhibit 52 is shown the account of trunk lines and mains. Do we understand that to include all the
1171 lines of mains laid, that were laid during the year 1919?

Mr. Ransom: I object to that as not within the scope of cross examination.

The Master: Objection overruled.

A. Yes.

Q. Does this account as shown on page 38 show all of the trunk lines and mains actually laid in the year 1919?

A. I think it does.

Q. Does it indicate all of the trunk lines and mains in actual use on December 31, 1919, if we take the item as it appears at the end of the year?

Mr. Ransom: I object to that as vague. Does he refer to the amount of money or to the mileage of the different kinds of mains, and the sizes of main?

Mr. Tobin: I asked a plain question, I think.

Mr. Ransom: The question was unintelligible to me.

The Master: What is the question?

Mr. Tobin: I asked if pages 38 and 39 show all of the trunk lines and mains in actual service——

The Master: What is your point, whether it includes mains that are not actually being used?

Mr. Tobin: Yes, sir.

The Master: Why don't you ask him that. Mr. Raynor, does this account as carried on pages 38 and 39 include any mains that are in the ground but not actually in use?

The Witness: Not to my knowledge.

1172 Q. Is there any book to which you can refer me to show the extent of mileage of mains and services laid in the year 1919?

The Master: Doesn't the main book show that?

Mr. Ransom: Exhibit 70. I object to this line of examination. The witness is not the man who kept this Exhibit 70. The books of account refer to investments. They show the investment since December 31st, 1908, in mains, but they do not show mileage.

The Master: Well, let us have it. He wants to know what the mileage was of mains laid in 1919.

The Witness: Here it is.

The Master: Beginning with your entry No. 801?

The Witness: Yes, sir.

The Master: And going on it shows the extent of mains laid in the year, in feet?

The Witness: It shows the different sizes of mains, the feet and the miles.

Q. Can you tell us how this record is made up?

Mr. Ransom: I object to that as not cross-examination.

The Master: I will sustain it on the ground that Mr. Neumann has already covered it.

Mr. Ransom: And Mr. Spear, who put it in, covered it.

The Master: Have you any point that you want to develop, Mr. Tobin?

Mr. Tobin: I want to try to get on the record, without going all through the books, the extent of the mains laid in the year
1173 1919, the mileage of those mains, the cost on a mileage basis, or any other basis that he may care to submit. I mean by the

company, and take in the same way the item of services. We will be met later with the testimony of Mr. Miller as to the mains and services that the company owns, and what he deems to be the value of those mains and services. Now I would like to get the record here to show what the company actually did in 1919, and what it cost them. That is as close as we can get to the figures that would be obtainable from the company.

Mr. Ransom: The books show what was laid in 1919 and what it cost.

Mr. Tobin: Yes, but it does not show it in just exactly that way.

The Master: What is your position now, Mr. Raynor?

The Witness: Secretary.

The Master: In charge of the books?

The Witness: I have supervision over them.

The Master: Of all the books?

The Witness: Yes.

Mr. Ransom: Secretary since when?

The Witness: Some time in January, 1920.

Mr. Tobin: I can do it in another way, if they don't care to have it done that way.

The Master: Well, it is simply a question of what is the quickest way.

Mr. Tobin: This will be the quickest way, if the Master please.

The Master: I doubt it.

Mr. Tobin: If they will admit that the 1919 report to the
1174 State Board of Tax Commissioners, which sets forth the company's reports——

The Master: You don't have to have their admission. If you want to offer that report in evidence, offer it.

Mr. Tobin: I offer it in evidence, if the Master please.

The Master: Mr. Tobin offers in evidence the report of the complainant company to the State Board of Tax Commissioners for the year 1919.

Mr. Ransom: I object to it on the ground that a report made for tax purposes is not either admissible or controlling as against the company or against investors in the company, in a case involving the issue of confiscation. Irrespective of what report may have been made, under the recent decision of the Court of Appeals in the Holmes Electric Company case, as in other cases, a tax report does not become a measure, or an estoppal against the rights of the owners of a corporate enterprise.

The Master: No, but it is some evidence for instance, of the extent of the mains laid during the year, isn't it?

Mr. Cummings: That would be true of any kind of report, wouldn't it?

Mr. Ransom: The Court of Appeals has just indicated the contrary.

The Master: That is no evidence at all?

Mr. Ransom: No evidence at all.

Mr. Tobin: I guess not.

The Master: As to the extent of mains laid?

1175 Mr. Ransom: Not on that precise question, but as no evidence at all against the company. They have entirely rejected it.

Mr. Tobin: I think he is entirely wrong.

Mr. Ransom: There were two dissenting Judges in the Court of Appeals.

The Master: I will take it over the objection.

Mr. Ransom: Exception.

Report received in evidence and marked Defendants' Exhibit L.

The Master: If I am satisfied that any statement made in that report is in error, I shall disregard it, but I think it is some evidence of the fact, a statement made by the company officially.

Mr. Ransom: Then it is offered as a statement against interest?

The Master: It must be in the nature of things.

Mr. Ransom: On that basis I am quite reconciled.

The Master: That is the only theory on which it could be offered.

Q. You had charge of the making up of this particular report?

A. Parts of it.

Q. Who had charge of the other parts of it?

A. Mr. Spear made up that record for the mains and services.

Q. That is what is known as S. F. Form B 2?

A. Yes.

Q. He had charge of that particular part?

A. Yes.

Q. As to what is known as the financial report, S. F. Form B, for the year ending December 31st, 1919——

1176 A. I compiled practically all of that.

Q. Who else had to do with it?

A. Well, some of this detail in front was copied from the Public Service Commission reports and it is all embodied in there.

Q. Are you able to say that this report is correct as taken from the record of the company?

A. It is, to the best of my knowledge and belief.

The Master: Who verified that report?

Mr. Tobin: It is signed by Mr. Spear and it was sworn to before Mr. Raynor.

Q. In the item of mains and services, did the company, in the year 1919, purchase any pipe or services, if they might be so termed, from the Consolidated Gas Company?

A. I don't recall having bought any from that company.

Q. Where did you obtain your supplies?

Mr. Ransom: Objected to as not cross examination of this witness.

The Master: Objection sustained.

Q. Did you buy any pipe or services from any of the subsidiary companies of the Consolidated Gas Company?

Mr. Ransom: Same objection, that has been covered by other witnesses.

The Master: I think so.

Mr. Tobin: No, it has not.

The Master: I am going to sustain the objection.

Q. Well, taking the value that you have placed in this report, Schedule 69, which is entitled, Property Schedule Summary, in the third column it reads at the top "Tangible real property in streets, highways and public places, exclusive of paving" and in the
1177 subdivision there which would be properly known as column 3 of this schedule, it says the present value of $613,668.78. How did you make up that particular figure, sir?

Mr. Ransom: Objected to, the question assumes various facts that are contrary to the record; and in the second place the kind of value which is stated on the face of the report put down here for tax purposes is not any basis recognized in this state.

Mr. Cummings: That is the best answer to the——

The Master: Objection sustained on the ground that the report itself is the proper basis of the valuation.

Q. Well, taking the cost of mains and services that were added to the account as it stood on January 1, 1919, how did you obtain that value?

The Master: What is that?

Q. Taking the mains and services laid in the year 1919, which were added to the mains and services value as of January 1, 1919, how did you obtain the figures there necessary to add to the mains and services as they stood on January 1, 1919?

Mr. Ransom: Objected to on the same grounds, not cross examination of this witness. You can't put in an exhibit and then turn around and cross examine the witness about that exhibit. The document itself shows the method and the peculiar basis laid down by the statute.

Mr. Tobin: The statute has nothing to do with it; I am simply asking Mr. Raynor how he got his figure that was put in there for the mains and services for 1919.

1178 The Master: Put in where?

Mr. Tobin: Put in this report.

The Master: Objection sustained.

Mr. Tobin: Exception, if your Honor please. I think we are entitled to know how they obtained their figures.

Q. What source did you get it from, Mr. Raynor? You said that you made up this report, this schedule 69——

The Master: He didn't have anything to do with the mains and services.

Mr. Tobin: He said he made up this report.

Mr. Ransom: He certainly did not say that.

Mr. Tobin: He said he didn't make up this particular report, the

supplemental report, but I am referring to the financial report which he said he did make up.

The Master: What part of it are you referring to?

Mr. Tobin: Schedule 69, which is part of the financial report; that is entirely separate from this supplemental report.

The Master: What item on Exhibit 69 are you talking about?

Mr. Tobin: I am asking how he made up that particular item, $613,668.78; what was the source of information for that figure.

Mr. Ransom: Objected to.

The Master: I will let Mr. Raynor say where this figure comes from on Schedule 69.

Q. Oh, state it on the record, Mr. Raynor.

The Master: He has stated it on the record; he said it is shown in the remarks on column 2—is that the idea?

1179 The Witness: Yes, sir.

Q. Where did you obtain this typewritten sheet which is pasted into Schedule 69 of this report?

Mr. Ransom: Objected to, it doesn't appear that he obtained it; it is not a report which he made.

Mr. Tobin: He said he made up the report.

Mr. Ransom: He said he made up some parts.

The Master: I am going to allow the witness to say whether he pasted this typewritten sheet on here.

The Witness: I did.

The Master: Where did you get it from?

The Witness: It was made up after consultation with Mr. Brundage.

The Master: Who got it up, you and Mr. Brundage, or did Mr. Brundage give it to you or did you make it up and submit it to Mr. Brundage?

The Witness: We worked on it together.

The Master: Next question.

Q. How much of it did you make up, Mr. Raynor?

Mr. Ransom: Objected to as incompetent and not cross examination; counsel should not be allowed to cross examine as to his own exhibits.

The Master: I will sustain the objection. You have got in the record here the report that they made and the basis upon which it was made, with an explanation of the various items. I do not think you are entitled to any more.

1180 If that is of any value to the defendants, they are entitled to avail themselves of it and are entitled to any benefit they may get from it.

Mr. Tobin: I don't know, if your Honor please, I don't think that there is anything here in this typewritten statement which refers to this particular column.

The Master: Which is column 1?

Mr. Tobin: There is no mark there.

The Master: Which is column 1?

Mr. Tobin: I don't know as they designate it in any particular way; they have column 1, 2, 5, 7, 3——

Mr. Ransom: Evidently counsel doesn't like his own exhibit.

Mr. Tobin: You are running away from it, that is the reason.

Mr. Ransom: I am standing on it.

Q. Referring to Column 1, Mr. Raynor, it states here in the typewritten slip pasted on this schedule, which is the tangible real property in streets, highways and public places exclusive of paving, that the subsequent construction work in streets has been added and adjusted from time to time by values placed upon the records of such property as shown at time of report. Will you kindly indicate just what you did, as concerns this particular phraseology of the typewritten statement, as to that which had to do with the mains and services laid in the year 1919?

Mr. Ransom: Objected to as incompetent, not cross examination, not within the scope of any matter concerning which this witness testified, directly or indirectly, on direct.

1181 Mr. Tobin: He said he made up the report.

Mr. Ransom: He didn't even say that on direct and didn't say it on cross.

Mr. Tobin: Yes, he did.

Mr. Ransom: If it is an admission, it speaks for itself; you can't put it in and then quarrel with it; whatever it admits, it admits.

The Master: I sustain the objection.

Q. Then, Mr. Raynor, how did you treat, as concerns this report, the mains and services laid in the year 1919?

Mr. Ransom: Objected to upon the same grounds.

The Master: I sustain the objection.

Q. How did you bring into this report, as concerns Column 1 of Schedule 69, the value or cost of the mains and services laid in the year 1919?

Mr. Ransom: Same objection.

The Master: Sustained.

Mr. Tobin: I think we are entitled to know where he got the figures from, if your Honor please.

The Master: I don't think you are entitled to cross examine this witness on that report.

Mr. Cummings: He is a hostile witness, your Honor.

Mr. Ransom: He is anything but hostile.

1182 Mr. Cummings: Yes, he is.

Mr. Ransom: He is the most friendly witness we have had.

Q. Tell us, Mr. Raynor, what part of this typewritten statement you prepared, if you will, please?

Mr. Ransom: Objected to upon the same grounds.
The Master: Sustained.

Q. Did you prepare what reads here as Column 1 of this typewritten statement?

Mr. Ransom: Same objection.
The Master: Sustained.

Q. Did you prepare what is set forth here as Column 2?

The Master: Sustained.

Q. Column 5.

The Master: There is no use calling off all the columns.
Mr. Tobin: I don't think it is fair to rule it out.

Q. Mr. Raynor, referring to Schedule 68, page 32 of this Exhibit L, did you prepare that schedule?

Mr. Ransom: Same objection.
The Master: Same ruling.

Q. Did you physically paste on the memorandum or slip which is attached to that particular Schedule 68, page 32 of this exhibit?

Mr. Ransom: Same objection.
The Master: Same ruling.

Q. Where did you obtain that particular typewritten memorandum which is attached to Schedule 68, page 32?

Mr. Ransom: Same objection.
1183 Mr. Tobin: Wait a moment, I think we are entitled to know where he obtained it. If he made it up out of his head we want to know.
Mr. Ransom: You must have known or you wouldn't have put it in evidence.
Mr. Tobin: Well, you know better, why make a silly remark like that.
Mr. Neumann: Well, he may not know any better, why presume he does?
Mr. Tobin: I think we are entitled to know where he got this typewritten statement from.
The Master: I have ruled on it.
Mr. Tobin: Do you mean to say you will not give us the privilege of knowing, from Mr. Raynor, how he obtained this particular slip and how he happened to put it in here?
The Master: I have made up my mind not to allow the cross examination of this witness on that report.
Mr. Tobin: On what ground, if your Honor please?
The Master: On the ground that I don't think it is cross examination of anything brought out from the witness on direct.

Mr. Cummings: Well, your Honor was after information before and here is the way to get it.

Mr. Tobin: This man is down here as an officer of the company; as we understand it, he is the Assistant Secretary of the Company. I don't see why we are not permitted to ask him about a report which he made to a public body. What do you want us to do, Mr. Master?

1184 The Master: You want me to answer that?

Mr. Tobin: Yes.

The Master: Go on and ask the next question; try your case.

Mr. Tobin: I am trying to do the best I can.

The Master: You can't ask questions that I rule you out on, you have got to ask something else.

Q. You prepared this report, did you not, Mr. Raynor?

The Master: Oh, we have had that, we know all about it, how it was prepared.

Q. Where did you get your information from to make up this report?

Mr. Ransom: Same objection.

The Master: Same ruling.

Q. Did you get the data that is in this report from the books of the company?

Mr. Ransom: Same objection.

The Master: I will let him answer that.

Mr. Ransom: I object on the ground that it affirmatively appears——

Mr. Tobin: Oh, the Master has ruled.

The Master: Is this report based on the books of the company—exception allowed to the complainant.

The Witness: Yes.

Q. Is it based entirely on the books of the company?

Mr. Ransom: Objected to.

The Master: Sustained.

Q. Mr. Raynor, will you identify this signature as Notary Public, as appears on this blank form, to be your signature?

1185 A. Yes, sir.

Q. And also the signature of Mr. Spear, which is signed as Vice-President of the company?

A. Yes, sir.

Q. And attached to what is known as Financial S. F., Form B?

A. Yes, sir.

Q. And your name as Notary and Mr. Spear's name as Vice-President of this company is attached to what is known as Gas Statement S. F. Form B-2?

A. Yes.

Q. Two sheets, four pages—thank you.

Mr. Ransom: Is that all? That is all, Mr. Raynor. Mr. Miller, take the stand.

Mr. Neumann: Is this direct?

Mr. Ransom: I have a few more questions of Mr. Miller.

The Master: I just want to recall Mr. Teele for a minute myself.

ARTHUR W. TEELE recalled.

By the Master:

Q. On Schedule 4 of Exhibit 65 there is an item, New York State Taxes, $1,749.10; is this the Assessment Notice that I now show you (showing witness paper)?

A. It is.

The Master: Mark it in evidence as a complainant's exhibit.

Mr. Neumann: Over our objection.

Mr. Chambers: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

1186 Mr. Chambers: I object to the Master offering it in evidence.

Mr. Ransom: The complainant offers it in evidence.

Mr. Chambers: You didn't until the Master offered it.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 91.

Q. The next item, New York City, Special Franchise Tax, $7,382.54; is this the bill for that (showing witness paper)?

A. It is.

Mr. Ransom: Offer it in evidence.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and I might call the Master's attention to the fact that since these exhibits are all checked by men who purport to be officers of the company, I cannot quite see why Mr. Teele is offered as a witness when there might be some cross examination on them, and the officers of the company are here present at this particular time.

The Master: Overruled, mark this as an exhibit.

Mr. Tobin: We take an exception to it; we don't believe it should be introduced in this way.

Marked Complainant's Exhibit No. 92.

Q. The next item is Real Estate of Corporation $28.20?

A. There is 24 cents discount.

Q. Is this the bill to which you referred in that item, a bill for $28.44?

A. It is.

1187 Q. Apparently paid with a discount allowed of 24 cents?

A. It was.

The Master: You offer it?
Mr. Ransom: I offer it.
Mr. Tobin: Same objection.

Marked Complainant's Exhibit No. 93.

Q. The bill is for $28.44 and the amount paid, however, is only $28.20 and as I understand it, you identify this bill with the item of $28.20 on Schedule 4 of Exhibit 65?
A. I do.

Mr. Neumann: Same objection.

Q. And that is the bill to which you referred in your schedule?
A. It is.
Q. In other words, the bills which I have been showing you and which you identified are the bills to which you referred in your schedule?
A. Yes.
Q. That is what you relied on, those bills?
A. Yes, sir.
Q. And those are your check marks?
A. Yes, sir.

Mr. Neumann: Same objection last urged by me.
Mr. Tobin: Exception.

Q. Your next item is Real Estate, $13,103.16; I show you two bills, one for $13.035 and another one for $68.73 and ask you whether those are the two bills to which you referred in your Exhibit 65?
A. They are.
Q. As aggregating $13,103.16?
A. Yes—a 56-cent discount.
11888 Q. Less a discount of 56 cents?
A. Yes.
Q. Those bills were checked by you?
A. Yes.
Q. Indicating that you used them in making up these figures?
A. Yes.

The Master: Do you offer those?
Mr. Ransom: I do.
Mr. Neumann: Same objection.
The Master: Mark those two as one exhibit.

Two sheets marked Complainant's Exhibit No. 94.

Mr. Neumann: Exception.

Q. Now, with reference to the next item, Capital Stock Tax, $1,298., did you have any memorandum of bills or invoices before you for those items?
A. I had the notice of assessment before me, received by the company from the Federal department.

Q. Was there one, or more?
A. I had two before me.
Q. I show you one, apparently for $827, and ask you whether that was one of them?
A. This is one of them, it bears my check mark.
Q. That was used by you in arriving at this figure of $1,298?
A. It was.
Q. Was there another one?
A. There was.
Q. Of similar character?
A. There was.
1189 Q. And checked by you?
A. Checked by me.
Q. For how much was that?

Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial; the paper itself might be proof of that fact but not what the witness states. There is no proof here that it was lost, or anything else.

Q. And there is a similar bill for the difference between $827 and $1,298?
A. Yes, $471.

The Master: This one for $827 is offered in evidence, is it?
Mr. Ransom: Yes.
Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and incomplete.
The Master: I will take it.
Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 95.

Mr. Ransom: I think the record ought to show that these vouchers which have now been given separate exhibit numbers were previously identified by the witness Spear when he was on the stand and were marked in evidence as part of the 1919 vouchers.
The Master: I understand that to be so but I wanted it clearly on the record, so I gave these separate exhibit numbers.
Mr. Neumann: Now, I take exception to the fact that they are characterized by counsel as having been previously offered in evidence as exhibits in the case and will ask him to show me on the exhibit now offered, No. 92, where the former exhibits number is on this.
1190 The Master: That is a perfectly ridiculous request because counsel knows perfectly well that there was a bundle of vouchers taken in evidence as one exhibit, and whether the mark was put on the wrapper or whether no mark was put on at all, I don't recall, but all of the 1919 bills are marked as one exhibit.
Mr. Neumann: Including any voucher of any kind?
The Master: Yes.
Mr. Neumann: I didn't so understand the offer at the time it was made.

The Master: I so understood it.

Mr. Neumann: It was offered in connection with an exhibit of coal and oil.

The Master: There was a separate bundle of all the 1919 vouchers excluding coal and oil.

By Mr. Neumann:

Q. Now, Mr. Teele, I show you Complainant's Exhibit No. 92, the very last column, there is the word "Arrears?"

The Master: That means that there were some unpaid taxes—what about it?

Mr. Neumann: I want the witness to explain what that word means.

The Master: There is no use wasting time with that.

The Witness: There is nothing in the column.

The Master: And in one of them there was?

The Witness: Oh, yes.

Q. There is the word Arrears there?

A. The word arrears appears there.

1191 Q. What does that mean?

A. Well, it states here—the notation appears on the bill itself—the word "Arrears," if it appears in the space indicated by the arrow, means that previous taxes have not been paid.

Q. I take it from that that the special franchise tax for some years, or probably all years, or one or two years prior to 1919, had not been paid by this company; is that correct?

A. No, my understanding is that only this half year is in arrears.

The Master: What half?

Q. Which half?

A. The second.

The Master: No, it shows how useless this cross-examination of Mr. Teele is.

Mr. Neumann: It shows how useless it was to offer him as a witness—that is what it shows.

The Master: The witness has testified that he has tabulated certain items from the books, that he found certain bills for 1919 for taxes, and he took them in as a liability.

The Witness: They are arrears of taxes.

The Master: As a matter of fact, that bill on its face shows that there is some tax unpaid of the year prior to 1919. It may be a special franchise, it may be a real estate tax, but it has nothing to do with his testimony.

Mr. Neumann: And we had the officers of the company here who could have identified that, and we could have gone into that question; we are deprived of our right to cross examine on that point and put it on the record.

1192 The Master: That is nonsense.

Mr. Neumann: Exception.

The Master: The answer to it all is that Mr. Teele has already testified there are some 1917 franchise taxes now for which he set up an accrual of interest. Are there not?

The Witness: Yes, sir.

Mr. Tobin: We did not so understand that, if the Master please. There were some 1917 taxes which they had not charged on their books. There were not any 1917 taxes which were unpaid, as I recall it.

The Witness: Yes.

Mr. Tobin: They were unpaid, Mr. Teele? I understood they had not been charged on the books.

The Master: You look at the records. They do not accrue taxes on the books, except taxes that are unpaid.

Mr. Tobin: They had to make an entry of it and that is the way they took care of it.

Mr. Chambers: Mr. O'Connor is a short witness, and I suggest that we cross-examine him. Then Mr. Neumann will begin the cross-examination of Mr. Miller, and I will cross-examine for the Attorney General, if that is agreeable to the Master.

Mr. Ransom: I suggest that whoever Mr. Chambers now represents in this case——

Mr. Chambers: I am the solicitor for the defendant Newton, the attorney of record.

Mr. Ransom: You might leave it to the complainant to determine the order of the witnesses.

Mr. Neumann: I think for the saving of time—it is now twenty minutes to one—we could probably get through with Mr.
1193 O'Connor by a quarter to one, and we could not with Mr. Miller.

The Master: Is there any point about it?

Mr. Ransom: No, just a preference.

The Master: We will take Mr. O'Connor. Let us get rid of him.

Mr. Ransom: Obviously they are unprepared for him, and they are prepared for Mr. O'Connor.

Mr. Neumann: We will tell you the fact—our engineers will be here in a very few minutes, if you want to know it, you will have it.

Mr. Ransom: I was going to put in some direct examination by Colonel Miller that you might want to think over during lunch.

Mr. Neumann: You are not helping us, so don't you worry.

PATRICK J. O'CONNOR, resumed.

Cross-examination.

By Mr. Chambers:

Q. Mr. O'Connor, who retained you to testify in this case?

A. Who what?

Q. Who hired you to testify in this case?

A. Mr. Spear.

Q. And you are charging him by the day, are you, or by the job?

A. By the job.
Q. What did he ask you to do, to go and look at only two buildings?
A. Yes.
1194 Q. Just those two?
A. Yes.
Q. There are a lot of other buildings there which you did not look at; he picked out just the two buildings and limited you to those two?
A. Right.
Q. That is the one where the superintendent lives, is it?
A. Right.
Q. And the general office building?
A. Right.
Q. The place where the superintendent lives is an old house, is it not?
A. Well, comparatively so.
Q. Would you not say it was twenty years old at least?
A. About that, I should think.
Q. And how old would you say the office building was?
A. About the same thing.
Q. About twenty years old?
A. Yes.
Q. It might be older than that?
A. It might be, one way or the other.
Q. And the house might be older than that?
A. It might be but I would not think so. I have no reason to know that.
Q. What did you do, what examination did you make, of the house?
A. Why, I went around the outside; I went up in the house and down in the cellar, just to make a general inspection.
Q. How much time did you spend in looking over that house?
A. Why, possibly half an hour.
1195 Q. Did you know the kind of foundation?
A. Yes.
Q. What?
A. Yes.
Q. What kind of a foundation has it got?
A. Brick.
Q. And the upper part of the house, what material is it made of?
A. Frame.
Q. Frame?
A. Yes.
Q. Shingle roof?
A. Shingle roof.
Q. Did you go through it?
A. Yes, sir.
Q. From the cellar to the top?
A. Yes, sir.
Q. What is its present state of repair?

A. At that time it was fair.
Q. Fair?
A. Yes.
Q. It is twenty years old, you say?
A. Yes.
Q. Are not some parts of it worn out or rotted out?
A. I do not think so.
Q. You did not see any at all?
A. No.
Q. You did not see any part of it that was worn out?
A. I would say the building has been kept in good repair.
Q. You made that decision after looking it over and spending half an hour on the house?
A. Yes.
1196 Q. Were you acquainted with it before that?
A. Yes, sir.
Q. Had you ever made any examination of it before?
A. Yes, sir.
Q. When?
A. I had done repairs there some years before that.
Q. What part of it did you repair?
A. The house.
Q. Shingled it?
A. No, part of it.
Q. Shingled part of it?
A. Yes.
Q. How long ago was that?
A. Four or five years, I guess.
Q. And the shingles on the rest of it?
A. Were in fairly good repair.
Q. You do not know when it was last shingled?
A. I could not say that, no.
Q. You say fifty-six hundred dollars to reproduce that as of January 1, 1920; is that right?
A. No, five thousand six hundred dollars.

The Master: That is what he said, fifty-six hundred.
The Witness: Oh, I thought he said——

Q. To put up a brand-new house that would be?
A. At that time, yes.
Q. New?
A. Yes.
Q. The same kind of a house?
A. Yes.
Q. The same material?
1197 A. Well, as near as you could get to that material. Of course, the material in twenty years would not be just exactly the same, only as we would call stock material at that time.
Q. When was the house last painted?
A. I could not tell you that.

Q. Of course, if you built a new house for fifty-six hundred dollars, or five thousand six hundred dollars, a new one, it would be worth what; would you say three times as much as this one which was twenty years old?

A. No.

Mr. Ransom: That is objected to.

Q. Your new house there for five thousand six hundred dollars would be worth, would you say, twice as much as this old house?

A. No.

Q. Well, it would be worth some more, would it not?

Mr. Ransom: Objected to.

The Master: I will allow it.

Mr. Ransom: You are getting into a realm that is not within the province of a witness to express an opinion on.

Mr. Chambers: The Master has ruled.

Mr. Ransom: This is a question of what constitutes value for rate purposes; not what constitutes sale value in the market, or what constitutes exchange value, which are very different things.

The Master: I will take it.

Mr. Ransom: Exception.

A. Do you want me to answer?

The Master: How much more would you say this new house would be worth than the old house?

1198 The Witness: Possibly a third.

Q. More?

A. Yes.

Q. So that would make the value of the old house——

The Master: We will figure that; do not waste time on it.

Q. About $1,700?

Mr. Neumann: About $1,800.

Q. About $1,800, whatever it figures?

A. About that. I am not a lightning calculator.

The Master: That is, you think it would make this new house worth that much more than the old one?

Mr. Chambers: Yes.

Mr. Ransom: Make it sell for more.

The Master: Yes.

Q. Your new house was $5,600?

A. Yes.

Q. You take a third off of that—that is about what you think is the difference between the new house and the old one?

Mr. Ransom: Objected to as incompetent, vague and indefinite.

Q. About a third off of the $5,600?

A. About, yes.

Q. Your $5,600 price was based, I suppose, on January, 1920, prices of labor and material?
A. Yes.
Q. They were abnormally high, were they not, then?
A. True.
Q. You never knew them, did you, to be so high?
A. No.
1199 Q. Would you not say they were unreasonably high?
A. Well, that is peculiar, to say unreasonable. They are awfully high, I would say that.
Q. They are abnormal?

The Master: We have had that. Go on.
Mr. Chambers: Let him say.
The Master: You are going to finish with him before one o'clock; now go ahead

Q. The office building, your figure to reproduce that was $10,400?
A. Right.
Q. That is made of brick?
A. Yes.
Q. And you considered that was 20 or 25 years old?

The Master: He said about twenty.
Mr. Chambers: No, he said twenty or twenty-five before.
The Master: Did you, Mr. O'Connor?
Mr. Chambers: Yes, I have it right here.

The Witness: As I recall it. Well, I don't know, in the neighborhood of twenty years, more or less.
Q. (Reading:) "Q. How old a building was it?
A. Why, offhand I would say twenty or twenty-five." How much of an examination did you make of that building?
A. Practically the same thing.
Q. Half an hour?
A. Half an hour.
Q. Did you know what its foundation was made of?
A. Yes.
Q. What?
A. Brick.
1200 Q. And the whole building is brick?
A. The whole building.
Q. What kind of a roof?
A. A flat roof, tin roof.

The Master: There is a little frame extension on that?
The Witness: Yes on one end.

Q. And that would be a new building you would produce for $10,400?
A. Yes.
Q. Brand new?
A. Yes.

Q. How much would you say that new building would be worth more than the present building that is there, considering the present one is twenty or twenty-five years old?

Mr. Ransom: Objected to, not a question within the province of the witness to decide, applying a standard which has no bearing on a rate case; vague and indefinite.

The Master: Overruled.

Mr. Ransom: Exception.

A. That would be in my judgment about the same as the other; it would be about a third.

Q. That is, the new building would be worth about a third more than the one you found there?

A. Yes.

Q. Is that not pretty low, now, a third, would it not be worth, say, half as much again?

A. I would not think so.

Q. These buildings do wear out, do they not; they deteriorate, do they not with age?

A. They deteriorate, yes.

Q. And in time, why, they would rot or deteriorate so they would not be any good at all; isn't that so?

1201 A. I would not say that.

Q. You would not go as far as to say that?

The Master: It depends on how a building is cared for as to how long it will last. If you take care of a building properly it will last fifty or sixty years.

The Witness: And longer than that, too.

Q. The price of materials that would be used in rebuilding the office building, those are very high now?

A. They are.

Q. You took into consideration the high prices?

A. I had to.

Q. In your reproduction cost?

A. Yes.

Q. Brick is very high?

A. Very high.

Q. Abnormally high, is it not?

A. They are very high.

Q. Would you not say that the prices of the materials that would go into that building are abnormal?

Mr. Ransom: Objected to. The question whether it is abnormal or normal is not within the province of this witness to decide. It has lasted for a long time and it is getting higher.

The Master: I think I will sustain that objection. I think what you can bring out from Mr. O'Connor is that the prices are very high, that they are higher than they have been for many years.

Mr. Chambers: Exception to the refusal to take the answer.

Q. Did you ever know them to be any higher in your experience as a builder?

1202 A. No.

Q. That is true of wages, is it not?

A. True.

Q. Are you doing any work now, doing any building?

A. Yes.

Q. What kind of building are you engaged in now?

A. Alterations and repairs.

Q. Any new buildings?

A. No.

Q. Just alterations and repairs?

A. Yes.

Q. How much of a force have you?

A. At the present time six men.

Q. Six men working for you continuously?

A. Yes.

Q. You take contracts and these men work for you?

A. Well, we do not take contracts now; we cannot.

Q. Do you work by the job?

A. No, on a percentage basis.

Q. By the day? Percentage?

A. Yes.

Q. Cost plus 15 per cent?

A. No, we do not get 15 per cent; 10 per cent.

Q. 10 per cent?

A. Yes.

Q. Is that a fair profit, 10 per cent.?

A. Fair, yes.

Q. You are satisfied with that You have taken it?

A. Yes.

Q. How does that cost of repairs compare with prior years, say before the war?

1203 A. Well, of course they would be higher Of course, material is high, so is labor.

Q. Your men are union men, are they?

A. Yes, sir.

Q. And you run a union shop?

Mr. Ransom: Objected to as incompetent and ridiculous.

The Master: What has that got to do with this case?

Mr. Chambers: I want to see if he is paying union wages.

The Master: He is paying the wages that he has got to pay to get men to work.

Mr. Ransom: He is probably paying much higher than union wages.

The Master: The point of the thing now is not how much you pay, but how much work you can get out of a man.

The Witness: And you do not get much.

The Master: No, I know it.

Q. Was there a time recently when you did not do any work at all to amount to anything, on account of the high prices?
A. No.
Q. There was not any such time?
A. No.
Q. Can you get material now, lumber, brick and so on?
A. You can get it, yes.
Q. Have you any trouble in getting it?
A. Sometimes we have little delays.
Q. Are you interested in any way in this company's property?
A. No way.
Q. No way at all?
A. No.
1204 Q. Nor in the company?
A. No, sir.
Q. The delay in getting material is due to transportation, is it, largely?

The Master: What is this all, a matter of personal interest, or does it bear on this case? I do not see how it makes a bit of difference to this issue whether there is a delay or there is not a delay. Mr. O'Connor has figured in his opinion what these buildings would cost to reproduce, he has given you his estimate of their value compared with the old buildings. What difference does it make whether there is a delay in getting lumber or plumbing material, or whether they are union or non-union? How does that help us? If you are interested in these things, Mr. O'Connor will undoubtedly spend a few minutes with you outside and tell you all about it.

Mr. Chambers: That is all.

Cross-examination.

By Mr. Neumann.

Q. Mr. O'Connor, did you inquire as to the age of this building?
A. No, sir.

The Master: Objection sustained, already covered.

Q. Did you inquire as to the original cost of this building?
A. No, sir.
Q. Did you take into consideration in arriving at a figure as to the value of this building that the company's business might
1205 outgrow this building, and thereby the building become inadequate, entirely apart and separate from wear and tear?

Mr. Ransom: Objected to as vague and meaningless.

The Master: No, it is not vague and meaningless, but I do not think it has the slightest thing to do with Mr. O'Connor's testimony. Let him answer it, though.

A. I had no reason to.

The Master: He simply testified to what it would cost to reproduce brick buildings; that is all he testified to.

Mr. Neumann: That is all.

Redirect examination.

By Mr. Ransom:

Q. Mr. O'Connor, is the cost of doing work or the construction of buildings of this sort higher or lower now than it was in January, 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: The question is allowed.
Mr. Neumann: Exception.

A. Still higher now.
Q. How much higher, would you say, now than on January 1st, 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.

A. Why, from 5 to 8 per cent.
The Master: Both as to material and labor?
The Witness: Material and labor.
Q. Have you recently built and sold several houses?
1206 A. I have sold one.
Q. Have you recently built several?
A. Well, last year I built three, three new houses.
The Master: Where, over in the Flushing district?
The Witness: The Flushing district.
Q. And you recently built one and sold it?
A. Yes, just sold it on Monday.

Mr. Ransom: That is all.
The Master: Anything else?

Recross-examination.

By Mr. Neumann:

Q. What were carpenters' wages on January 1st, 1920?
A. What is that?
Q. Carpenters' wages.
A. Why, they went from $8 to $9 on January 1st—no, rather from $7.50 to $8, and May 1st they went to $9.
Q. That is the union scale?
A. The union scale.
Q. Provided for in the union rules?
A. Yes.

Mr. Neumann: That is all.
Mr Ransom: That is 16 per cent.

1207 ALTEN S. MILLER resumed.

Direct examination

By Mr Ransom (continued):

Q. Colonel Miller, on page 699 and following of the record you have already given your estimate of the total cost of reproduction of the complainant's plant and property up to the point where the same was ready to begin the distribution of gas?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and already fully covered.
The Master: Overruled.
Mr Neumann: Exception.

A Beginning manufacture and distribution, yes.
Q Does such a sum represent all of the expenditures which it is necessary to make in order to reproduce a company with its business attached, as a going concern?

Mr Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, all fully covered by the exhibit, or supposed to be.
The Master: Overruled.
Mr. Neumann: Exception.

A. No.
Q What additional elements of cost are incurred in the organizing and developing of an enterprise such as a gas company?

Mr. Neumann: Same objection.
The Master: Overruled.
Mr. Neumann: Exception.

A Starting with a complete plant, not operating, it is necessary to organize first the operating force, and second to organize
1208 the manufacturing plant. No manufacturing plant is ever created finished. There are no two exactly alike——

Mr. Neumann: May I ask this, before the witness is allowed to testify any further—upon what theory this evidence is introduced in the record? Is it for going value?
The Master: I do not know; it is additional direct testimony.
Mr. Neumann: I think we ought to have an expression from the counsel as to what his purpose is in introducing this evidence at this late day.
The Master: No. I will not require it. Finish your answer, Colonel Miller.
Mr. Neumann: Exception.

A. (Continued:) No two gas plants are exactly alike, and in designing them on paper and building them it is found after operation commences that changes will contribute to facility of operation and to economy. When the plant is revalued these changes, of course, do not show, and therefore have not been included. Also in securing business it is necessary to canvass, to advertise, and in order to secure it rapidly it is necessary to make special inducements. If it is allowed to grow up slowly over a long period, then special inducements are not necessary, but under those conditions, with the plant——

Mr. Neumann: One moment, Colonel Miller. I move to strike the witness' answer out upon the ground that it presupposes a set of facts that are not in existence in this case; they are hypotheses, and it is not responsive to the question that was asked.

The Master: I will deny the motion.

209 Mr. Neumann: Exception.

Mr. Tobin: If the Master please, I think there is a further objection, a good objection.

The Master: You do not think Mr. Neumann's was good, then?

Mr. Tobin: Well, there is a further objection.

Mr. Neuman: He said a further good objection.

The Master: He said a good objection.

Mr. Tobin: You cannot twist my words that way. I said there was a further objection, that this witness is not qualified to speak as to the commercial end of the gas business.

The Master: I will deny the motion. Mr. Tobin: Exception.

The Master: My criticism of it is that it is rather too much of a speech in answer to that one question.

Mr. Neumann: Then why is it that the objection it is not responsive is not a good one?

The Master: But it does not appeal to me, because another question makes it responsive.

Q. In the first place, Colonel Miller, with respect to the plant, there is an expense of organizing the personnel of a working force?

A. Yes.

Q. And is the cost of that greater or less than the cost of the working force under ordinary operation conditions?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, nothing bearing on the issues in this case.

A. There is no cost of organizing.

210 The Master: I will overrul- it.

Mr. Neumann: Exception.

Q. I mean during this preliminary stage is there a greater cost as the force is organized and settles down?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Not material to the issues in this case. Exception.

A. I take it you mean there is a greater cost of operation due to the greenness of the force. Yes, there is.

Mr. Neumann: You see, counsel does not even know what he is trying to introduce.

The Master: That is all right.

Q. With respect to the physical plant are there things that have to be readjusted and replaced that are not reflected in the present inventory?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, presupposes a set of facts that are not in existence or proven here.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Now will you state what you were interrupted saying with respect to the development of the business, the commercial side?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and no proof here that the witness was interrupted. He evidently finished his answer in full, and it is immaterial to the issues here.

1211 The Master: Overruled.

Mr. Neumann: Exception.

A. The estimate of value is based on the completion of the plant and of the mains before the beginning of business.

Q. In your opinion is a plant that has been completely constructed, ready to commence operation but with no customers, of greater or less value than the same plant in operation as a going concern supplying gas to its customers?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on a supposition, based on opinion, and not within the province of this witness so to testify; it presupposes a set of facts which have not been proven as yet in this case.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Assuming that the rate is sufficient to bring a proper return——

Mr. Neumann: One moment. Before the witness goes any further I move to strike it out.

Mr. Ransom: Let him for once finish an answer.

Mr. Neumann: No, you cannot get in on this record any such thing.

Mr. Ransom: Courtesy should be extended, even by representatives of public officers.

Mr. Neumann: Yes, and I am giving you the kind you do.

The Master: Judge Ransom's question excludes any other suppositions, other than those contained in the question. The question of Judge Ransom calls for the witness' statement as to whether
1212 a concern that is actually making and distributing gas, a plant, a manufacturing and distributing plant, as such, as a going concern—that is practically what it means—is worth more than a plant that has just been constructed and before it starts to do any business.

Mr. Neumann: Does your Honor want to read 210 New York before you get any further?

The Master: No, not just now.

The Witness: That cannot be answered without consideration of the rate.

Q. Assuming there is permitted the charging of a rate yielding a fair return, would you say that a plant completely constructed, ready to commence making gas but having no customers, is of greater or less value than the same plant in operation, supplying gas to its customers?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and upon all the grounds urged as to the last question.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: If your Honor please, the form of the question is the same as the last one; it is not any different.

The Master: No, there is included an additional element.

Mr. Tobin: He is just putting a conclusion into the mouth of the witness.

The Master: No, it presupposes a fair return.

Mr. Neumann: Here is the vice of this question: This is supposed to be on an hypothesis. If I know anything about the
1213 law with reference to hypothetical questions they must be based upon facts that are proven in the case.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: Presupposing now a fair rate of return, is a going plant worth more than a plant before the customers are obtained?

The Witness: It is worth more, yes.

Mr. Neumann: I move to strike the answer out.

The Master: Motion denied.

Mr. Neumann: Exception.

The Master: Suppose the rate of return allowed by statute is inadequate, what would you say?

Mr. Tobin: If your Honor please, I do not think you ought to go into that on this record.

Mr. Neumann: I object. If the Master wants to read the opinion in the Court of Appeals, in Kings County Lighting Company vs.

Willcox, 210 N. Y., at page 433, there is the citation (handing Master).

The Master: No. How about an inadequate return being allowed—what would you say?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: If there is an inadequate return and no prospect of an inadequate return——

1214 The Master: It is a liability and not an asset?

The Witness: It is a liability instead of an asset.

The Master: Next question.

Q. How would you measure the difference in value between a plant ready for business and without customers and one in operation as a going concern with customers?

The Master: With a fair rate of return.

Mr. Ransom: Yes.

Mr. Neumann: I object to it on the ground it is incompetent, irrelevant and immaterial and on all the grounds last urged.

The Master: Overruled.

Mr. Tobin: If your Honor please, you have got before you a case which has to do with a going concern. You have not got any mysterious subject here that you are going to compute a rate for.

The Master: Counsel may as well get this clear. I am going to take this line of testimony. I am predisposed against making any finding based on it, but I am going to take it. Make your record, state your objections and let us get done with it.

Mr. Neumann: Yes, and I want to say right here that the manifest unfairness of it is in this, that it is no criterion, because a large plant might be different than a small plant.

The Master: All right, I will let you bring it out on cross examination for what it is worth. I will take it.

Mr. Ransom: If you wish to argue that question, the Illinois Supreme Court a few days ago, for example, reversed the

1215 Illinois Commission for failing to allow for this.

The Master: I will take that up a little later, when I come to the consideration of the evidence.

Mr. Ransom: There is something in this Kings County Lighting case which indicates clearly these elements that Col. Miller testified to must be taken into account.

Mr. Neumann: In 210 N. Y.?

Mr. Ransom: Yes.

Mr. Neumann: You know that is not true.

The Master: And you know, Mr. Neumann, there is no sense in continuing this discussion.

Q. What is your answer to the last question?

Mr. Neumann: That is subject to the same objection and exception, if your Honor please.

The Master: Yes, same objection, ruling and exception.

A. What is the question?

Q. How would you measure the difference in value between a plant ready for business and without customers and one in operation as a going concern with customers?

A. By the cost of securing the business under intensive conditions.

Mr. Neumann: I move to strike the witness' answer out as not responsive to the question.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. How long a period, in your opinion, would be required in the case of the complainant gas company by means of intensive work to attach the present business of the company?

1216

Mr. Tobin: Your Honor, I do not think that should be allowed.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial.

Mr. Tobin: That is about as wild as you can hit.

Mr. Neumann: It is clearly contrary to the proven facts in this case, too indefinite, vague, meaningless, and has no application to the present company at all; it is based on pure hypothesis and opinion.

Mr. Ransom: We have shown that this witness has had a very considerable experience in that respect, and we have shown that this witness has had a very large and long knowledge of these Flushing conditions. He has lived in Flushing.

Mr. Chambers: I think you have shown this witness is incompetent.

Mr. Ransom: He ran a gas company in Flushing for a great many years. He was a resident of Flushing.

The Master: Is there an unanswered question?

Mr. Ransom.: There is.

Mr. Neumann: There is an objection that you have not ruled on.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Read the question, please.

Q. How long a period, in your opinion, would be required in the case of the complainant gas company by means of intensive work to attach the present business of the company?

1217

A. Two to three years.

Mr. Neumann: I move to strike the witness' answer out.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: I do not understand what he means by the word "attach." Did you say attach, Mr. Ransom?

Mr. Ransom: Yes.

Q. Have you made an estimate, Col. Miller, of the probable cost of attaching the business of this company, assuming it were to start business as a new concern?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. The term "attach" does not mean anything. It is vague, meaningless, indefinite, based on hypothesis and opinion.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes.

Q. What is your estimate?

Mr. Neumann: That is objected to upon the same grounds.

Mr. Cummings: We must first show that he has got the actual figures from the books and built it up.

The Master: Overruled.

Mr. Neumann: Exception.

A. Between $525,000 and $550,000.

Mr. Ransom: The defendants may cross-examine.

Mr. Neumann: I move to strike out the witness' answer.

1218 The Master: Motion denied. You will cross-examine at 2 o'clock.

Mr. Chambers: I move to strike it out as being incompetent, improper, irrelevant, suppositious, worthless, hearsay.

Mr. Ransom: We have gone back to having three representatives of the Attorney General on one witness.

Mr. Chambers: The trouble is you take this testimony of the witness and then when it gets cold you consider it.

Mr. Neumann: Then you compel us to go into a cross-examination and limit our cross-examination.

Recess.

Afternoon Session.

ALTEN S. MILLER, resumed:

Cross-examination.

By Mr. Neumann:

Q. Mr. Miller, have you at any time in the past purchased or sold any equipment entering into the property of a gas plant?

A. Yes.

Q. When? I mean you actually, not your firm?

A. Personally?

Q. Yes.

A. Yes. I purchased a large part of all the apparatus that went into the Ravenswood plant of the New Amsterdam Gas Company. I purchased all of the apparatus that went into the plant of the

Consolidated Gas Company of Baltimore. I sold apparatus
1219 to several companies when I was Western sales agent of the United Gas Improvement Company, or manager of the National Gas Light & Fuel Company of Chicago.

Q. When you use the word "apparatus" what do you mean by that?

A. In the case of the East River Gas Company of Long Island City, afterwards the New Amsterdam Gas Company, I mean everything that went into the plant, I mean all the material for setting meters, I mean the meters, all the material for services, and all the material for mains; in other words, everything that goes to make up the plant of a gas company. That includes buildings.

Q. How many years have you been actually identified in placing valuations upon utilities properties?

A. Between eleven and twelve years; that is, for the purpose of rate making, ten or eleven years; for the purpose of purchase and sale, a period of between twenty-five and thirty years.

Q. Now, will you mention some of the cases in which you testified for the purpose of rate-making?

A. Yes. In the case of the rate of the United Electric Light & Power Company of St. Louis. In the case of the Paterson and Passaic Gas Light Company. In the case of the Haverhill Gas Company of Massachusetts. In the case of the Kings County Lighting Company. In the case of the Newtown Gas Company.

By Mr. Ransom:

Q. That is in the Borough of Queens?

A. In the Borough of Queens, yes.

By Mr. Neumann:

Q. Was that a matter pending before the Public Service Commission?

1220 A. It was.

Q. What other cases?

A. The case of the Washington Gas Light Company.

Q. Was that before Judge Gould?

A. No, that was a commission case. In the case of the Consolidated Gas Company of New York. I do not at the moment recall others.

Q. Now, in all these cases that you have mentioned in whose behalf did you testify?

A. In every case representing the company.

Q. Never for the public or for the public officials defendants?

A. I think in every case I testified for the public, yes; I considered I was testifying for the public when I testified for the company.

Q. That is your interpretation of it, is it?

A. It is, yes.

Q. And you have never testified for any of the defendants, you have always testified for the complainant?

A. The defendants——

Q. Answer that yes or no.

Mr. Ransom: By the defendants do you mean the public authorities, because often the company is the defendant?

Mr. Neumann: I mean the public authorities.

A. I have never been asked by the public authorities.

Q. And you have never testified?

A. No.

Q. Have you ever offered yourself?

A. I never have to anybody, the companies or the public.

Q. Now, you have testified that you began this work about
1221 fifteen months prior to the date that you first testified in the instant case—by the way, before that question, this is the third appearance on the stand in behalf of the complainant in this case?

The Master: Well, the record shows that, don't bother with that.

A. I am not sure whether it was the second or third.

Q. You testified on your first appearance that you began the work about fifteen months prior to the time you first testified—is that correct?

A. Yes.

Q. Then you testified that your finished the work within six or eight weeks—is that correct?

A. Yes.

Q. Just explain what you meant that you began fifteen months ago and finished within six or eight weeks?

A. Yes. It meant that when the work was started I went to Flushing, made an examination of the plant, examined the records of the distributing system, examined the books and got as broad and as large a picture as I could of the whole situation. I then sent for a staff of engineers, put them in charge, or rather put them on the main records, the meter records, the service records, the books of the company, and in the plant made a complete appraisal of all the property of the company.

The Master: May I interrupt a minute to get something off my mind, Mr. Neumann?

Mr. Neumann: Certainly.

By the Master:

Q. Mr. Miller, as I understand it, your testimony is that including the land, which you did not appraise, and including these
1222 two buildings that O'Connor appraised, and including the working capital of $165,000, you figure the reproduction cost to be $2,907,000—is that the idea?

A. That is the idea.

Q. As of January 1, 1920?

A. Yes.

Mr. Ransom: And exclusive of going value?

The Master: Exclusive of going value, except that I should imagine some of these items, like engineering during construction, and so on, to some extent include going value.

Mr. Ransom: No. The overhead and reproduction cost that Mr. Miller has stated are the costs up to the completion of the plant ready for beginning operations. Now, going value does not relate to anything up to that time. Going value is something from the time the plant is ready to begin making gas and supplying it to consumers.

Q. You say this excludes going value?
A. Yes, sir.
Q. This is of January 1, 1920?
A. Yes, sir.
Q. I want to know from you what in your opinion these same items would represent as an average during the years between 1904 and 1914?

Mr. Neumann: Just one moment, please. That is objected to on the ground that it is incompetent, irrelevant and immaterial, for this particular reason: We went before Judge Mayer on this question, asking for a bill of particulars, so we could prepare ourselves on that very question, but counsel stated that he did not intend to offer that on the record. Our order directing a bill of particulars
1223 directs him to give that information if he intends to produce that evidence.

The Master: I can't help that; I am going to decide this fact.
Mr. Ransom: I did give you a bill of particulars.
Mr. Neumann: No, you did not.
Mr. Ransom: I did; I gave you everything Judge Mayer asked for.
The Master: State your objection on the record.
Mr. Neumann: It is manifestly unfair to the defendants to open up this line of questions, introduce this line of testimony, without our having been given an opportunity and the data beforehand in order to prepare for it.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

Q. Now, what do you say?
A. That item of taxes during construction, and working capital would not be changed. The balance would be about one-half, excluding land. I don't know what the land would have been, but, leaving out land, taxes during construction and working capital, the plant would be about one-half of the figures that I have here.

Mr. Neumann: I move to strike out the answer of the witness.
The Master: Motion denied.
Mr. Neumann: Exception.
Mr. Tobin: Exception.
Mr. Ransom: I think the record ought to show that the complainant does not in any way acquiesce in any such basis of compu-
1224 tation, or even that it has any proper bearing on this case whatever.

Mr. Neumann: Why didn't you object when the question was asked?

Q. You say the taxes would not be changed?
A. No, sir.
Q. And the land would not be changed?
A. In so far as I know: I don't know the value of land.
Q. You don't say one way or the other?
A. No.
Q. Working capital: I am taking that out, too.
A. Yes.
Q. You said that should be taken out?
A. Yes.
Q. What else do you say ought to be taken out?
A. That is all.
Q. Taking out land, taxes and working capital makes a reduction of $220,345 from $2,907,062. I figure the balance to be $2,786,771. Taking half of that and adding again the $220,345 gives me $1,563,703.
A. Yes.
Q. That you say is your opinion as to what all of these items would represent, assuming the land value not to have been changed during the years, on the average, from 1904 to 1914?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.
Mr. Ransom: And that is exclusive of franchises and rights and exclusive of going value.
The Master: It only includes the items specified here.
Mr. Neumann: I must object to counsel putting something in the question that the Master's question did not contain.
1225 The Master: Do I understand that correctly, Mr. Miller?
A. Yes.
Mr. Neumann: Exception.
The Master: That is exclusive of franchise rights and going value. What proof is there in the record as to going value, the amount?
Mr. Ransom: $525,000 to $550,000?
The Master: What proof is there in the record as to the franchise?
Mr. Ransom: The books.
The Master: Only that?
Mr. Ransom: So far, and the franchise documents.
Mr. Neumann: What do the franchise documents show, the price?
Mr. Ransom: They speak for themselves.
Mr. Tobin: They show nothing.
The Master: Mark for identification the Bill of Particulars, so called, furnished to the defendants pursuant to the order of Judge Mayer.
Mr. Ransom: Entitled "Detail Statement of the Cost of the Plant, Distribution System, et cetera, of the New York & Queens Gas Company to and including December 31, 1919."

Bill of Particulars marked Complainant's Exhibit 96 for Identification.

The Master: Your complaint alleges a value of $1,492,976, "Exclusive of some other intangible assets of great value."
Mr. Ransom: Yes.
The Master: Do you rely on that figure?
Mr. Ransom: We stand on the figures that we have here proved. The Complaint was drawn on an investment basis, and not a
1226 present-cost basis.
Mr. Tobin: We ask that that should not be put in the record, if your Honor please. The complaint speaks for itself.
Mr. Ransom: We had no appraisal at that time, and alleged the company's book investment.
Mr. Neumann: I move to strike from the record the witness Ransom's definition of what going value is.
The Master: Motion denied.
Mr. Neumann: Exception.
Mr. Tobin. Exception.

By Mr. Neumann:

Q. Were you finished with the answer to the last question when the Master interrupted you, or was there anything else you wanted to say?
The Master: I want to ask another question.

By the Master:

Q. Mr. Miller, you say that the value of the manufacturing and distributing plant of the character of that of this complainant, in the territory served by this complainant—would you say that it was more or less per thousand cubic feet than a similar plant on Manhattan Island serving a densely populated territory?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial and not the proper way of proving it, and from a witness not qualified to testify upon that particular subject.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

1227 A. More, considerably more.
Q. By considerably more, how much more would you say?

Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. I have not made a direct comparison, but from my knowledge of companies about this size I should say probably 50 per cent. A small plant is much more expensive per unit than a large plant, and the customers are much more widely scattered; I mean they are less per mile of main. On the other hand, of course, that is in some degree counteracted by the fact that it costs very much more to lay

a main in a thickly built up territory, where there are many underground obstructions, than it does to lay mains in a scattered territory.

Q. Would you be able to give me an answer to this question. Assuming merely for the purpose of illustration that a manufacturing and distributing plant on Manhattan Island, fairly valued in pre-war periods, throughout the years, would be about $1 per 1,000 cubic feet, what would that represent in the case of this company's plant and distributing system?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial, and not from a qualified witness, and no foundation having been laid for it.

The Master: Objection overruled.

The Witness: Yes, I could do that. In the case of the Paterson & Passaic Company, it was somewhat similar——

1228 Mr. Neumann: Now, before the witness goes any further, I move to strike the answer out.

Mr. Ransom: Let us hear it before you move to strike it out.

Mr. Neumann: What he has already said indicates that there are different conditions.

The Master: Motion denied.

Mr. Neumann: Exception.

The Witness: Paterson & Passaic was somewhat similar, although the territory was a little more closely built up. The value found was $5.

The Master: I don't care what the value found was. I am asking you if you can give me an expert opinion as to what you would say from your knowledge of this and other plants, that its value per 1,000 cubic feet is as a manufacturing and distributing system throughout the years prior to 1917.

Mr. Neumann: I make the same objection as last urged.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: What would you say it was?

The Witness: I did not mean right away. I can't tell you offhand. I thought you meant whether I could fix it up or not.

The Master: I was wondering whether you could tell me now.

The Witness: I could not offhand; I have not the figures.

Q. Why not, Mr. Miller?

A. I simply have not made the figures up.

1229 The Master: Did you value the Passaic plant at all?

The Witness: No, I did not value the plant. I tested on the going value there, made an estimate of the going value.

The Master: All right, go ahead.

Q. Now, had you finished your answer to the last question prior to the Court taking up some questions?

The Master: Yes, he had finished it, because I asked you if I could interrupt before you asked another question. You can always as-

sume when I break in that there is an answer to the previous question, because I refrain from breaking in until that happens.

Q. Now, Mr. Miller, how much time did you actually spend at this plant yourself?

A. I cannot give it to you exactly. I was there a great many days, but I could not say the exact time. I am pretty familiar with all of this company and its territory, and it did not require a very large amount of time, but I did spend—I was there on a great many days, different days.

Q. Did you keep any record of your time?

A. No.

Q. Do you know when you commenced?

A. I stated that it was about 15 months previous to the first date on which I testified in this case, but I don't remember the exact date.

Q. You said you spent about six or eight weeks at it?

A. I think I said I spent about 15 months.

Q. That is what I am trying to get clear. You said you started about 15 months ago?

1230 A. Oh, it would be 15 months less about six weeks.

Q. In other words, you started about 15 months prior to the date you testified?

The Master: That is what he said.

Q. And you concluded the work about six or eight weeks prior to the date you testified, is that correct?

A. Yes.

Q. When did you actually first make an inspection of the plant?

A. At the time that I started the work.

Q. Do you know how much time you then spent without interruption?

A. Approximately half a day.

Q. Do you recall when you next took it up, generally speaking, after what space of time?

A. No, I stayed on it for some days at that time, looking over it and getting my crew together, and getting the work started. Then I kept it up from that time on.

Q. You personally?

A. I was personally in touch with the work. I do not mean that I spent all the time either in Flushing or in the plant, but I went there from time to time.

Q. What did you mean by the statement that you kept personally in touch with the work?

A. I meant that I knew what every man was doing all the time; I knew by correspondence and by visits and by looking over the records that were being accumulated, and I advised with them and instructed them.

Q. How many men did you actually have employed—how many men were actually employed by you in the performance of this work?

1231 A. Not including stenographers, some ten or twelve.

Q. Will you name them and name the different classifications?

A. I cannot name them all offhand; I have a list of them here.

Q. Can you by referring to that list refresh your recollection?

A. Yes.

Q. Will you please do so?

A. E. H. Matthews was originally in charge under me. He is a mechanical engineer who has spent a great deal of his time in gas plants.

Mr. Neumann: I move to strike out that he has spent a great deal fo his time in gas plants.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. I just asked you for their names and designations.

A. What do you mean by designation?

Q. Whatever their title is, statisticians, engineers, or whatever they were?

R. E. Haskins, Engineer.

E. A. Gross, Clerk.

William Graham, Engineer.

Hans Weiss, Constructing Engineer.

L. Green, Constructing Engineer.

G. F. Bolgiano, Constructing Engineer.

W. H. Wise, Clerk.

H. G. Maser, Engineer.

Mr. Wilmer whose initials I have forgotten, Engineer.

Mr. Rossi, whose initials I haven't got, Building Expert.

Those are all my regular men.

1232 The Master: Paragraph 7 of the complaint alleges that the said stock of $600,000, and some of the said bonds, $816,000, were duly issued in payment for the reasonable value of the plant and franchise purchased by your orator. As I understand it, no proof was submitted in support of that allegation.

Mr. Ransom: We have not regarded it as any part of the complainant's direct case to prove the cost of this property to this company. We are standing upon our proofs of present value, as we did in the Consolidated case.

Mr. Tobin: You mean the company's present value?

Mr. Ransom: The present value of the present property.

Mr. Neumann: Reproduction cost as of 1920?

Mr. Tobin: He means present value of December 31, 1919.

Mr. Neumann: Do you mean reproduction cost of 1920? For once be straight in what you say.

Mr. Ransom: I mean present value as of January 1, 1920.

Mr. Neumann: What do you mean by present value?

The Master: He has answered it.

Mr. Neumann: I think the record ought to state clearly whether he means reproduction cost as of 1920——

The Master: I think the record sufficiently shows it. Go ahead.

Q. Were these men continuously employed by you?

1233 A. No, all of them were not. Rossi was employed only temporarily.

Q. For how long a period?

A. He was employed for three or four weeks. The other men—Matthews has left the employ of my company. He had been with us several years, but his health was not particularly good, and he left when this work was about half finished. I am not sure,—the other men were drawn from different departments of the Bartlett-Hayward Company, and I am not sure whether the rest of them are all with the company now or not. I am under the impression that they are. Some of them I know are.

Q. This is part of the staff of the Bartlett-Hayward Company, is it not?

A. Yes.

Q. Were they continuously and exclusively employed upon this matter of the New York & Queens Gas Company during these times that you have testified to?

A. All of them were not, no, and I don't know that any of them was exclusively employed during the whole period. Matthews was exclusively employed, and Wilmer was exclusively employed during a large part of the work, that is, something over one half of the work. Graham I think came in then and took Matthews' position and finished it up.

Q. Summing up the whole situation, Mr. Miller, how many man days would you say were spent by your staff exclusive of yourself, upon the inventorying of the property of the New York & Queens Gas Company?

A. Probably 250, 300, maybe double that.

1234 Q. And that wide variance is about as close a figure as you can give?

A. That is probably low—probably 750.

Q. Is that about as good a figure as you can give?

A. That is as good as I can give; the bill was between $15,000 and $20,000 for the work done, and those men would not average certainly over $15 a day. That is the way I got at it, I worked at it backwards.

Q. While you were testifying here?

A. Yes, sir.

Q. From data you had before you?

A. No, I remembered the bill——

Q. You remember the amount that was paid?

A. Yes.

Q. Mr. Miller, at page 171 of the stenographer's minutes, you testified that you checked up all the figures: do you recall that?

A. I don't recollect it particularly, but I did.

Q. Well, now, I read the particular question and the answer, reading from stenographer's minutes, page 171, fol. 513:

"Q Did you personally go over all the work?
"A I did, and checked all the figures."

Do you recall that question and that answer?

A. No, I don't recall the question and answer, but I say I did do it.

Q Don't you recall testifying to that?

A. I don't recall that particularly, but I have no doubt I did because I did checks the figures, checked all the figures.

Q. Just tell us what you did?

A You mean on the whole appraisal, the whole history of this appraisal, now?

1235 Q. Well, what did you mean when you said you checked all the figures?

A I went into the plant with measurements that my men had made of the plant, showing the location of the buildings, showing the dimensions of the buildings, showing the dimensions of the apparatus and the locations of the apparatus; I took rules and tapes and I had two men with me. Two of the men would stretch the tape; I had a sketch before me and I checked the dimensions.

Similarly with rules. I checked the dimensions that I could check with a rule, checking the figures back and then taking them to the office, and the calculations of quantities that had been made were checked by me for accuracy.

The quantities to which prices were affixed were shown in a book or on sheets, as the case might be—they were checked by me for accuracy.

Q. What sheets have you reference to?

A. Let me finish, please.

Q. All right.

A. These were assembled in a book and added to produce a total, and the total was checked by me for accuracy—many of the figures I made myself.

Q. What books did you have reference to when you used that wording in your answer?

A. In connection with this work our men filled a very great number of note books and of loose sheets—and I refer to the books and loose sheets as well as to the typewritten copies of the exhibit showing the inventory here in evidence—I don't remember the exhibit number.

Mr. Ransom: 66 for identification.

1236 Q. You didn't mean the books of account of this company, did you, when you used that word "books?"

A. I did go over the books of account of the company.

Q. That was not my question?

A. I did go over the books of account of the company.

Q. One moment——

Mr. Neumann: I move to strike that answer out.

Q. It is a very plain question: By the word "books" in your answer you did not mean the books of the company?

A. No.
Q. That is your answer?
A. One moment. I did mean the main book and the service book of the company, I did not mean the books of account of the company.
Q. The only book you had reference to in connection with your answer was the main and service book of this company?
A. Yes.

Mr. Neumann: Will the Complainant's counsel produce Exhibit No. 70?
Mr. Ransom: Produced (handing book to counsel).

Q. Is it fair to say of your testimony, Mr. Miller, that you checked each and every individual computation of cost?
A. Read that question again, please?
Q. (Read).
A. I checked each and every individual computation of cost shown in Exhibit No. 66 for Identification.
1237 Q. That is, personally?
A. Personally.
Q. How about the bills sustaining the figures, did you check those?
A. I checked those.
Q. Also personally?
A. Personally.
Q. Now, you stated that you obtained the mains and services from the company's books?
A. The number of services and the length of main—and the length of services, yes.
Q. And by that book you meant Complainant's Exhibit No. 70 which I now show you?
A. That shows the mains only.
Q. Where did you get the services?
A. From the company's service record.
Q. From the company's service record?
A. Yes.
Q. What is that, in book form?
A. I think so; my recollection is that it is in book form.
Q. Isn't it in map form?
A. Not the one that I checked.
Q. The company has a map, has it not, of its mains?
A. Yes.
Q. Referring again now to Complainant's Exhibit 70, you took the figures from that book as to the mains, did you not?
A. Yes.
Q. If there is any error in that book, that error would appear in your appraisal?
A. No, because the error is negative: the company has more mains than they showed.
Q. How do you know that?

1238 A. By an actual check of all the mains owned by the company.

Q. Do you recall this question and this answer, stenographer's minutes, print, page 176, folio 527 and 528:

"Q. With respect to the distribution system, street mains, etc., will you describe how you ascertained the quantities and the reproduction cost as of January 1, 1920?"

Do you recall that question?

A. Yes.

Q. And do you recall this last answer given thereto:

"I took the company's records as far back as they went, and took from them the quantities of mains that were laid from year to year, and that left a balance which presumably might have been there before the record began.

"I then took a map and entered on it all the mains as shown by the record; I then entered on that map, in different-colored ink, the mains that should have been there according to another old map; then I went to the company's file and took out the records of repairs and services and such work and checked this map that I had made on the old map, checked that up to find out whether the reports of the man who did the work on the service and work on repairs and work on extensions agreed with this map.

"Then there were still a few gaps and I had the ground dug at those places to identify the pipe that could not be identified either from records as having been laid or from the records as hav-
1239 ing been worked on since they were laid by actual inspection of the pipe in the ground."

Do you recall that answer?

A. Yes.

Q. Then you did find that there were some that you could not locate?

A. No, I located more than this record shows.

Q. Let me call your attention to this part of your answer:

"Then there were still a few gaps and I had the ground dug at those places to identify the pipe that could not be identified either from the records as having been laid or from the records as having been worked on since they were laid?"

A. Yes, that is clear.

Q. That is true, isn't it?

A. That is quite true, and I found the main when I dug.

Q. One minute—Then you had to dig, didn't you?

A. Yes.

Q. Where did you dig, in the streets?

A. Yes.

Q. And where?

A. I have mislaid my memorandum. I remember one place on Percy Street.

Q. Percy and where?
A. I don't remember the cross-street; I remember one on either Jamaica or Jaggar Avenue, not very far from the Main Street station. I have got the memorandum somewhere—I brought it with me.
Q. Are those public highways?
A. Yes.
1240 Q. They are not on the complainant's property?
A. No.
Q. Did you actually dig up the street?
A. Yes.
Q. Did you have a permit to do it?
A. Yes.
Q. From whom?
A. From the Borough President, I think it is.
Q. Of Queens?
A. Yes.
Q. And that record over there will indicate when it was?
A. Yes.

The Master: And where it was?
The Witness: Yes.

Q. Do you recall about when it was?
A. Several months ago; I don't remember the date.
Q. Would you say it was before the 1st of January, 1920?
A. Yes.
Q. Was it before the 1st of October, 1919?
A. I am not sure whether it was or was not; somewhere in the autumn of 1919 I think.
Q. Was it between September and December, 1919?
A. I am not absolutely sure.
Q. And you can't give us anything more definite?
A. Not at the moment. I will bring that memorandum in the morning.

The Master: How do you know you will be on the stand in the morning.
The Witness: I just assumed that, sir.
The Master: Go on, Mr. Neumann.

1241 Q. Now then, Mr. Miller, you presumed that there was a balance, according to your answer as read to you, from page 528, did you not?
A. The records showed a balance, showed that there was an opening there, an opening entry in the Mains Book, and the Insurance Map of the company showed mains that were not laid since 1901.
Q. You recall that that answer had these words "And that left a balance which presumably might have been there before the record began"?
A. Well, that is what the record was opened with.
Q. That answer was correct when you gave it, wasn't it?
A. That answer is correct. The record shows—this Main Book is

opened with a balance; this Main Book, Exhibit 70, is opened with a certain opening entry headed "Laid Prior to April 1, 1901," and I was trying to identify those mains.

Q. Then you started off with a presumptive balance, is that correct?

A. A balance as shown by the record, yes.

Q. Well, a presumptive balance it was?

A. Well, presuming that the record was correct, and I went out and proved it. I didn't want to take anything for granted and I didn't take anything for granted.

Q. Now, then, tell us just what you did, everything, every step and every detail, to satisfy yourself that there were no mains that were not used in this gas business of the company?

A. As far as the mains not being used in the gas business of the company, I took the map which I had finally prepared, went to the company's ledgers and identified those mains as being in use

1242 by their being services on them.

Q. How could you identify the various mains by the services?

A. Because you can't distribute gas without mains, and this company doesn't have a great multiplicity of mains on a single street.

Q. Do you mean to be understood as testifying that by looking over the records of the company's meters in service, that you could determine what mains the company had in use?

A. Not for a moment. You can't tell whether the mains were in use. I had identified the mains and, to determine whether the mains were in use, I went to the ledgers to see whether there were consumers at those places.

I also examined the maps to see whether mains—whether one section of mains could secure gas without going through other sections of mains.

Q. Did you find in your examination any mains that were not in service?

A. I found records of abandoned mains, yes.

Q. Where?

A. I couldn't say offhand, they are given here in the record book.

Q. Did you find any——

A. Wait a minute, do you want me to look them up and read them to you? They are here in the book.

Q. What is your answer?

A. Do you want me to examine the record book and read the mains shown as having been abandoned?

Q. Can you do that very readily without wasting too much time?

1243 A. Well, I don't know how much time it will take.

Q. Well, tell me this—you can check it up, Mr. Miller—are they shown on that Exhibit 70 that you have before you?

A. Yes.

Q. Every main that is not in use?

A. As far as I know every main that is not in use, every main that I have deducted from—there are no mains shown here that I

have used that are not in use. This won't necessarily show all the mains that are not in use.

Q. That is what I was trying to get at.

A. I do not know whether this will show all the mains that are not in use or not; I have not included any mains that are not in use.

Q. How do you know that?

A. Because I examined it to see whether all the mains I included were in use, and I can tell that from the system as I have laid it out on my map. You can see it is a complete system, checked by the consumers' ledgers.

Q. How about the discontinued mains, not connected, laying there idle?

A. I have taken no account of it.

Q. How would you know that?

A. Because all of the mains that I have accounted for are alive, therefore I would not have accounted for any discontinued ones.

Q. Are there no small mains there?

A. Quite a few small mains, as you will see in the list of mains given here.

Q. Just tell us——

A. Inch and a half, inch, two-inch mains.

Q. Just tell us how you know that those mains are alive and active and not idle?

1244 Mr. Ransom: Objected to as answered four or five times.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: Taking this map which shows the main system, I have identified, by services, on the mains using gas, all of the mains that are not transportation mains; the transportation mains may be identified by the delivery of gas through them, because they could not transmit gas unless they were continuous. I know that those transmission mains are delivering gas at the far end and I know that they could not deliver at the far end unless they were continuous.

Q. Who drew this map?

A. It was done under my direction by my own staff.

Q. And from the records of the company?

A. It was done from a record of the study I made of the whole situation, partly from the records of the company and partly from actual examination in the field.

Q. So that it is based upon three elements, the books of the company, an examination in the field——

A. And the records of the company.

Q. Yes, the records of the company, examination in the field, and what was the third one?

A. By the books and records of the company and examination in the field.

Q. That is two?

A. Yes.

Q. I thought you mentioned three?
A. I don't recollect anything else.

1245 Mr. Neumann: May we have the stenographer read back?

Q. Are there any other elements and facts that you took into consideration?
A. I took into consideration the finished map, as I understood the possibility of its being—or the necessity of its being a continuous system; that refers particularly to the transportation system.
Q. Did you take into consideration any other data, then, other than what you have just testified to, those two things?
A. The records of the company are very many things. The records of the company consist primarily in an order to the contractor to run the pipe; then there is a report from the contractor that he has run it; then there is a report from the inspector of the company that the work has been completed—in some cases that is in the form of a regular report, and in another case it comes in the form of a certification of the bill; then there is a bill from the contractor; then it is entered on this record book.
In addition, every time a street is dug up for purposes of repair of mains or repair of services, or for the purpose of putting in a new service, a card is brought in showing the size and location of the main, and all those cards I examined; in that way I got a complete picture of the whole system.
Q. What do you mean by the record book in that answer?
A. I said the main is entered into the main record book—that is this book, Exhibit 70.
Q. Well, now, the main record book would indicate what mains were laid, would it not?
1246 A. Indicate what mains are laid, and in many cases what mains are taken out or discontinued.
Q. What other record is there as to mains abandoned, discontinued or idle?
A. As far as I know there is no record other than this book of mains abandoned, discontinued or idle, and there is no record of some of the mains—no, I am wrong.
Q. Then the sum and substance of your entire testimony is that there is no record of Complainant's Exhibit 70 which would indicate mains abandoned, idle or discontinued?
A. Yes, I am wrong; there is a report. There is an envelope for each new job and for each change, and every job that is discontinued is included in those envelopes, and marked on a record card. There is a record card which I did not mention, too. The company has a card showing each job that has been done since 1901 or 1902. The main is just drawn on the card, the block is drawn out, and if it is discontinued it is indicated on that card and indicated in an envelope, which is indexed back. Yes, the envelope is indexed back to this book.
Q. Referring to what book?
A. In the first column of this record book——

The Master: Exhibit 70.

A. (Continuing:) Exhibit 70, will be seen numbers. Those numbers refer to a very complete file, indicating when the work was done, how it was done, and what went into the job.

Q. So that we get back to the same proposition, that the main record book does contain a record of the mains presumably discontinued and idle?

A. It presumably does, but it is not absolutely certain that every envelope would be indexed in there. But I think it is.

1247 Q. Would you be willing to say that that record was correct so far as idle and discontinued mains are concerned, not in use?

A. No, mains might have been discontinued before 1901 and this record would not give it. This record only purports to——

Q. You have attempted to appraise the mains and services, have you not?

A. I have appraised the mains and services.

Q. And it is based on this book, to an extent?

A. Based on this book—I took the balance from that book.

Q. Yes.

A. Took the length from that book, which is less than the total length and total value of the mains which the company owns. There are certain mains which the company has that are not in this book.

Q. You have no knowledge of your own as to the idle and discontinued mains, then, have you?

A. I have taken no account of any of the idle and discontinued mains.

Q. What do you mean by that, Mr. Miller?

A. I mean in my appraisal I included no idle or discontinued mains.

Q. How do you know you did not?

A. Because I had checked up all the mains in my appraisal.

Q. Did you not just state that that book, which is supposed to be a record, may be incorrect with reference to the balance?

A. I have stated that it does not include all the mains that the company has. The company has more mains than this book shows.

Q. So the book is not a complete record of the company's mains?

1248 A. It is not complete.

Q. And it is based presumably on a balance?

A. It has an opening entry which I have checked and which is correct. All of the mains shown in this opening entry are now in Flushing and are now in service.

Q. Did you find any mains that were shown and not in place?

A. No.

Q. Mr. Miller, tell us just how you know there are more mains that the book shows?

A. For one thing this section known as Queens borough Hill has a little complete distribution system of its own. None of that is shown in this—none of that except the mains of 4 inches and over are shown in this book.

Q. So that in that respect the book is incorrect and incomplete?

Mr. Ransom: Objected to on the ground that no such thing appears. The book is a record of mains laid by the company, not of mains purchased by the company.

The Master: Overruled.

Mr. Ransom: It does not follow at all that it is incorrect because it does not show mains purchased.

The Master: Colonel Miller can answer it then.

Mr. Ransom: Exception.

A. The book is incomplete in that it does not show the entire distribution system, the entire distribution mains of the company. It is correct as far as it goes.

Q. You recognize a distinction, Mr. Miller, between removing mains and retiring them?

A. Oh, yes.

1249 Q. What is the distinction?

A. Well, to my mind you retire a main when you abandon it, you may or may not remove it.

Q. The removal of it is the physical taking of it out of the ground?

A. That is what I presume you mean.

Q. I am asking you for your definition of those two words.

A. That is what I should call it. If the main were removed I should understand that it is taken out of the ground.

The Master: An abandoned main may or may not be taken out of the ground?

The Witness: Yes, sir, that is true.

Q. What steps did you take to advise yourself with reference to this company, in the case of a retirement of a main, as to whether or not it was taken off the books of the company?

A. I did not make any effort to find out whether in case it was retired, it was taken off the books. I found as a matter of fact that the company had more mains than its record shows.

Q. So far as your personal knowledge is concerned there may have been a great many mains retired which have not been taken off the company's books?

A. Well, as a matter of fact a great many mains have never been retired, in the case of this company; very little main has ever been retired.

Q. You have no personal knowledge of how they handled it from the bookkeeping end; you did not advise yourself as to that?

A. I did as far as any great amount of main is concerned, because no great amount of main has been retired in the case of this company.

1250 Q. What period are you speaking of?

A. I am speaking of the history of the Flushing Company and the history of Flushing.

Q. For what year?

A. In that whole system no great ——

Q. From what year?

A. From 1850, or whenever they started, to date. It is a type of distribution system that could not have permitted of retirement.

Q. Do you state, Mr. Miller, that all the lengths of mains included in your inventory represent gas mains which are presently used in delivering gas to consumers, by this complainant company?

A. Yes.

Q. Absolutely and without qualification?

A. Absolutely and without qualification, and more are used than this.

Q. And that is based on the testimony that you have given here today?

A. More are used than this. This is not the full value of the mains of this company.

Q. You inventory this property at a price as of today, do you not, Mr. Miller?

The Master: The question is not allowed.

Q. Do you understand what is meant by the phrase "piecemeal construction?"

A. I think so.

Q. What is your interpretation of that phrase?

A. The whole enterprise is not built at once, but it is built in parts, over long periods.

Q. Do you know of any gas companies that have been built that way?

A. Yes, I think this particular company was.

Q. Any others?

A. I think that most of them are built that way.

1251 Q. In fact would you not say that all of them are built that way?

A. No.

Q. With very few exceptions?

A. There are a few exceptions, yes.

Q. But generally speaking most of them were built that way, piecemean construction?

The Master: Colonel Miller said that four questions back—most of them are built that way. What is the use wasting time by going back?

Mr. Neumann: I would like to say this: I am having some data looked up, from which I want to finish the cross-examination of Mr. Miller. In the meantime Mr. Chambers wants to go ahead with it.

The Master: Very well.

Cross-examination.

By Mr. Chambers:

Q. You are the same Mr. Miller that testified in the Consolidated Gas Company case, are you?

A. Yes, sir.

Q. And in the Kings County Lighting Company case?

A. Yes.

Q. And you are going to give testimony in all these gas cases that are pending?

Mr. Ransom: Objected to as immaterial.

Q. That are in charge of the Consolidated Gas Company; are you not?

Mr. Ransom: Objected to as a misstatement of fact.

The Master: I am going to let the witness correct it, then.

A. I do not know.

1252 Q. You have made affidavits in all these motions now pending in the Standard and all these other companies?

A. Yes. I should hope, though, you would see the light and not try them.

Q. You claim, I understand from your evidence, to be an expert in prices of most all kinds of material?

A. I am familiar with the costs of construction of gas systems.

Q. I see you have appraised wax figures here?

A. I do not know of that.

Q. So if there is anything in here of wax figures, do you claim to be an expert on wax figures?

A. Oh, yes; there are some wax figures in this case.

Q. Then you do acknowledge you are an expert on that subject?

A. No, I do not. I know what those wax figures were worth as of the 1st of January; but I am not an expert on wax figures, no.

Q. How do you know what they were worth?

A. I inquired.

Q. You got that from somebody else?

A. I have got all the information I ever had in my life from somebody else, except a very small amount of original investigation that I have done. I have done a small amount of original investigation myself, but most of my information has come from some one else.

Q. Whom did you get it from?

A. I do not recollect at the moment.

Q. You appraised typewriters?

A. Yes.

Q. Where did you get that information from?

1253 A. I have bought a very large number of typewriters in the last five years—a very large number.

Q. Take these two typewriters, Underwoods, how old were those?

A. I did not know.

Q. You did not care either, did you?

A. No, not as long as they were——

Q. You have appraised them at $112.50 apiece; where did you get that from?

A. That is what we were paying at that date.

Q. That is, you figured out that your company was paying $112.50 for that model typewriter?

A. Yes.

Q. For that model?

A. That is the model they had.

Q. Do you know what model it was?
A. No.
Q. So you do not know whether those are the same ones that you were paying $112.50 for?
A. I gave in my inventory the price of that model on that day.
Q. You do not know what model it was, though?
A. I can tell you, yes.
Q. You just told me you did not know?
A. I cannot remember, no. I do not remember all the details of this appraisal, and we cannot get very far if you expect me to.
Q. All right, tell us what model those two typewriters were?
A. I do not recollect. I have not the memorandum with me; it is in my office.
Q. A minute ago you did not know how old they were.
A. I do not.
1254 Q. So you think they are just as good, regardless of age?
A. I do not know how old they are.
Q. You put the new price on them, the price of a new typewriter?
A. That was the reproduction cost of those typewriters.
Q. New?
A. That particular model; new as of that date, yes.
Q. If they had been used three or four years would you put the same price on them?
A. I would.
Q. Just the same?
A. Yes.
Q. I see you appraised furniture?
A. Yes.
Q. All kinds of furniture?
A. Yes.
Q. Bookcases, and all that sort of thing.
A. Yes, sir.
Q. Do you claim to be an expert on the value of furniture?
A. No, but I know what furniture costs. I have bought a great deal of it and I know what that furniture was.
Q. And you based that on the knowledge you had buying other furniture?
A. On the knowledge I had, and of my staff. That is the basis on which my staff has bought tens of thousands of dollars' worth of furniture, and then I checked these figures with the actual purchases.
Q. Take the chairs and desks, how old were they?
A. I do not know; varying ages.
1255 Q. Do you know how old any of this furniture was?
A. Varying ages. The cost data furnished you shows when some of it was bought.
Q. Well, some of it is quite old.
A. I presume so.
Q. Then you proceeded to put a valuation on safes?
A. Yes, I did.
Q. There were five. What kind of safes are they?
A. They were fireproof safes.
Q. Whose make?

A. I do not recollect.
Q. Did you take the pains to inquire?
A. Yes.
Q. And have you any data showing whose they are?
A. Not with me.
Q. You claim to have a knowledge of the value of safes, do you?
A. I bought quite a number of fireproof safes.
Q. Of this same kind?
A. Yes, practically the same type. The same size. There is about one market price for an ordinary fireproof safe of a given specification. They are not burglar proof and not elaborate.
Q. It would not make any difference to you how old they were?
A. No.
Q. You would put the same value on them, regardless of that?
A. If they were in good condition, yes. If they were in a condition as good as new.
Q. I see you have appraised automobiles, too?
A. Yes.
1256 Q. Do you claim to be an expert on the price of automobiles?
A. I have bought a good many automobiles. The appraisal of those automobiles is what they cost. They were worth more January 1st than what those figures give.
Q. Did you know how old these machines were?
A. They were varying ages. That is all shown in the detail furnished you.
Q. Take this Maxwell roadster, that was a 1914 model, you said?
A. Yes.
Q. Apparently it had been used since 1914?
A. Yes, possibly.
Q. Must have been?
A. Not necessarily. A good many 1914 models were not used in 1914.
Q. It would not have made any difference to you how old that was, that machine?
A. Not as long as it was in good condition. All of that stuff is worth more today than it is there, because I put in the purchase price.
Q. You mean it is worth more than your figure here in 1920?
A. Yes.
Q. No matter how old it was?
A. No.
Q. I mean that automobile, that Maxwell roadster; you would not care if it was 50 years old, it would be worth more today than it was——
A. I cannot imagine an automobile 50 years old. Automobiles are not built like that.
Q. It would wear out, would it not, some time or other?
A. Automobiles will wear out, certainly.
1257 Q. Was this one worn out?
A. It was not a new machine, but it had been kept up in good condition.

Q. And yet you put the new price on it?
A. I put the price on it as of the time it was bought, but that is not the price today. It is worth very much more. That whole stock of automobiles is worth a good deal more than I inventoried it for, because the price of automobiles has gone up.
Q. That is not reproduction cost, then, Mr. Miller?
A. What is that?
Q. That is not reproduction cost, then?
A. It is below reproduction cost, therefore not reproduction cost.
Q. So your heading is not quite up to snuff on that?
Q. Well, I do not know just what you mean by "up to snuff."
Q. Well, its cost to reproduce.
A. I think I could reproduce them for that.
Q. The Maxwell touring car, do you know how old that was?
A. I think the date is given in—I did know, because I have got all the dates in this item, which shows when the stuff was purchased.
Q. But still you did not care; you did not care how old it was?
A. It is all given here.

Mr. Ransom: Complainant's Exhibit 96 for Identification.
The Witness: The dates are all given in Complainant's Exhibit 96 for Identification.
Mr. Chambers: All right, let us see how old that Maxwell touring car is.
1258 Mr. Ransom: Pages 25 and 26.
The Witness: Yes, they all show. All the dates show on that.
Mr. Chambers: Well, it is as old as the date shows on that, whatever that is?
Mr. Ransom: 1919.
Mr. Chambers: The Maxwell touring car?
Mr. Ransom: Yes, 1919.
Mr. Chambers: It shows on there?
The Witness: Yes.
Mr. Ransom: On page 26.

Q. The convertible top for car, did you look at that?
A. Yes.
Q. What kind of a car does that go on?
A. That goes on the Maxwell.
Q. Do you know how old that was?
A. Bought in 1919.
Q. That goes on that Maxwell touring car?
A. Yes.
Q. Where did you get that price for that top?
A. That is what it cost the company.
Q. You put in the cost there?
A. Yes, I just testified that all these items were cost. I just testified to that.
Q. You put in the cost, then, sometimes?
A. I put in the cost on all of these items.

Q. And you do not know whether it was the cost or not, do you?
A. Yes, I know it was the cost.
Q. How do you know?
A. I know it from the amount the company paid for it, as indicated by the receipted bills.
Q. That is the only way? Did you look up the voucher for that?
A. The receipted bill is the voucher.
1259 Q. No, did you go and take the pains——
A. Yes, absolutely, I looked up the bills for everything in this statement.

Mr. Ransom: Exhibit 96.
The Witness: What?
Mr. Ransom: Exhibit 96 for Identification
The Witness: Yes.

Q. This Ford runabout, Model 1912, how old was that?
A. That was bought in 1913.
Q. So that Ford is seven years old, and you put a price of $546.50 on it?
A. Yes.
Q. That is reproduction?
A. Yes.
Q. That is what they paid, is it, in 1912?
A. Yes, in 1913.

Mr. Ransom: I call attention to the fact that this examination is proceeding along lines that are based entirely upon matters that are not in evidence.
Mr. Chambers: I have it right before me. Isn't this in evidence, printed in the record?
The Master: What is that?
Mr. Chambers: That (indicating paper).
The Master: That is the bill of particulars, is it not?
Mr. Chambers: Well, I will use the record here. It is all printed and you allowed it all in the record, this thing.
Mr. Ransom: You are examining as to date of purchase and cost of acquisition.
The Master: Isn't that a bill of particulars?
Mr. Ransom: Yes.
1260 The Master: Isn't that an amplification of your pleading?
Mr. Ransom: I hope so.
The Master: Then he has a right to refer to it.
Mr. Chambers: Isn't that ridiculous? I am asking him if he knew how old these things were, in his testimony.
The Master: Proceed.
Mr. Ransom: He has not testified to age of property or cost of acquisition. You are asking him as to cost of acquisition and age.
Mr. Chambers: I have not asked him for any such thing, Judge Ransom, and you are misconstruing, as usual. I am asking him if he knew the age of that Ford runabout, and he said 1913.

Q. That Ford has been used apparently seven years?
A. Yes.
Q. So you put the same price on it as when they bought it?

Mr. Ransom: How is it seven years? That is some new mathematics.

Q. You put a higher price on it, did you not?
A. I did not say so.
Q. Your price indicates it.
A. Well, if the price had gone up, or had doubled, I would double the price or have added very much to it.
Q. You would add to it and make it about a thousand dollars?
A. No, it would not increase that much, but to a great extent.
Q. You said you doubled it?
A. I modified my statement.
1261 Q. How much would you add to it?
A. I do not know.
Q. Do you know how much you can buy a Ford runabout for?
A. I do not remember.
Q. A model 1912.
A. I do not remember. I don't know anything about the model 1912.
Q. The Ford special body the same way?
A. That is what it costs.
Q. $1,397?
A. Three special body delivery wagons.
Q. I say that is what they cost?
A. Yes, three special body delivery wagons cost $1,397.02.
Q. And they bought them in 1916?
A. They bought them in 1913, 1914 and 1917, as indicated by Exhibit 96 for Indentification.
Q. How did you get the Ford special body delivery wagons, Model 1916, three? That is not correct, then, to that extent?
A. One of those was a 1916 model, another one was 1913, and one was 1914.
Q. That is not quite correct, then?
A. I have not that before me. Just what does it say?
Q. It says for special body delivery wagons, Model 1916, three.

Mr. Ransom: What page is that?
Mr. Chambers: Page 37.

A. There is only one 1916.
Q. The Ford engine and these other Ford parts, I will ask you the one question to cover them all, to save time. Rear end, steering post, front axle, radiator and body—those were the costs to the company?
1262 A. Yes.

Mr. Ransom: That is the way they keep their property in good condition, by replacing parts that are worn out.
Mr. Chambers: Let the witness testify.

Q. Did you examine each one of those parts, the Ford parts?
A. Yes, sir.
Q. That is, you looked at the steering post and the radiator, did you?
A. I looked them all over and saw them running.
Q. Why did you take the actual cost to this company of those automobiles and the Ford parts, instead of the reproduction cost?
A. Because there was such a tremendous amount of detail it was very much easier and quicker to do it that way.
Q. You proceeded on the theory that the quickest way was the best way, is that it?
A. In that case, yes.
Q. Now, the land in the very first beginning here, you took that from Halleran?
A. Yes.
Q. You took his figure for that?
A. Yes.
Q. You do not pretend to be an expert on land purely?

The Master: Don't you see what a waste of time it is to ask these questions.

Q. All of these items, street mains, services, meters, et cetera, are all undepreciated, are they?
A. Yes.
Q. You have allowed nothing for wear and tear?
A. Not in that exhibit.
1263 Q. Have you allowed any other form of depreciation, like improvement in the art, and obsolescence?
A. Nothing in that exhibit. There is an exhibit in the case showing what it will cost to put the plant in condition as good as new.
Q. Let us stick to this for a minute. Do I correctly represent you when I say that in this list here are $2,907,062 you have nothing whatever for any kind of depreciation.
A. That is correct.
Q. In your list of repairs have you anything that will show how much it will cost to put those cars in first-class condition, or don't you allow anything for those?
A. I allow nothing for those.
Q. You did not fix up any repairs on them at all, they don't need repairs, I suppose?
A. Oh, some of them might have some work done on them, but the present price of cars is so much greater than the cost here, they are worth more than I have included them at.
Q. Have you your copy of this paper that I have in my hand?
A. I don't know what paper you have in your hand.

Mr. Ransom: Exhibit 66 for Indentification. It begins at page 699 and following of the record.

A. Yes.
Q. You have invested yourself with that paper now, have you?

A. What did you say?

Q. I say you have invested yourself with that paper.

1264 A. I don't know just what you mean by "invested".

Q. Well, have you got it in your hand?

A. I have it, if that is plain English.

Q. Take not your index, but the summary item, II—you see the item there of $505,960, don't you?

A. Yes.

Q. Is that the sum which you find on page blank there where it says "General Summary of Cost," page 712, in the printed record, where that total is $510,470.18? Are you having any trouble in finding it, Mr. Miller?

A. That total does not seem to be ——

Q. That don't gibe, does it?

A. Just what that discrepancy is I cannot say.

Q. In other words, it is a little matter of $5,000, one is $5,000 less than the other?

A. Yes.

Q. How can you explain that? You can't just now, can you?

A. Not at the moment.

The Master: What is that item for?

Mr. Chambers: Buildings and apparatus.

The Witness: The general summary of costs seems to have been carried forward at a lower figure than it is given at a later period.

Q. You would not want to acknowledge that that was a mistake now, would you?

A. No, I would not.

Q. Not yet?

A. Not at this stage of the game. My impression though is that it is.

Q. Suppose I show you a mistake over here that I think you will acknowledge. Let us look over here. I will show you one that I think you will acknowledge right off quick. Perhaps Mr.

1265 Ransom won't, but I guess you will. He is so constituted that he would not acknowledge anything.

The Master: I think you all are. I can't get you to agree on anything. I think if I were representing the State here I would have been able to agree with the complainant on some items and eliminate them.

Q. Look at page 84, Gas Appliances, and you find the 4th item, Peerless Junior Cookers. You have it $38,120.40. Now, I will just give you the correct figure. It should be, should it not, "$38-102.40"?

The Master: Oh, don't waste time on things like that.

Mr. Chambers: Of course, when we find a mistake there is nothing to it.

The Master: You don't think there is anything to it, do you?

Mr. Chambers: Yes, I do. There is an error in this exhibit.

The Master: Go ahead; next question.

Mr. Chambers: Of course, that does not mean anything if Mr. Miller makes one, and it is all right.

Q. Am I right that that is a mistake?

The Master: Oh, don't answer the question. It is a waste of time.

Mr. Chambers: Well, does the Master acknowledge that it is a mistake?

The Master: I haven't figured it, but I will assume that you are right about it.

Mr. Chambers: It would be pleasanter if Mr. Miller would acknowledge it.

The Witness: The transposition of figures makes an error of $18.00, which will help to offset that $5,000.

1266 The Master: Mr. Chambers, if you don't get to something useful I will take the witness off the stand.

Mr. Chambers: I will just take an exception when you do that.

The Master: Well, it won't do you any good.

Mr. Chambers: Not here.

The Master: Nor anywhere else.

Mr. Chambers: Well, possibly; we will see.

Q. It is your idea that machinery does not wear out, is it?

A. No.

Q. It does wear out?

A. Yes.

Q. Automobiles wear out?

A. Surely.

Q. And boilers wear out?

A. Surely.

Q. Everything wears out?

A. If not properly maintained it will wear out. Anything that is properly maintained does not wear out. If it is not properly mained it goes.

Q. Do you want to say that if properly maintained it does not wear out?

A. Yes.

Q. Never does?

A. Never does. There may not be any original part after a series of years, but it will be the same form, the same machine. You can replace part by part.

Q. Have you ever heard of any court or any writer adopting your theory, Mr. Miller?

Mr. Ransom: Objected to as absurd.

The Master: Objection sustained.

1267 Mr. Ransom: This court has and the Supreme Court has.

Q. Along these lines?

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you familiar with the different rules laid down by the courts in fixing valuations for rate making purposes?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception. Would you mind stating the grounds of your ruling?

The Master: No, I won't state it.

Mr. Chambers: Exception.

The Master: It must be apparent to any reviewing Court. You are cross-examining this witness on a question of fact. We can leave the law out of it, so far as this witness is concerned. He has not qualified as a lawyer.

Mr. Chambers: I thought I was cross-examining on a theory.

The Master: I am not talking about theories. I am talking about facts. He states this as a fact.

Mr. Chambers: It is a fact that they don't wear out?

The Master: Yes.

Mr. Cummings: He is an expert witness testifying to a theory.

The Master: No, he is testifying to a fact.

Mr. Cummings: We should be allowed to prove that his theory has never been approved by any court.

The Master: Go ahead.

1268 Q. Has this company, the complainant company, ever removed any mains or any other part of their plant because it was worn out?

A. Not as far as I know.

Q. Did they remove some purifiers?

A. Yes.

Q. Why?

A. Because they were too small and in the way of the generator house which they were extending. It was cheaper to remove those purifiers and extend the generator house over that site, and put in new purifiers, than it was to build a new generator house. It was purely a question of economy. The purifiers were to- small.

Q. They did not wear out?

A. No.

Q. They were not worn out?

A. No, they were not. Purifiers do not wear out.

Q. Did they remove any engines because they were worn out?

A. No.

Q. Not any?

A. No.

Q. Did they not remove any meters because they wore out?

A. No. Meters have corroded, I have no doubt. They have in most situations that I have been in, where they are not cared for.

Q. Then the company did not care for those properly?

A. No.

Q. Bad management, was it?

A. No.

Q. What kind of management was it?

A. Very good management.

1269 Q. Not to care for them?

A. Very good management in this company.

Q. Not to care for them?

A. No.

Q. Well, I don't know what you mean by "no."

A. No, I don't think you do. The facts are that there are certain exposed places in which gas meters are set. The company cannot go out and build enclosures for those meters. They set meters there, and in some cases they rust. Now, they do not care for them in one sense. That would require probably bringing them in every three months and repainting them. They leave them out there several years, and when they come in they are rusted.

Q. Are those the only meters they have scrapped that you know of?

A. As far as I know. They have scrapped very few meters, and I never made any elaborate investigation to get at the cause of the few meters that they have scrapped.

Q. You say you dug up some mains?

A. I did.

Q. And those I suppose you say, as you said in the Consolidated case, would last forever?

A. They will. There is no limit as far as I know on the life of a cast iron main.

Q. You don't think they would ever want to take them out because they were inadequate as to size?

A. I think in many cases—in some cases, not many, but in some cases they have abandoned pipe because it was inadequate as to size, yes, and I have no doubt they will do it again. Flushing is

1270 growing rather rapidly, and in the history of all gas companies they abandon pipe because it becomes inadequate as to size.

Q. Are you acquainted with the term known as improvement in the art?

A. I have been in the business thirty years, and I have made some inventions in connection with it, so I think I should.

Q. Would they not replace or displace some of their apparatus on that account?

A. The whole plant has been rebuilt on that account, and so I take it it may be done again. This was originally a coal gas plant.

Q. And it is your idea, your testimony, that all of this plant and apparatus, mains and services and meters have their full value from the time they are put in there—have a value equal to cost, we will say, up to the time they are removed?

A. They have a value greatly in excess of cost.

Q. Up to the time they are removed?

A. Greatly in excess of the cost at the present time.

Q. Right up to the time they are removed?

A. At the present time this plant has a value greatly in excess of the cost.

Q. That is to say, here is a main that the company finds is inade-

quate because it is not large enough, and they replace it by a larger sized main. You say that that main that is replaced has a full value up to the moment when it is displaced by the larger one?

A. If it is in good condition up to that time, yes.

Q. Those meters that are rusted, they had a value equal to their cost, did they?

1271 A. As long as they were performing the service I have taken them at their value. Every plant must have certain replacements, and parts are continually replaced. The system as a whole has its full value up to the time that it is shut down and abandoned.

Q. Well, in the condition which you spoke of, these meters in that condition, they were corroded or would corrode, did they have a value equal to their cost, reproduction cost, right up to the time they were taken out?

A. The individual meter had not at the time it was abandoned. Up to the time it was abandoned and charged to operating expense it should be carried as capital, and I have considered it as capital up to that time. When it is abandoned it is charged off and disappears from capital.

Q. And until abandoned it has a value equal to cost?

A. The system as a whole, yes. That particular meter may not have as much value, but it is carried on the books, and until it is charged off I take it at its full value.

Q. You saw the meters, did they have full value?

A. The system, yes.

Q. I say the meters?

A. The entire lot of meters, yes. The entire set of meters at the present time has a value greatly in excess of the cost.

Q. Disregarding war prices, would these meters have a value under those circumstances that I have mentioned equal to their cost right up to the time they were scrapped or retired?

Mr. Ransom: I object to that. The meters were not used in war, and the war is now ancient history. I object to it as
1272 incompetent and improper in form.

Q. And having no relation to the present inquiry in the year 1920?

The Master: Objection overruled.

Mr. Ransom: Exception.

A. What do you mean by war prices?

The Master: Present high prices.

Q. Disregarding the present high prices?

A. I cannot think of meters disregarding present prices today.

Q. Then think of them before the war, like you have given here. You have given pre-war prices, you gave it to the Master this afternoon.

A. Taking the meters bought previous to the war, and taking prices previous to the war, and assuming that prices have not in-

creased, the value of the meter system as a whole would not decrease.

Q. I want an answer to this question: Take a meter purchased in 1920, and retired in 1913 because it is corroded, as you said, would that meter have a value equal to its cost right up to the moment it was taken out and retired by the company?

A. The individual parts would not, no.

Q. Then the other meters would have to have more than the cost to make the thing balance?

A. Oh, not necessarily. As the few meters are charged off they are taken out of capital account and new meters are put in. As a matter of fact, a new meter set and operating is worth more than it costs. Otherwise the company would not buy it and set it.

1273 Q. Will you take the item of "Omissions and Contingencies," numbered XII. What does that cover?

Mr. Ransom: I object to that. It is fully explained on page 703 of the record. The notes indicate at great length just what is covered.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, take boiler house. You have added there an item, "Omissions and Contingencies, five per cent," haven't you?

A. Yes.

Q. To each item you added Omissions and Contingencies?

A. Oh, yes; that is that $5,000 which I could not match up I deducted the Omissions and Contingencies from the summary and put it over here.

Q. The Omissions and Contingencies made about $5,000, did they?

A. Yes.

Q. And on that whole business you made it $25,000?

A. The Omissions and Contingencies on buildings made about $5,000, which I afterwards deducted from buildings and added it in the summary sheet.

Q. And that is what you mean by these Omissions and Contingencies as to boiler house?

A. I have deducted all of these Omissions and Contingencies from the detail, or from the summary of the building itself, and carried it over to the final summary.

Q. In other words, you took out $5,000 and put in $25,298?

1274 A. I took out $5,000 for Omissions and Contingencies on buildings, and put in $25,000 for the Omissions and Contingencies on buildings and apparatus.

Q. In other words, on apparatus there is $20,000 Omissions and Contingencies—is that right?

A. Substantially. To be exact, it is $20,777.

Q. That was an estimate on your part?

A. An estimate based on my experience. So that $5,000 was not an error after all.

Mr. Ransom: In fact, it appears on page 703 that he has done exactly that. It was there stated.

Q. Your item for organization and development expense prior to construction is an estimate on your part?

A. Yes, an estimate based on my experience.

Q. How did you make up that sum of $135,000?

Mr. Ransom: Objected to on the ground that the notes fully show.

Mr. Chambers: The notes do not do anything of the kind.

Mr. Ransom: It states the basis, and the detail of the things that go into it.

Mr. Chambers: I want to know what the details are. I think we are entitled to have it. If the Master rules it out, all right.

The Master: Are the details set forth on that exhibit, Mr. Miller?

The Witness: In general description. There is a general description of that here.

Q. There is nothing but the lump sum of $135,000, is there?

The Master: Let us see it. I sustain the objection to the question as put. You can ask him any more details that you want.

1275 Q. You have put something in for services of sponsors. What do you mean by that?

A. I mean the people who stand behind the enterprise. You may call them the promoters or such persons as get up the enterprise.

Q. How much did you allow for those fellows?

A. I have not subdivided it. I have had items of this kind run all the way from five to fifteen per cent of the whole enterprise. In this case the amount is something less than five per cent. I have not attempted to subdivide it.

Q. You allow something for local consents—how much for that?

A. I have not subdivided it at all.

Q. How much did you allow for franchises?

A. The same answer.

Q. Supposing they did not pay anything for their franchises, you would allow something anyway?

The Master: Who is "they?"

Mr. Chambers: Any of the companies.

Q. If nothing was paid for these franchises you would still have allowed something, would you?

A. Nothing has been allowed to any amount in this case. If I had put in anything actually for franchises I should have put in a considerably higher amount. The franchise had a greater value.

Q. You say the $135,000 includes franchises?

A. I do not say any actual payment.

Q. You don't know anything about whether they made any or not?

A. I do not. I think in all human probabliity they paid more than this amount in the case of this company.

1276 Q. What is this amount?

A. $135,000.

Q. For franchises?

A. No, for everything, for the amount which I have allowed and which I say I have not subdivided.

Q. Does it include anything for franchises or not?

A. If anything was paid it is intended to include it.

Q. Mr. Miller, you made this up?

A. I made it up.

Q. And you said amount the items was franchises. Did you allow, or did you not allow, anything for franchises?

A. I have stated that I have allowed about five per cent to cover the preliminary expense, and which in my opinion carries anything that was probably actually paid to the local authorities. I don't know whether they paid anything or not.

Q. Did you make any investigation to determine what they paid the local authorities?

Mr. Ransom: I object to this line of inquiry.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. Did you?

A. Not to the local authorities. The books show a very large payment for franchises.

Q. To whom?

A. To the predecessor company.

Q. And you treated that as a payment for franchises?

A. I did not. That was an amount of something like a million dollars and we are discussing a figure of $135,000.

1277 Mr. Ransom: Counsel is failing to distinguish between the expenses incurred in the obtaining of a franchise, and payment for a franchise.

By the Master:

Q. You say the books show a payment of a million dollars for franchises?

A. The books opened with a million dollar item for franchise.

Q. Do the books show a payment for franchises?

A. They do not show any cash payment, but they open with an item of a million dollars ad something for franchises, and against that stocks and bonds were issued.

Q. There were only $600,000 of stock and $800,000 of bonds altogether?

A. The opening entry shows a very large item on franchises and property.

The Master: Is that opening entry here?

Mr. Ransom: No, the original book is not here.

Q. Is it your testimony that anything you found on the books justifies you in the statement that they paid a million dollars for franchises?

A. No, I don't believe they paid that. I know there was a great deal of real property in that account, from my own investigation.

By Mr. Chambers:

Q. That was an opening balance, was it, that is all?
A. That is all.
Q. Or a balancing entry?
A. Well, it was an opening entry.
1278 Q. Wasn't it a balancing entry?
A. It probably was. They probably lumped the whole plant in it.
Q. Now you allow something for salaries of stenographers?
A. It is all included in that.
Q. You can't state how much you allowed for that?
A. I had not subdivided it. It is five per cent based on my experience as the lowest item.
Q. What do you base that five per cent on? You have mentioned that two or three times?
A. I have based it on everything except financing.
Q. Five per cent on what sum?
A. It is approximately five per cent on the whole figure less the financing.
Q. And you figure five per cent on your total of $2,907,062, do you?
A. Less the financing. It is five per cent on $2,700,000.
Q. Well, what is the $2,700,000? That is your reproduction cost as of January 1, 1920, less financing?
A. That is correct.
Q. What?
A. That is correct, as explained in the text. The text explains that at great length.
Q. So you can't tell me what you allowed for clerks and other assistants?
A. I stated that five per cent is intended to cover the whole; I have not attempted to subdivide it.

The Master: Oh, say "no."

1279 Q. You can't give me any further details, like incorporation fee?
A. No.
Q. Do you know what the incorporation fee would be?
A. No.
Q. You haven't any idea, have you what it is in this State?
A. No.
Q. Do you know what they had to pay the State for capital stock tax?
A. No.
Q. And I see you have repeated again, expenses in connection with obtaining ordinance, franchises, permits and the local consents; you have that in twice: did you allow it twice?

Mr. Ransom: Objected to as not at all either accurate or a fair statement of what he said.

The Witness: I don't see any case where it is repeated.

Q. Well, you said services and expenses necessary in the organization, development of the company from the time of the inception of the project to the time when the charter, franchises, local consents, permits and so forth had been procured.

Mr. Ransom: But that says

Mr. Chambers: Just a minute. I am examining him.

Mr. Ransom: You are misrepresenting; you stopped examining.

Mr. Chambers: You are the one that is misrepresenting.

1280 Mr. Ransom: Well, read it.

The Witness: You left out the first two words.

Mr. Chambers: An insane person thinks that everybody else is insane and a person who misrepresents thinks everybody else is misrepresenting—do you see the analogy?

The Witness: You left out certain words when you read off that item.

Q. You didn't include it twice, did you?

A. I did not.

Q. You figured five per cent as at the present time; how do you explain that?

A. Because it costs five per cent as at the present time.

Q. But this was done long ago?

Mr. Ransom: Objected to as absurd. He is testifying here to the present reproduction cost.

The Master: Pure argument, Mr. Chambers.

Mr. Chambers: Well, I wish I could ascertain the workings of the innermost recesses of Mr. Miller's mind as to why he thinks they ought to have returned, on $135,000, five per cent of their reproduction value, when they organized years ago, 'way back.

The Master: Don't bother asking Colonel Miller about it; it is argument pure and simple.

Q. Now, the cost of financing, what are the details in regard to that?

Mr. Ransom: Objected to, they are fully shown on pages 704 and 705 of the record.

1281 The Master: Objection sustained.

Mr. Chambers: There are no details shown at all. Now, if the Master please, you are ruling before you see what is in here; there is no figure given at all.

Mr. Ransom: There is a figure of $150,000 representing approximately six per cent on the project, and the various things which go to make it up are shown with great particularity.

Q. Well, what services are included in the $150,000 for financing; whose services?

A. The services of engineers, lawyers, printers, engravers, advertising—not advertising, I am wrong—yes, advertising.

The Master: Well, Mr. Chambers, there is a whole page of this stuff following page 5, all of page 6; you don't have to repeat all that again. Cross-examine him on what he says there—he has sworn to all this on page 6.

Q. Well, can you give any detail for this item at all, or is that all you can do, what is stated on pages 5, 6 and 7?

The Master: He has lumped it all in one figure, that is what he has done—you haven't itemized this figure of $150,000 into the various elements that you referred to, have you?

The Witness: I have not. The actual mechanical cost, so to speak, the actual operating cost in the broker's office cost three per cent of the selling price—that alone; then the other two per cent is taken up in some profit to them, and the cost of making in-
1282 vestigations, preparing mortgages, printing mortgages, printing stock, and so forth—it is a low figure.

Q. Now, the cost of financing generally is taken care of by a discount on the bonds issued, isn't it, usually?

A. Not necessarily; sometimes they are sold above par and sometimes below. The figure that I use here——

Q. Wait, you don't need to go on.

A. The figure that I use here is the difference between the price at which——

Mr. Chambers: I ask the Master to stop the witness, because he is wandering.

The Witness (continuing): Between the price at which securities go to the banker and that at which they go to the public.

Q. I asked you if it was not usually taken care of by discounts on the bonds?

A. No; there is a great deal of financing done in the case of stock.

Q. How do you know it was not done in this case, with this company?

A. I don't know how it was done in this case.

Q. Will you say it is not usually done? Can't you answer that categorically?

A. Please read that again, what isn't usually done?

Q. The cost of financing.

The Master: By discount on the bonds.

The Witness: The financing in bonds is usually taken up by discount on bonds, but all financing is not done in bonds. Unfortunately, present public service corporation financing is done
1283 more or less in bonds because they can't get anything elsewhere they get anything.

Q. When bonds are issued, should not the discount be amortized during the life of the bond?

A. Under no circumstances. If they have part of the bonds which

go to pay for the services rendered, no. Taking the bonds that are sold below par, take the part that does not go to pay for services rendered, yes, that should be amortized, but the other part that goes to pay for services rendered should be capitalized, and that is what I have included here.

Q. I can't explain the operation of your mind in allowing the figure of $200,000 for engineering, superintendence and general contractors' expense and profit.

Mr. Ransom: I object to the admission of the Attorney General as being no question and not relevant to the issues here.

The Master: I haven't heard any question. I heard the admission.

Q. How do you explain that large item?

The Master: That is pretty fully set forth.

Mr. Ransom: Objected to as already set forth.

Mr. Chambers: Engineering and superintendence?

The Master: Mr. Miller has given us a page and a half of stuff on that.

Q. Can you give me any details of that, engineering, superintendence and general contractors' expense and profit?

The Master: Give us the figures.

The Witness: I figure 5 per cent goes to the engineer and 8 per cent to the contractor.

1284 The Master: But you haven't figured up the details of these items, 5 per cent on each item of construction, or 8 per cent?

The Witness: No. I figured it on the total, that is the way these contracts are usually let.

Q. Can you give me any details of the next item, administrative, legal and miscellaneous general expense during construction, $45,000?

Mr. Ransom: Objected to, more than a page of details are given.

The Master: Not separately set up or itemized.

Mr. Ransom: No.

The Master: That is what Mr. Chambers means.

The Witness: Of course I could reply as to each individual item.

The Master: Can you say how much was for auditor, of this sum, how much for bookkeeper, how much for time-keeper, how much for each individual?

The Witness: I could build up, I suppose, a theoretical staff, but I couldn't do it offhand.

The Master: In arriving at this figure that you give here, did you figure it that way?

The Witness: No, I based it on my experience in doing this class of work.

The Master: As a lump sum?

The Witness: It is a percentage, 2½ per cent on the construction; that is the way it is arrived at.

Q. Do you mean to say you cannot give us how much your
1285 item of engineering, superintendence and general contractors' expense and profit is made up of engineering?
A. It is in the record.
Q. What is in the record?
A. The statement that 5 per cent goes to engineering and 8 per cent for the contractor.

The Master: But you are on the item of administrative legal and miscellaneous general expense during construction, Mr. Chambers.

Q. How much, 5 per cent and 8 per cent of what, for engineering, superintendence and general contractors' expense and profit?
A. 13 per cent on the items of mains, buildings and apparatus.
Q. That is your reproduction cost, 8 per cent on your reproduction cost as at the present time?

The Master: On buildings and apparatus, mains?
The Witness: On mains, buildings and apparatus.
The Master: How about services?
The Witness: They are not included.
The Master: Meters?
The Witness: No.
The Master: Nothing else?
The Witness: Nothing else.
The Master: 13 per cent on $1,577,000, is that right?
The Witness: That is right.
The Master: All right, what is next, Mr. Chambers?

Q. Interest during construction, $101,096?

The Master: Tell us how you get that, other than you have stated on page 10 here of this exhibit; how is that arrived at?
1286 The Witness: That is calculated per half a year at 8 per cent rate on items 2 and 3; that is, the buildings, apparatus and street mains, and it is figured for one year at 8 per cent on organization and development expense prior to the beginning of construction.
The Master: What is that $18,000 item?

Q. In your summary you have interest during construction $101,096, and over here on page 10, at the top of page 10 it is $18,600?
A. Well, it is an error on page 11.
Q. You mean there is a terriffic difference there?
A. Evidently.
Q. The difference between $18,600 and $101,096?
A. Quite right

Mr. Chambers: Your Honor still thinks that it is an immaterial error?
The Master: I thought this $18,600 had reference to some item included in the $101,096, that is what made me ask the question.

Q. Now I would like to ask you which is right, $18,600 or $101,096?

A. $101,096.

Q. Why isn't the other one the proper one, $18,600?

A. Because the other one is wrong; I don't know what the figure is——

Mr. Chambers. Can't I take my choice in this case?

The Master: Let us get along, see if we can't finish this thing up tonight.

Q. You said you took a year in computing that interest during construction; wouldn't a part of that plant or whatever it was be in operation in less than a year? 1287

A. No.

Q. You don't think so?

——, ——.

Q. None of it?

A. No.

Q. Not in the case of mains?

A. No.

Q. You think it would be a whole year that they would be idle?

A. I think from the time that construction started to the time that gas was turned on, under this system it would take a year.

Q. Supposing they turned the gas on in some of the mains in six months?

Mr Ransom From when?

Q. From the time they began to lay the mains—what then?

A. They wouldn't do it.

Q. Supposing they built their plant in the first six months and had not laid out a dollar for mains and built the mains in the second six months; you couldn't figure the whole year for the whole outlay?

A. I haven't figured the whole year for the whole outlay; I figured half the year for the whole outlay.

Q. Would you say the construction period is six months or a year, then, Mr. Miller?

A. The construction period is a year.

Q. Well, then, you have taken a year and averaged it?

A. I figured the interest on the construction during a period of six months, assuming no payment would be made on construction at the beginning of a year, and that full payment would have been made at the end of the year, so that the average interest period is six months. 1288

Q. When in the year do they begin to lay mains as a matter of fact?

A. It depends entirely upon when you get your money and get ready to start. I assume that this plant would start about the 1st of July; start construction about the 1st of July and start operating about the 1st of July.

Q. As a matter of fact when do they begin to lay mains?

A. As a matter of fact they begin to lay mains whenever they need them and have the money to pay for them.

Q. What time of the year, the 1st day of January?

A. I have begun to lay mains on the 2d day of January, never on the 1st.

Q. In this company here, when do they begin to lay mains in this climate, in this company?

A. I presume when they need them, I don't know; there is no fixed time, in my experience, for the laying of mains, except the time when they are required.

Q. And that is the best answer you can make?

A. That's the best answer I can make. Of course, no company lays any more mains than absolutely necessary when the ground is frozen.

Q. In other words you figured the whole plant would be idle for a year?

1289 A. No; on the contrary I figured it would take a year to build it—the whole plant would not be idle at all; they would start as soon as it was finished.

Q. Then you would not start operating any part of it until the whole was completed?

A. No. Part of a gas plant is not of much use until it is finished—6 inches of main would shut down a whole plant.

Q. You could not conceive of their being able to operate part of their plant in the first 6 months, could you?

A. Oh, I could conceive of it, yes.

Q. How do you know they didn't do it?

A. Maybe they did, but I have figured to build this plant in the cheapest possible manner. If I start to build it in parts and run it in parts, so that the operating men would be in the way of the contractors' men, the cost would be greater than the amount I have estimated.

Q. Isn't it good engineering policy to lay a certain number of mains, connect up your services, put them in operation and lay the rest?

A. It may be good engineering.

Q. You don't know of any company that goes to work and lays off all of its mains at once, do you?

A. Never.

Mr. Ransom: Objected to as immaterial.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: Never knew of it being done, no.

Q. You have assumed it here, haven't you?

A. I have assumed it.

1290 The Master: Let us get down to the next item.

Mr. Chambers: What is your favorite item?

The Master: Take the next item of tax, we have had enough of interest.

Mr. Chambers: Which is the one you wanted?

The Master: The next one is tax during construction.

Q. How long a period did you cover for that?

A. One year, as I explained.

Q. You thought they would have to buy the land a year ahead of the time when they started constructing?

A. No, I didn't figure that way.

Q. How did you figure?

A. I figured they would buy the land when they started constructing.

Q. Why the year, then?

A. As I explained at some length, it would take a year to get this enterprise going.

Q. Now, working capital, $165,000?

The Master: On the last page he tells you how he gets it up; go down to that.

Q. You said it was more than that; you thought you would make it more, for that.

A. I made what I thought would be necessary for the satisfactory operation of this company if they did not have any larger brother to lean upon.

Q. That is, you think their past experience is not a good proposition to go by?

A. Their past experience indicates that they have been running on somebody's else capital to a certain extent.

1291 The Master: How much have they been using for working capital.

The Witness: Around $125,000, I think, I am not entirely sure of that; I only looked it up for the one year; I think the present balance sheet shows about $125,000.

Q. How many cents a cubic feet would that be, per thousand cubic feet?

A. It is approximately fifty cents a thousand cubic feet.

Q. So you think that is a fair amount, do you, Mr. Miller?

A. I think it is a very important amount for it to have if the company is to operate economically and pay its bills promptly and take advantage of cash discounts.

Q. You don't think fifteen cents a thousand cubic feet would do?

A. No living company could operate on that.

The Master: What good would that do? If he thought it would do, he wouldn't make it fifty.

Mr. Chambers: You ask him some questions, will you, about this? You don't believe in fifty cents.

Mr. Ransom: It is a small company. I don't see how they can get along on less.

The Master: We will adjourn to a quarter of ten tomorrow morning.

Mr. Chambers: If the Master please, I have to be in the Appellate Division to-morrow and Mr. Neumann can go on in my absence.

The Master: Yes, and Mr. Tobin can, too.

Mr. Chambers: All right, until I get here.

1292 The Master: Well, if you are not here I will close the case; I am going to hold it for all three counsel to be here.

Mr. Chambers: I don't want to be unreasonable, but wouldn't you declare a little recess?

The Master: I will not declare five minutes if you are not here—quarter of ten to-morrow morning, and then we will take an adjournment at a quarter after until eleven o'clock.

Adjourned to Friday, May 28, 1920, at 9:45 A. M.

1293 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before

Abraham S. Gilbert, Special Master.

New York, May 28, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Ransom: I offer in evidence a certified copy of the order of the Public Service Commission for the First District, made on September 17th, 1918, in Case No. 2330, prescribing the regulations as to filing a rate schedule for gas corporations.

Mr. Neumann: May I ask what the purpose of this is? There does not seem to have been any foundation laid for it.

Mr. Ransom: The tariff is in, and I think I ought to have the order also.

The Master: What did you say was in, Judge?

Mr. Tobin: I did not hear you.

Mr. Ransom: The tariff schedule filed pursuant to this is in.

Mr. Neumann: Objected to on the ground it is immaterial, incompetent and irrelevant, no proper foundation laid for it.

1294 The Master: Overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 97.

Mr. Ransom: I offer in evidence certified copy of the order of the Public Service Commission for the First District, made on May 20th,

1913, in case No. 1453, authorizing the purchase of stock of the New York & Queens Gas Company.

The Master: By whom?

Mr. Ransom: By the Consolidated Gas Company of New York.

The Master: What is the date of that?

Mr. Ransom: May 20th, 1913.

Mr. Neumann: Before making an objection, if the Court please, I would like to state this. I do not like to be technical, but it seems to me that there ought to be some orderly procedure here with the introduction of exhibits, so that we may have an opportunity of cross examining—cross examining the testimony upon which these exhibits are based. Here is something taken out of the clear sky; there is no opportunity of examining anybody with reference to it. It is put in the record here, and it may be so far as I now know correct, and it may be all wrong; I know nothing about it.

The Master: If you want to recall anybody for cross examination I will let you do it. If counsel wants to recall anybody for cross in the light of this, I will let them do it.

Mr. Neumann: We will object to it on the ground it is incompetent, irrelevant and immaterial, and no foundation laid for it.

1295 The Master: Overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 98.

ALTEN S. MILLER resumed.

Cross-examination.

By Mr. Neumann (continued)

Q. Mr. Miller, you recognize the term "going value?"

Mr. Ransom: Objected to as vague.

The Master: I will allow it.

Mr. Ransom: What does he mean, recognize?

A. I think so.

Q. What is your definition of the term "going value?"

The Master: He has given us that.

Mr. Ransom: Objected to as immaterial.

The Master: He has given us that.

Mr. Neumann: Has he?

The Master: Yes.

Mr. Neumann: I did not know that. That must have been while Mr. Chambers was cross examining him.

The Master: Why, he gave it in his direct yesterday. He described an element which he figured at between $525,000 and $550,000, my recollection of it was.

Mr. Ransom: That is correct.

The Master: He did not call it going value, but it was quite apparent that is what he referred to as going value. That is
1296 what you referred to as going value?

The Witness: Yes.

Mr. Ransom: What public service commissions call going value.

Mr. Tobin: I move to strike that out.

Mr. Neumann: I move to strike that out.

The Master: I am not going to strike out statements of counsel. What is the use of making those motions?

Q. What is your understanding, Mr. Miller, of the term "good will?"

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: I will allow it in cross examination.

Mr. Ransom: Exception.

A. Good will is something that obtains in the ordinary manufacturing corporation, where the public is free to come and go as it pleases. I have customers accustomed to deal with me and who can buy the same goods elsewhere, but by reason of the relations established between me and the customers, they prefer to deal with me. That I call good will, where the customers are free to come and go as they please, but prefer to come to me by reason of previously established relations.

Q. I take it from that that the distinction you draw, then, between the term "going value" and the term "good will" is that one is in a sense a monopoly and the other is free competition; is that correct?

A. Not entirely. Good will often costs nothing to produce. Going value, as I understand it, is an actual cost. It would cost that much to secure the business. Sometimes good will costs much
1297 more than it is worth and sometimes very much less.

By the Master:

Q. Really, it is not to secure the business, it is to build up the enterprise?

A. Build up the enterprise as a going concern, a considerable part of it.

Q. As I understand this good will item——

Mr. Ransom: You mean going value item.

Q. (continued). Yes, going value item, it is really what you lose by the time you get it going right—really what it costs you to get it going right?

A. It is what it costs to get it going right.

Q. That is about what it means, is it not?

A. Yes.

Q. How long do you figure you have that expense for getting it going right?

A. It depends entirely upon the efforts that are made to reproduce it, in a short while or long while.

Q. Take this situation here, as I understand it this enterprise over

at Flushing started back in 1855, or thereabouts, and I take it that those original concerns spent this money that you are asking about to get this concern going right?

Mr. Neumann: That is objected to on the ground it is irrelevant and immaterial.

The Master: I do not know what you are objecting about. I am attempting to cross examine and bring out a line in your favor and you start objecting. I am predisposed to be against the going value, and I was about to cross examine Colonel Miller to bring out my view of it, and then you started objecting. I cannot un-
1298 derstand that at all.

Mr. Neumann: Exception.

Q. I was interrupted when I was about to say, Colonel Miller, that I take it it is fair to assume these companies who started this plant in 1855 began the expenditures of these moneys that you figure the going value—going value item?

A. Yes.

Q. More or less?

A. Yes.

Q. That continued a good many years?

A. In all probability they did not expend the amount that I estimated it would cost to reproduce under intensive conditions.

Q. I am not concerned as to the amount or as to the intensive character of the work.

Mr. Ransom: We are dealing here with present cost to reproduce this business, this concern.

The Master: That may be, but I am going to get on the record what is in my mind as an answer to your proposition.

Q. (continued). I will ask you, whether it was intensive work or whether the expenditure was greater or less, the fact is that this expenditure that you refer to as being part of the going value expenditure was being made right along?

A. Yes.

Q. They probably did not make any money at the start, they were losing money perhaps when they started in, the probability is their return showed a deficiency between what they should have gotten and what they actually got at the very start?

A. That is probably true.

1299 Mr. Neumann: Your Honor is now talking of 1856?

The Master: Yes, I am bringing it up to date.

The Witness: That is probably true.

Q. That continued over the years as these reorganizations and extensions took place——

Mr. Neumann: And mergers.

Q. (continued). And right down to 1904, I suppose, did it?

A. Well, I should say probably long since.

Q. No, I am carrying it down now from 1855 to 1904.

Mr. Ransom: I object to the question on the ground that it does not relate to the present inquiry. We are dealing here with the question of what it would cost now to reproduce this enterprise as a going concern.

The Master: But I am frank to say my mind runs back to the rule I adopted in the Consolidated case, that if possible I am going to determine what it costs your company, or this New York & Queens Company, to acquire all of this going value and franchises and rights and property in 1904, and if I can find that you probably in good faith and honestly paid a certain sum for it, representing stock and bonds at that time, I will be inclined to make a finding that the actual investment was the stock and bonds and other property and money issued for it in 1904, plus additions and less withdrawals.

Mr. Neumann: To which we respectfully except.

The Master: Yes, I am not going to satisfy either side;
1300 I can see that.

Mr. Ransom: To which the complainant more earnestly excepts, and much more sincerely excepts.

The Master: All right. And then in conjunction with that I am going to have in mind what I believe to be the value of these plants in pre-war times. From some calculations I have made my mind runs in the direction of a finding very close to what you allege in your complaint as the value of them. Now I am telling you frankly how my mind is running on this, and I am going to make my record the same as I did in the Consolidated case.

Mr. Ransom: I do not object, your Honor, on the matter of what the complaint alleges. The complaint does allege an investment; it says bare-bone investment is so much, that the cost to reproduce is very much more.

The Master: Yes.

Mr. Ransom: That the present value is very much more?

The Master: Yes.

Mr. Ransom: That aside from the bare bone investment——

Mr. Tobin: Did you use those terms in there?

The Master: Wait a minute, Mr. Tobin.

Mr. Ransom (continuing:) —there are various other elements of value, all of which the complaint alleges.

The Master: Yes, I understand that.

Mr. Ransom: And no more serious type of confiscation could be inflicted, even by a public service commission, than to restrict a company to a return upon bare bone investment.

1301 The Master: I do not quite get your point as to bare bone investment. Is there any distinction between investment and bare bone investment?

Mr. Ransom: I think there is, yes.

The Master: What is it?

Mr. Ransom: You take a matter of mere cost of certain tangible property, that does not represent the entire outlay of the enterprice.

The Master: No, but the cost of the tangibles and intangibles does.

Mr. Ransom: If an adequate allowance is made for intangibles.

Mr. Tobin: It depends on what you call intangibles.

The Master: Your complaint alleges this, Judge—that this property was purchased in 1904 for $600,000 of stock.

Mr. Ransom: The tangible property cost so much.

The Master: No, all of the property.

Mr. Tobin: Yes, all of it.

The Master: All of the property. That is just what I looked at in the complaint yesterday, as I read it, that you bought all of the property. That is why I traced through the title, that is the reason I looked at these exhibits yesterday. I did not do it to waste time or to amuse myself; I was looking for something.

Mr. Ransom: I knew very well what you were doing.

1302 The Master: As I read the record up to this time, the New York & Queens Company bought all the perpetual leases and franchises and tangible and intangible property in Flushing—I mean bought all the stock—therefore was in a position to merge with the Flushing, and the Flushing plant owned everything, as I read it, at that time. I may not have it exactly correct, but the impression I got as I read through all these exhibits and the testimony to date was that the Flushing plant owned everything in 1904 and the New York & Queens owned all the stock of the Flushing plant.

Mr. Tobin: No, that is not it exactly, if your Honor please.

The Master: What was it?

Mr. Tobin: There was organized the New York & Queens Gas Company.

The Master: Yes.

Mr. Tobin: Which was simply just a plain ordinary stock company.

The Master: Yes, but it owned the stock of the Flushing plant at the time of the merger.

Mr. Tobin: I do not believe so.

The Master: That is what the statement was in the merger papers. That is as I read it.

Mr. Ransom: How could it merge if it did not?

The Master: That is as I read it, the New York & Queens first bought the stock of the Flushing Company, then it merged with the Flushing Company. At any rate, as a result of that,

1303 everything came in, tangibles and intangibles, into the New York & Queens.

Mr. Neumann: On August 1st, 1904.

The Master: July 15th is the date, really, in 1904.

Mr. Ransom: It paid for that property at that time.

The Master: Yes.

Mr. Ransom: That is not an index of its value.

Mr. Tobin: There is this point, too, which you do not want to miss—that the New York & Queens Company did not have a stick of property, tangible or intangible.

The Master: I do not care anything about that. The result of

the merger was that it owned all of it, and at that time a certain sum was paid for it in stock and bonds.

Mr. Ransom: Which was its value at that time.

The Master: The result was that this combination bought all of the stock, $600,000, and a portion of the bonds; it does not say how much, something less, therefore, than $800,000 and odd in bonds. That is $1,400,000 in 1904.

Mr. Neumann: What is that?

The Master: $1,400,000.

Mr. Tobin: Oh, no.

Mr. Neumann: How do you get that amount?

The Master: $600,000 in stock and $800,000 in bonds.

Mr. Tobin: There was not any such amount, if your Honor please.

1304 The Master: It did not exceed that amount.

Mr. Neumann: Oh, no, quite the contrary.

Mr. Tobin: It did not—anywhere near that amount.

The Master: Well, it did not exceed that amount. The exact amount I have not got yet.

Mr. Neumann: The fact is this——

The Master: Wait a minute, I am explaining to Judge Ransom what is in my mind.

Mr. Ransom: And they object to your being against me.

Mr. Cummings: It did not exceed $2,000,000, either.

Mr. Neumann: It did not exceed $5,000,000.

The Master: What?

Mr. Neumann: It did not exceed $5,000,000.

The Master: It did not exceed $5,000,000? I am talking about $1,400,000.

Mr. Neumann: I did not want your Honor to put on the record here the fact, or create the atmosphere, that in 1904 this company owned property of the value of $1,400,000 and odd, which is not the evidence.

The Master: I did not say anything about it.

Mr. Ransom: I object to that, too, because it is too low.

The Master: I said that they paid not in excess of $1,400,000 in par value in stock and in bonds. It was less than that,

1305 because the complaint says it was part of the bonds, not all of them. Running from that time to date, there were certain additions and withdrawals, and on December 31st, 1914, there was in existence this operating plant—or 1915, or whatever you may call it, or 1916—this operating plant, and its distributing system and all the rest of it.

Having in mind two things, first, what I may be able to find was actually paid for it, plus the actual cost of withdrawals and extensions and additions, and taking into consideration, too, such evidence as I may have in the case as to the value of an operating and distributing plant of this character in this locality prior to the war period, say at $1 or $1.50 or $5 per thousand cubic feet——

Mr. Ransom: Or $6.

The Master: Or $6, or whatever the evidence will show.

Mr. Neumann: Why not make it $50?

The Master: Well, there is not any evidence clearly before me on that yet. I am going to make a finding that the value of this property in pre-war times was so much money, and that its value now is a great deal more; and I shall refuse to find what its value is at this time, except that it is a great deal more and perhaps twice as much, on Mr. Miller's testimony, than it was before the war.

Mr. Neumann: Why not make it three times?

The Master: No, Colonel Miller says twice, and as his testi-
1306 mony now stands, I am just finding twice. If you bring a witness on who says it is three times, I might find three times, but as the record now stands it is twice.

Mr. Neumann: To which, of course, we do not assent.

The Master: The question of going value to my mind gets back to this: I believe the going value was paid for in 1904. That is what is in my mind, and that is what I am going to bring out from this witness.

Mr. Cummings: I do not believe you can.

The Master: Or in large part.

Q. Colonel Miller, am I correct in my understanding of your testimony that this going value expenditure continues from the time the plant is complete and ready for operation, through the years, until it is gotten in good going condition?

Mr. Neumann: If your Honor please, may this appear, that at the conclusion of the discussion the defendants all took exception to the Master's views as stated.

The Master: Yes.

Mr. Ransom: The complainant has been completely protected by the defendants.

Mr. Tobin: There is more than that, if your Honor please. We do not believe that the Master should read into the record here sufficient value so as to boost up what this company said they paid for it in the way of stocks.

The Master: I am not reading in any value, Mr. Tobin; I am expressing the theory upon which my mind is working.

Mr. Tobin: But it is just an attempt to build up their
1307 value; that is what you are trying to do—something that does not exist and did not exist at the time.

Mr. Neumann: The question is objected to on the ground it is incompetent, irrelevant and immaterial, no proper foundation laid for it, purely hypothetical, speculative and a guess.

The Master: Overruled.

Mr. Tobin: Exception.

The Master: Read the question now.

(The question was repeated by the stenographer.)

A. It continues that long and all of the time that the company is advertising, canvassing and working to secure new business.

Mr. Tobin: If your Honor please, we ask that that answer be stricken out. There is no foundation for any such answer here and, more than that——

Mr. Neumann: It is not responsive to the question.

Mr. Tobin (continuing): ——the books themselves indicate what there was as concerns any such expenditure as that.

Mr. Ransom: $1,032,000.

The Master: Motion denied.

Q. Colonel Miller, I limited my question to a particular situation. There comes a time when the plant is gotten into good going condition, does there not?

A. Yes.

Q. That means, in a case like the Flushing plant, that the people in that section have been brought to the point of using gas instead of using their coal ranges; is that right?

1308 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on an assumption, an hypothesis and a guess, and no proper foundation been laid for it.

The Master: I do not believe you know what you are talking about.

Mr. Neumann: What was the Master's comment?

The Master: It is quite apparent to me you do not know what you are talking about when you object to a question of that kind.

Mr. Neumann: Exception.

Mr. Cummings: We do not know what it is going to lead up to, that is all.

The Master: I am trying to indicate to you; I am trying to cross-examine this witness.

Mr. Ransom: In justice to my client I ought to take an exception to each one of these matters.

Mr. Neumann: But you have not, and that is the best evidence of what it is going to lead to.

Mr. Ransom: I am willing to have the Master bring out the facts.

Q. Isn't that what you call going value, to get the people away from some other thing that they are using, to the thing that you want them to use?

A. Yes, to the extent that it is done.

Mr. Tobin: That is purely mythical.

Mr. Neumann: I move to strike the answer out.

The Master: The trouble, Mr. Tobin, is that you are about
1309 twenty-five years younger than I am, and you do not recall the trouble that these companies had to get the people away from coal ranges and to the use of gas, and once having gotten them to use gas you do not need to do any more to get them to use it. That is [illegible] I am trying to bring out from Colonel Miller. I have not seen coal ranges to speak of in that Flushing section in fifteen years.

Mr. Tobin: The particular point about it, if the Master please,

is that there is trying to be read into the record here capital expenditures which are not capital expenditurees.

The Master I am not worrying about that.

Mr. Tobin Well, we are worrying about it.

The Master I am trying to demonstrate the proposition in behalf of the defendants that there is not any going value for me to allow in this case, and you are not letting me do it. It is a perfectly stupid line of objections, there is no sense to it at all. I am asking him whether there was in 1865, 1866, or 1870, and I am trying to eliminate it since 1904, and you gentlemen will not let me. It seems to me my duty in this case to get this record in such shape that it will clearly present my views on this question of going value, and I am going to do it. Both sides can keep on objecting as long as they please.

Mr. Neumann We are only endeavoring to make the record.

The Master You are simply lumbering up the record with a lot of useless objections.

Q. Colonel Miller, do I correctly conceive the idea that you have in mind of the going value item?

1310 Mr. Neumann Objected to on the ground it is incompetent, irrelevant and immaterial and based purely on speculation, guess and an hypothesis.

A. I do not think you do.

Q. Take a plant and take a section like the section in Douglaston, where houses are going up and where they have been pressing for the extension of mains to get gas, you do not have to spend any money to get them to use gas, do you?

Mr. Neumann Objected to on the ground it is irrelevant, incompetent and immaterial. I am objecting to this entire line. If the Master please, I will do this, instead of interrupting the Master's question. If the Master will state that it is upon and over the objection of the defendants, until such time as the Master states that he has concluded his inquiry ——

The Master You can go on and object as often as you like and make yourself as ridiculous as you please. The objection is overruled.

Mr. Neumann Exception.

Mr. Tobin Exception.

A. It does not require any great effort to get some of them, probably a considerable number of people, to use gas to a certain extent, but it does require canvassing and advertising, to get them to put in water heaters and use an additional amount of gas, gas irons and——

Q. Isn't that what is included among this gas company's accounts as a distribution cost, this publicity work day after day; isn't
1311 that what I allowed in the Consolidated case as part of the distribution expense, publicity work?

A. I think in the case of almost all of these companies the cost has been largely charged to operations.

Q. Then if it is charged to operation it does not run into the separate capital account, does it, for going value?

A. It is an asset. It is not a capital account on the books, no.

Q. But as I understood you, Colonel Miller, there is a clear distinction between the operating expenses of a company once you have got it into going shape and it is beginning to make money, when you want to make more money, and the situation where you are losing money in order to get it into going shape. That was the item of expense of capital value that I understood you were talking about.

A. That is what I say, I did not think you understood me. My estimate of the going value is the value of having these customers using gas.

Q. Well, that is good will.

A. And what it costs.

Q. That is good will.

A. What it costs to produce it.

Q. That is good will.

A. No, I do not think what it costs to produce it is good will.

Q. Do I understand this, now, that going value, at any rate in you theory, to some extent is what it costs by way of a loss in running the company, before you are getting a profit on your investment, to get the company in such shape that it begins to show a profit?

1312 A. It may be represented by a loss, but not measured by the loss.

Q. Not necessarily measured by the loss, but that is what it costs the company to get it into a position to make money, is it not?

A. A part of that cost is, yes.

The Master: All right, proceed.

Mr. Ransom: We are dealing here with what it costs to reproduce this enterprise.

The Master: I know your thought, Judge Ransom. I know it perfectly, and on the idea of reproduction cost, starting a new company today, Col. Miller's testimony, of course, is consistent with his testimony as to the cost to produce the entire enterprise. It simply illustrates and confirms the view I have, that it is a perfectly ridiculous basis on which to charge the consumers with gas. It is too wild a guess.

Mr. Neumann: I hope your Honor will stick to that.

The Master: I have told you over and over again that I will not make a finding that the cost of reproduction is the cost today. I did not do it in the Consolidated case and I will not do it in this case.

Mr. Ransom: Or its reproduction cost in 1914 would involve the same elements.

The Master: Yes, the same element, but not to that extent.

Mr. Ransom: The amount might not be quite as large on a 1914 basis.

The Master: Of course not, but my view is still the view that I expressed in the Consolidated case, that a public utility is en-
1313 titled to a fair return on its actual investment and nothing else, and there is not any other safe basis; and that to my

mind represents the value in the years, up and down, just as the Illinois court said in the case indicated.

Q. Mr. Miller, what do you understand by the term "deferred maintenance"?

A. Deferred maintenance is the work that is not done today. If a holder is painted every two years, and it was painted a year ago, the deferred maintenance is the liability of the stockholders to paint that holder when it requires painting.

Q. Generally speaking, is it fair to say that it means repairs which should have been made and which have not been made?

A. No, that is not my idea. In the case of this company every repair that should have been made has been made.

Q. There is a deferred maintenance in addition to necessary repairs?

A. I don't know of anything.

Q. Well, it is practically the same, isn't it?

A. No, not at all.

Q. What is the distinction between deferred maintenance and necessary repairs?

A. Necessary repairs are repairs that must be made now. Deferred meintenance are repairs which should not be made now——

The Master: And which are bound to come.

The Witness: Which are bound to come. Necessary repairs which must be made in order to keep the plant going.

Q. Contrasted with the term "repairs" and "deferred maintenance," is there any distinction in your mind between those two terms?

1314 Mr. Ransom: I object to that as academic and vague and having no relation to the cross examination.

Mr. Neumann: Evidently, as I understand the witness' answer, he harped on the word "necessary," so I have taken out the word "necessary," and framed the question without the word "necessary."

The Master: That is rather a meaningless question. Mr. Miller's testimony is that there are two kinds of repairs, as I understand it. There are the immediate repairs, and there are the repairs that are bound to come. In other words, take a holder, it will run a couple of years. During those two years the repair which is actually coming is deferred until the time arrives when it should be done. Then the time arrives when it must be done. I should say the distinction between deferred and necessary repairs is that one is immediate and one is prospective.

The Witness: Exactly.

Mr. Ransom: In the natural course it comes about.

The Master: When it becomes immediate it simply brings into actual existence the thing you have been expecting for several years.

The Witness: Yes.

The Master: The same repair which was deferred has now become immediate?

The Witness: Yes.

Q. Is it not a fact, Mr. Miller, that deferred maintenance is really repairs that have been neglected? Is it or is it not so?

1315 A. If repairs have been neglected they are deferred maintenance, certainly. In the case of this company repairs have not been neglected.

Q. How do you know that?

A. Because I have examined the plant most carefully.

Q. Now, at page 947 of the printed minutes, folio 2840, you testified as to expenditures necessary to put the plant of the New York & Queens Gas Company in the condition in which it was when new?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And your figure there was $6,144.07?

A. Yes.

Q. What do you call that figure?

A. Expenditures necessary to put the plant of the New York & Queens Gas Company in the condition in which it was when new.

Q. I mean in the light of what we have been discussing, deferred maintenance of repairs, or neglected repairs, or what?

A. It is maintenance that will eventually be done, but it is not necessary now, and which would not be economical to do now.

Q. Do you wish to be understood as stating that it is possible to take old equipment and put it in exactly the same condition as new equipment?

A. Yes.

Q. And that you could do with this plant by spending $6,144.07?

A. Yes.

Q. No question about that at all?

A. Absolutely none.

1316 The Master: A considerable portion of this operating plant is pretty new, is it not?

The Witness: Yes, this plant has been rebuilt largely in recent years.

Q. Do you know as a matter of fact as to the particular age of portions of the plant, I mean of your own knowledge?

A. I know of my own knowledge the age of the gas holder which my company built recently. For the rest, I got my information from the original contracts and the company's records.

Q. Now, I notice the superintendent's dwelling here is one item, you say $490.74 would be necessary to make it as good as new. Is that correct?

A. Yes, sir.

Q. Were you here when Mr. Connor testified that building was 20 years old?

A. Yes.

Q. And that it was a frame building?

A. Yes.

Q. And you want this court to believe that for $490 you can

make a new frame building out of an old frame building 20 years old?

A. I have not said a new building. I said a building as good as that building was when it was new.

Q. When to your knowledge were the holders of this company painted last, your own knowledge I mean?

A. Within the last two or three months.

Q. When prior to that time, of your own knowledge?

A. I don't know when they were painted prior to that.

Q. What do you understand by the term "depreciation," Mr. Miller?

1317 Mr. Ransom: I object to that as vague and indefinite. He has not testified about depreciation.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Lessening in value due to wear and tear.

Q. Are those the only two elements that enter into depreciation?

The Master: Lessening in what kind of value due to wear and tear?

The Witness: In useful value.

The Master: Productive value you mean, sales value, junk value?

The Witness: That would require work to get it back in the condition in which it was when new.

The Master: To do the work that it was intended to do when new?

The Witness: Yes.

The Master: In other words, if a plant was intended to produce a million cubic feet of gas when new, and without doing any further work on it it will now produce a million cubic feet of gas a day, would you say there was no depreciation?

The Witness: Oh, no, but if going through that plant we found that the engines had gone down, and that the machinery was rusted and had been neglected, and you could see that it had been neglected and see that it had been damaged and was going to pieces, and that immediate expenditures or future expenditures would be needed to correct the damage that had been allowed to accumulate or accrue, then I should say it was depreciated.

1318 The Master: In the condition in which you have described this plant it would not be doing the work it was intended to do when new, would it?

The Witness: Oh, yes. You can keep an engine running even though it is knocking somewhat.

The Master: Well, it won't run very long if it is knocking.

The Witness: Well, no, it would not.

The Master: I am talking about running for a substantial time, I am talking about running for three or six months, and doing the work.

The Witness: Well, even three or six months. Take a gas holder for instance——

The Master: I am talking about a machine. A machine won't knock for six months without knocking itself to pieces, will it?

The Witness: No, a machine would not. A running machine goes down more rapidly than anything else, and if a machine is not kept pretty well tightened up and in good shape it goes to pieces pretty rapidly.

Q. Mr. Miller, haven't you really only described observed depreciation?

A. Absolutely, only observed depreciation.

Q. Now, in your elements of depreciation you only gave wear and tear. How about obsolescence?

A. Obsolescence is not a thing which should be paid for by the present consumer.

Mr. Neumann: I didn't ask him that, and I move to strike it out.

The Master: Yes, don't try to tell us what the consumer should pay for, just answer the question.

1319 He asked you whether obsolescence was a part of depreciation. Mr. Miller, is obsolescence part of depreciation?

The Witness: Not any depreciation included by me.

Q. That is all right, I am developing your theory. How about inadequacy?

A. There is nothing inadequate in this plant.

Q. I didn't ask you that.

Mr. Neumann: I move to strick the answer out.

The Master: Motion denied.

Mr. Neumann: Exception.

The Witness: I did not include anything that was not there.

Mr. Neumann: I move to strike that out.

The Master: Yes. In talking about depreciation have you included inadequacy?

The Witness: This does not relate to this case, it is general?

The Master: Yes.

The Witness: In general it would depend on the degree of inadequacy.

Q. Now, is not inadequacy one cause of depreciation, generally speaking?

The Master: In value, depreciation in value?

Mr. Neumann: Yes.

Mr. Ransom: I object to this line of inquiry. It does not relate to anything bearing on this case, it does not relate to any matter as to which this witness has been interrogated on direct. It is merely philosophical, theoretical and speculative.

The Master: Objection overruled.

1320 A. In selling an individual piece of apparatus, as an automobile for instance I should say—I mean an individual piece of apparatus for particular service I should say inadequacy might measure depreciation, yes.

Q. Now, you don't confine that solely to automobiles?

A. I made a mistake, I did not mean that.

Q. You meant that generally speaking about any piece of plan
A. Any piece that you expect to sell, yes.
Q. Now, is not obsolescence also a cause for depreciation?

Mr. Ransom: I object to that as vague and indefinite and n
cross-examination, and meaningless.
The Master: Objection overruled.

A. It is a form of depreciation certainly.
Q. Now, you recognize the terms "Retirements" and "Repla
ments"?
A. I think so.
Q. Is it not a fact that every piece of plant, whether you are ta
ing of a gas utility or any other manufacturing company, that
tirements and replacements are due to either of these causes, w
and tear, obsolescence, inadequacy, or collectively all of them?
A. In my experience I have never seen a major piece of apparat
retired except for obsolescence or inadequacy. I have seen much
paratus retired for those two reasons, but only for those two.
Q. In other words then your theory is that a major piece
apparatus in a gas utility never wears out?
1321 A. If properly maintained it never does, in my experien
Q. Parts from time to time of any major portion wo
have to be replaced, would they not?
A. Certain parts of certain apparatus; all parts, no.

The Master: As I understand Col. Miller, it is because the parts
large apparatus are being constantly replaced and renewed and
paired and changed and put back, that the machine still contin
to be a new machine?
The Witness: That is correct.

Q. Do you know from your experience in the gas business t
repairs are charged as an operating expense?
A. Yes.
Q. And eventually there must come a time, if your theory is c
rect, that the entire original piece of machinery must have been
placed by new parts completely?
A. Not necessarily. I do not say that every part of every
chine will be replaced. On the contrary I excepted certain pa
Take a purifying box, for instance. That is made of cast iron w
wooden trays, and a steel cover. The cover rusts from time to t
if not kept painted very frequently. Sometimes we put new
sheets, as we call them, on the cover. Sometimes we put new t
in the boxes. Cast iron has an unlimited life. I have never s
any purifying boxes made of cast iron replaced except for defec
original design, where sheets had broken. Similarly there are o
parts around a plant which do not give out.
Q. Mr. Miller, would it be fair to say that a good definition of
preciation is that loss in worth or value due to all causes, s
1322 as wear and tear, decay, obsolescence, and inadequacy?

Mr. Ransom: I object to that as having no bearing on this c
The Master: I will allow it.

A. That sounds like a good definition, yes.
Q. You would be willing to accept that?

The Master: I think we have enough on that.
A. I think it sounds all right.

The Master: Mr. Halbbie has written out a good definition.

Q. Now, Mr. Miller, do you know whether or not this company retired a boiler in the year 1919?
A. Yes.

The Master: They did?
The Witness: Yes.

Q. If the boiler had been installed in the year 1918, would you have taken into consideration in arriving at the value of that boiler that it had only one year of useful life?

Mr. Ransom: I object to that, there is no foundation for such a question.

The Master: Objection sustained. I have let you go beyond the strict rule of cross examination in order to develop whatever you had in mind within reasonable limits. Colonel Miller was called to prove the reproduction cost of this plant, and I think you have gone entirely too far.

Mr. Neumann: I think he was called for more than that. Colonel Miller was called for direct yesterday morning and they were allowed to put in here certain figures.

The Master: Yes.

1323 Mr. Ransom: About going value.

Mr. Tobin: He had a lot of figures about finances and all that sort of thing.

The Master: All on the cost of reproduction?

Mr. Tobin: Yes, which you might say are entirely theory.

The Master: Assuming that to be so, what pertinency has this question that Mr. Neumann has just asked of Colonel Miller, as to what he might have done with a boiler that was installed in 1918, or was not installed in 1918?

Mr. Tobin: Colonel Miller has said he was in touch with the plant, that he was there at various times, and that he had largely to do with the replacing of many of the parts that were put into the property, and it would be within his knowledge to know the condition of that boiler in 1918, just the same as it was within his knowledge to know the condition of the gas holder which was replaced.

The Witness: I would like to have an opportunity to explain this.

The Master: Next question, Mr. Neumann.

Q. Is it your idea, Mr. Miller, that there is no diminution in value in any plant or part of plant until it is actually replaced?

Mr. Vilas: I object to that.

The Master: I shall sustain the objection upon the ground that I think that line of examination has gone far enough.

Mr. Tobin: We will take an exception to your Honor's ruling.

Q. You testified in your direct examination, did you not, Mr. Miller, that you were a witness in the Newtown case, Newtown
1324 Gas Company, before the Public Service Commission?

A. Yes.

Q. Do you recall what year that was?

A. I think it was 1913, or 1914.

Q. 1913, the spring of that year?

A. I think it was 1913 or 1914; I am not quite sure which date it was.

Q. You were testifying for the Newtown Gas Company in that case?

A. Yes.

Q. Now, reading from the minutes in Case No. 1610, Public Service Commission, First District, do you recall this question put to you by Mr. Dykman:

"Q. Proceeding in the manner and upon the assumption stated, will you give the result of your computation in dollars and cents?"

Mr. Vilas: I object to that as having no relevancy here.

Mr. Neumann: It is going to lead up to a certain point. I cannot develop it immediately.

The Master: Objection overruled for the time being.

Mr. Vilas: Exception.

A. I don't remember the question, no.

Q. The answer you gave to that question was "$2,331,985"?

The Master: Do you remember giving that answer?

A. No, I don't remember it. I have no doubt it is all right.

The Master: To what does that refer? What has that relation to?

1325 Mr. Neumann: This has relation to going value. I will develop it in a minute.

The Master: Well, get down to it.

Mr. Neumann: I have to ask him this first question in order to bring out the point.

The Master: Assume now that the record shows that.

Mr. Neumann: All right.

Q. Do you recall that at a later time in that hearing you were called back to testify with reference to this figure?

A. No, I do not recollect that I testified more than once. I recollect testifying to going value, but I do not remember the date.

Q. The question and answer as just read was given on January 28th, 1915. The question and answer that I now want to read to you was given on March 29, 1915. The question is:

"Q. What I want is the figure year by year so that we can see exactly what figures you used and how you treated depreciation and amortization."

The Master: I thought you were talking about going value.

Mr. Neumann: Here is his answer:

"Well, I don't think in any case they have much bearing here because I think they will show that the going value has been paid back. The error that I made makes a difference that instead of $2,331,000, I got $1,600,000."

Mr. Vilas: I object to that as incompetent, irrelevant and immaterial, and as having no bearing on the issues here.

The Master: That is all perfectly meaningless to me.

1326 These questions and answers do not seem to refer to any particular subject matter.

Mr. Neumann: The witness admitted that he made a mistake of more than $700,000 in his computations on the question of going value.

The Master: Is that the purpose of these questions and answers?

Mr. Neumann: That is the purpose of this question and answer.

The Master: All right, go on to the next one.

Q. Mr. Miller, can you tell us from your Exhibit 66 or any other sustaining details which you have, just what you have figured the cost to reproduce mains, services, meters and connections required to be laid under the order of the Public Service Commission of the first District, to the district known as Douglaston?

Mr. Vilas: I object to that as already completely covered by the direct and cross.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. The question is what it did cost?

The Master: No, what you estimated as the cost to reproduce the Douglaston extension.

The Witness: No, I did not have the Douglaston extension separated out from the other part of the system.

Q. Would it be possible to prepare that?

A. If you take the length of mains and multiply them by the units shown in my exhibit, that will produce it, on a sub-contract basis. I do not just have the length of mains run in Douglaston.

1327 Q. You had to take that into consideration in arriving at the reproduction cost of this property, did you not?

A. I took all of the mains into consideration.

Q. Yes.

A. But I do not know what part of these mains were in the Douglaston extension.

Q. Now, Mr. Miller, you made an affidavit in the New Amsterdam Gas Company case, on their application for a preliminary injunction did you not?

A. Yes.

Q. That affidavit is verified May 12, 1920?

A. I don't remember the date; I suppose it is all right.

Q. Do you recall this statement in the affidavit "In the early

part of 1919 I was retained by the New Amsterdam Gas Company and other companies of the Consolidated System to make appraisals and inventories of their property?"

A. Yes.

Q. You also made an affidavit in the case of the Central Union Gas Company on their application for an injunction?

A. Yes.

Q. And substantially the same wording appears there except that you make it refer to the Central Union Gas Company?

A. Yes.

The Master: What is the point here, Mr. Neumann: He made affidavits in all these six or seven cases.

Mr. Neumann: Yes, and all about the same time.

The Master: All right, what about it.

1328 Mr. Neumann: And he made affidavits in other cases. I want to show that he could not possibly have been spending the time that he testified to in this case.

The Master: Well, get right to it. You made an affidavit in all these cases that you were retained to make appraisals and inventories of all these various plants?

Q. In addition to that you made an affidavit in the Brooklyn Union Gas Company case, for the Brooklyn Union?

A. Yes.

The Master: How many cases have you been working on since January 1, 1919?

The Witness: Eight, I think.

The Master: And the time during this period was divided among all these various plants?

The Witness: Yes.

The Master: So, when you testified that you had devoted the greater part of a year to this plant, it meant in conjunction with the work that you were doing on other plants?

The Witness: Yes, in conjunction with other work.

Mr. Neumann: I must object to the Court taking the examination out of my hands.

The Master: I am taking it up because it takes you too long to get to it. If you have a point get to it. This witness gave me the impression that he had spent the greater part of a year on this plant. In two words I bring out the proposition that he was working on eight other plants during this year? What more do you want? What are you complaining about?

1329 Q. Now, the course of procedure that you followed in the New York & Queens case with reference to checking each figure and such sustaining detail, and everything, did you follow that in every case?

A. I have not. I am much more familiar with these other plants than I was with the Queens, and I had to spend more time on Queens to get familiar with it.

Mr. Neumann: If the Master please, that brings me to a point where Mr. Chambers was going to go forward with some of the other questions that Mr. Miller treated of.

The Master: Are you all through?

Mr. Neumann: I would be through if Mr. Chambers were here. I would have to develop a certain subject that he has himself touched upon and is quite familiar with, and that is the element of working capital, which is an important subject.

The Master: Have you anything else that you want to ask?

Mr. Neumann: Well, the position is this, if the Court pleases: I have made an arrangement with Mr. Chambers with reference to this——

The Master: Don't worry about Mr. Chambers. Have you anything else you want to ask?

Mr. Neumann: Why, I will have to open up a subject that I have not fully primed myself on, and it is rather unfair, because I wanted to go into it fully before I ask any questions that might be useless.

The Master: I am going to ask you defendants what you have got to say. I am not going to give you the floor again.

1330 Q. Mr. Miller, what elements did you take into consideration in arriving at working capital?

The Master: I thought you said Mr. Chambers was going to take up working capital.

Mr. Neumann: You have asked me to go on.

The Master: No. If you have an arrangement with Mr. Chambers for him to cover working capital you need not bother with it. I am trying to find whether there is anything else that you have to ask that Mr. Chambers does not intend to cover.

Mr. Cummings: There may be some other points that Mr. Chambers would want to cover. If he were here we could have a conference with him and determine that, but now we cannot.

The Master: Have you anything else that you can go forward with, Mr. Ransom?

Mr. Ransom: Yes. I have the McMillin testimony that I am going to read in.

The Master: Is there a stipulation about that?

Mr. Ransom: Yes.

The Master: I will suspend with Col. Miller for a while, and we will take this McMillin testimony.

Mr. Ransom: They may want to make objections.

Mr. Neumann: There was some correspondence about it. The correspondence fully covers it.

Mr. Cummings: We might want to make further objections, unless it is fully covered in the original record.

1331 Mr. Neumann: I think we would be willing to rest on the judgment of the men who represented the defendants there. The correspondence will indicate very clearly what has been agreed to.

The Master: The stenographer will spread on the record the following letters:

Letter from Judge Ransom to Ely Neumann, dated May 20, 1920.
Letter from Ely Neumann, Assistant Counsel, to William L. Ransom, dated May 21, 1920.
Letter from Judge Ransom to Ely Neumann, dated May 22, 1920.
Letter from Ely Neumann to Judge Ransom, dated May 25, 1920.
The letters above referred to are as follows:

May 20, 1920.

New York & Queens Gas Company v. Newton.

Ely Neumann, Esq.,
Assistant Counsel,
19 Lafayette Street,
New York City.

DEAR SIR

I have reached the conclusion that it is advisable to present upon the trial of this case the testimony of the Honorable Emerson McMillin along the lines to which he testified in the Consolidated Gas Company case.

Mr. McMillin has recently been ill, and it would be a great convenience, to him and to me, if you were willing to have his
1332 testimony read in from the Consolidated case record, instead of requiring his attendance in Court again. He was very vigorously cross examined in the Consolidated case, and all that could be read in.

If you are unwilling to do this, please let me know, not later than Saturday. If his testimony is not to be read in, I shall have to try to procure his presence for next Wednesday.

Very truly yours,

——— ———.

New York, May 21st, 1920.

New York and Queens Gas Co. vs. Newton et al.

Hon. William L. Ransom,
120 Broadway,
New York City.

MY DEAR SIR:

In response to yours of the 20th inst., would say that I see no objection to reading into the record of this case the entire testimony given by Mr. Emerson McMillin in the Consolidated case, provided however that it is stated on the record, that by so doing all the defendants do not waive any objections thereto, but on the contrary object to the testimony, as inadmissible, immaterial, incompetent and irrelevant; and that the objections and rulings and motions to strike out and rulings contained therein shall have the same force and effect as if herein taken and given.

1333 Lastly upon the understanding that the witness will be produced before the Master by complainant before the entire case is closed, for further cross examination, if any of the defendants should so desire, and so notify complainant's counsel.

I may add that the above also expresses the views of Mr. Chambers on behalf of the defendant Newton.

Yours very truly,

ELY NEUMANN,
Assistant Counsel.

May 22, 1920.

New York & Queens Gas Company v. Newton.

Honorable Ely Neumann,
Assistant Counsel,
Public Service Commission for 1st Dist.,
49 Lafayette Street,
New York City.

DEAR SIR:

Your letter of May 21st, in reply to mine of May 20th, is received, and I beg to thank you for your courteous compliance with my suggestion as to the testimony of Honorable Emerson McMillin.

The conditions which you attach are acceptable, but I think I ought to add this: If you should call for Mr. McMillin's presence as a witness for further cross examination, and if through
1334 his illness or otherwise I cannot produce him, and his testimony is stricken out in consequence, I shall have the right to call another witness to testify on the same subject matter, with the same right as though originally called.

Very truly yours,

——— ———.

New York, May 25, 1920.

New York and Queens Gas Company vs. Newton.

Hon. William L. Ransom,
120 Broadway,
New York City.

MY DEAR SIR:

I have your letter of the 22nd and neither Mr. Chambers nor myself see any objection to inserting the condition mentioned therein to the conditions mentioned in my letter to you of the 21st in re subject of testimony of the witness McMillin.

Very truly yours,

ELY NEUMANN,
Assistant Counsel.

1335 The Master: Upon the stipulation expressed in this correspondence the testimony of Emerson McMillin, given in the case of the Consolidated Gas Company will be copied into this record.

The testimony of Emerson McMillin, above referred to, is as follows:

EMERSON McMILLIN, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom.

Q. Mr. McMillin, where do you reside?
A. Darlington, Ramsey, New Jersey.
Q. What is your business?
A. 120 Broadway.
Q. What is your business?
A. What is my business?
Q. Yes.
A. Well, banking and public utilities, dealing in securities, and farming.
Q. Are you connected with any companies or corporations engaged in the purchase, management and operation of public utlities, and if so, what?
A. Yes, I am the senior member of a banking firm that deals in securities, and chairman of the board of a holding company that operates plants.
Q. That is the banking firm of Emerson McMillin & Company, you are the senior member of?
A. Yes.
Q. And you are chairman of the Board of the American Light and Traction Company?
A. Yes, sir.
1336 Q. How long have you been in the business in New York City?
A. Since the middle of 1891 in New York City.
Q. And how long before that elsewhere?
A. Well, it is 52 years since I begun the management of companies.
Q. Have you had occasion in that capacity to become familiar with the management and operation of public utilities including gas companies?
A. Fairly so.
Q. That has been your business?
A. That has been my business, yes.
Q. The utilities, principal kinds, owned by the American Light & Traction Company or other companies in which you are interested include gas and electric light and street railways?
A. Yes, sir.

Q. In what portions of the United States are gas works for the supply of gas to the public also controlled or operated by you?

A. In the States of New York, New Jersey, Michigan, Ohio, Missouri, Wisconsin, Colorado, Texas, Providence of Quebec, Canada.

Q. State of Alabama—you have some properties in Alabama?

A. Yes.

Q. Have you personally bought and sold gas companies and gas properties?

A. Yes, sir.

Q. One or more in each of the states that you have mentioned during that time?

A. Yes, sir.

Q. Are you familiar with the returns expected and usually realized by investors in other classes of business than gas corporations and public utilities in New York City and its vicinity?

1337 A. In other than public utilities?

Q. Yes.

A. Fairly so.

Q. That is, you deal in other kinds of stock personally?

A. Yes, sir.

Q. And your work for your banking firm brings you in contact with investments in other than public utility properties?

A. Yes, sir.

Q. To what extent would you say that you do deal in other than public utility stocks, personally, how much a year, what volume?

A. Usually I personally deal in three or four million dollars' worth of securities a year. The firm—I cannot say very much more than that, but the percentage of the two, I don't know about that.

Q. Many of these stocks in which you deal are stocks where the dealings are conducted on the stock market?

A. Yes, sir.

Q. Dividend paying stocks?

A. No other kind.

Q. Based on current market quotations and upon prices paid by you from time to time for stocks in which you would deal, what would you say is the basis of return represented by prices paid for such stocks?

Mr. Chambers: I object to that *as* irrelevant, incompetent and immaterial and not the subject of expert testimony. That is a question which the Court has to determine in this case, it is a question of law which the courts have determined in other cases.

1338 The Master: I will overrule the objection at this time and entertain a motion to strike out at the close of the entire case.

Mr. Chambers: Exception.

A. What is the question?

Q. Based on current market quotations and on prices paid by you from time to time for these stocks in which you say you deal, what would you say was the basis of return represented by the prices paid for such stocks?

A. Other than public utilities?

Q. Yes.

Mr. Chambers: I make the further objection that the question is too indefinite and too general and too uncertain, and does not relate to any particular property, or any particular stock, or any particular company, or any particular locality.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. Other than public utilities, what would you say?

A. In railroad securities the earnings of the companies—I have no means of knowing and pay no attention to those, but the dividends will average more than eight per cent. With the industrial companies, on the price which they are purchased on, about nine per cent.

Q. Are you familiar with the selling price of bonds and stocks generally of corporations furnishing illuminating or heating gas to the public?

A. In a general way, yes.

Q. Are you familiar with the rate of return expected and usually realized by investors in gas property?

1339 A. The rate of return of course——

Mr. Chambers: That calls for yes or no I take it.

Q. That is over and above operating expenses?

Mr. Chambers: Does that call for the rate?

Mr. Ransom: No.

Q. The question is are you familiar with it?

A. Yes.

Q. Are you familiar with the conditions of risk attending investments in operating gas utilities in this city and vicinity?

A. Yes.

Q. According to your own experience and the knowledge that you have acquired in the banking and public utility business, what is the rate of return usually expected and realized by investors in gas properties?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. This is a subject that cannot be measured by the opinion of an individual of the experience of the witness.

The Master: You make the same objection, Mr. Chambers?

Mr. Chambers: I make all the objections I made before to the other question, including that it is indefinite and uncertain, and the other grounds.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception. You will entertain a motion to strike out?

Mr. Ransom: I may say that that form of question is based on the Supreme Court ruling in a prior case.

1340 Mr. O'Brien: While it may be competent for a duly qualified expert to tell the Court what during a given period has been the average rate of return, I do not think it is competent to give opinion testimony on this subject. It is a question as to locality. This state has fixed a fair rate of return, there is a legal rate of interest, and from that the Court will draw its conclusion. The ruling of the United States Supreme Court has not as yet been upset, and I say that in spite of the obiter dictum in the Lincoln gas case.

The Master: When did the State of New York fix a legal rate of six per cent?

Mr. O'Brien: It has always been, so far as my memory goes, the legal rate of interest, and anything more is usurious. In the Lincoln gas case they took cognizance of the fact that in the State of Nebraska the legal rate of interest was eight per cent. I say that if they drew a conclusion as to that in the State of Nebraska, we have the right as to this particular locality to base our own deductions upon what this state up to the present time has declared to be a legal return.

The Master: I will not hear any argument at this time; I will hear argument when the time comes for a motion to strike out.

Mr. O'Brien: My point is that this is not a subject for opinion testimony.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Expectations the last two or three years have not been
1341 realized.

The Master: Based upon the sales of that kind of securities, upon what basis are prices realized for securities?

Mr. O'Brien: Your Honor will permit me, with due deference, to object to your question, on the ground that the sale of securities is in no way a measure of the return upon a piece of property.

The Master: It bears somewhat upon the expectation that Mr. McMillin says have not been realized.

Mr. O'Brien: Exception.

Q. What rate of return do you say the net earnings should represent in this locality?

A. There would be no occasion for any one to pay more than on a ten per cent basis. You can buy easy enough on those returns.

Q. What is that?

A. A ten per cent basis of earnings on the value of the property.

Q. Your opinion is that a figure of ten per cent in this locality——

A. That would be cheap judging from the returns on my own securities.

Q. Would it in your judgment be possible to interest investors in the acquisition or establishment of a public utility enterprise such as a gas company in the city or vicinity of New York upon a lesser expectation of earnings than eight per cent upon the value of the property?

Mr. O'Brien: I make the same objection, and I call your Honor attention to the fact that we are getting into the realm of Wall Stre now, and it hasn't any place in this case.

1342 The Master: Objection overruled.

Mr. O'Brien: If we are going to——

The Master: I have ruled on it, don't let us waste any argume at this time. I will take Mr. McMillin's testimony, and I am goi to hear a motion to strike out when all the proof in this case is in. am not concluding myself by allowing the testimony in, as whether I will let it stay in or not.

A. What is the question?

The Master: Could you interest people in investing in securit of a gas plant at less than eight per cent?

The Witness: In the establishment of a gas company you said?

Q. Acquisition or establishment.

A. In one established or in establishing one?

Q. In establishing one, or in buying one?

A. Well, in establishing one of course you have got to take eve thing into consideration. In one that is already established th are bonds, and first preferred, and possibly second preferred, a common, and they all have a different value, so that you could answer one question as general.

Q. But putting the question in the form in which I did w respect to the possibility of interesting investors in the acquiring the establishing of a gas enterprise, is it your judgment that inves could be interested in furnishing the money for such a purpose less than an eight per cent basis?

Mr. O'Brien: I object to that as incompetent, irrelevant and material, based on assumptions that are not in this case, and that h no vital part in a rate case. On the further ground that i leading.

1343 The Master: Objection overruled.

Mr. O'Brien: Exception.

A. No.

The Master: You mean by that, Mr. McMillin, that you would be able to interest capital in a gas enterprise unless the gas comp could show a net earnings of eight per cent?

The Witness: Yes.

Q. On the value of the property?

A. On the value of the property.

The Master: That does not mean that they would insist on e per cent on their bonds?

The Witness: That does not follow.

The Master: Or on the first preferred stock.

The Witness: No.

The Master: Take a gas company in operation which showed

it was only earning on its invested capital actually in less than four per cent, could you sell the bonds of the company at all?

The Witness: No.

Mr. O'Brien: I object to the question of the Master, with due defetence, on the ground that it is not the measure, that capitalization is not the measure of the value.

The Master: I said invested capital, actually invested capital, the cost of its property.

Mr. O'Brien: My objection is just as valid whatever way your Honor puts it.

The Master: What I am trying to get at is this, Mr. McMillin, and I take it that that is the gist of your testimony here—what
1344 would a gas company have to earn to make its securities marketable at any price, having mind that prices will vary as you have indicated between the bonds, and the first and second preferred, and the common stock, what would be the basis that it would have to earn to make its securities marketable?

Mr. O'Brien: I object to that.

Mr. Chambers: I object to that.

The Master: This is all taken subject to the objection and exception.

Mr. O'Brien: We are dealing with a false basis, your Honor

The Master: Maybe we are. I am inclined to agree with Mr. Chambers that this is not a matter of expert testimony at all, but I am going to take it at this time subject to a motion to strike out.

The Witness: It would have to earn ten per cent to make the enterprise a go.

The Master: You would have to earn ten per cent to make the enterprise go?

The Witness: Yes.

Mr. O'Brien: You mean initiating an enterprise?

The Witness: The enterprise would have to show the possibility to earn ten per cent.

Mr. Ransom: I object to that.

Q You mean to start?

The Master: I won't take that.

The Witness: On the value of the property.

Mr. O'Brien: I will have to go over this ground later. You might as well settle it now.

1345 The Master: I am going to do it myself now. Take a going concern that wanted to sell some bonds, and it only showed a return of four per cent, would it be able to sell it bonds?

Mr. O'Brien: Same objection.

The Witness: No.

The Master: Or five per cent?

The Witness: No.

By the Master:

Q. Well, what would it have to show investors who would be wi
ing to buy first lien bonds that it could earn and was earning?
A. The percentage of bonds compared to the value of the proper
of course——
Q. Would bear on it?
A. Yes.
Q. But the investors want to know that the interest is going to
paid on their bonds?
A. They must know that.
Q. What would they look at to see what the net return was, w
the company's earnings were, what would the minimum be? W
would your minimum be as a banker to underwrite the bonds?

Mr. O'Brien: I object to that.
The Witness: To underwrite the bonds?

Q. Yes.
A. That would depend. If it was an established company——
Q. I am talking about an established company?
A. The surplus that it had and the percentage of bonds to
stock. There are lots of things that must be taken into consid
tion. If you had a property in a large city with a good franc
and did not have out more than half its value in bonds,
1346 could probably sell them on, at the present time, a six
one-half or seven per cent basis.
Q. Let us analyze that a minute. Let us assume a company
is offering half of the value of its property in a six per cent b
and it has a surplus of a few million dollars, and the company sh
that it is not making any money at all, but losing money, could
sell the bonds?
A. No.

Mr. O'Brien: Exception.

Q. That there is a surplus, it is only half the value of the prope
A. You could not sell the bonds for half the property on that
of a proposition.

Mr. O'Brien: Will your Honor permit me to note my objec
to each one of your questions, and take an exception to your rul
The Master: Surely.

Q. Let us assume a company that has an amount of surplus,
surplus—in other words, that its capital is intact—and that it is
ing bonds at one-half the value of its property, or the cost
property, either way you like, and it is not showing any earn
will you be able to sell the bonds?
A. If the stock is earning how much?
Q. Nothing?
A. Nothing?
Q. The company is earning nothing.
A. There wouldn't anybody want them.

Q. Well, at what return, what net return would you insist on before you would underwrite these bonds, in the case I have suggested?

1347 Mr. O'Brien: Same objection. It is not clear whether you are addressing Mr. McMillin now as a banker or as a consumer.

The Master: I am addressing him as a banker, and a man who is dealing in securities and knows what he can buy and what he can sell, and he is not underwriting bonds unless he knows he can sell them.

Mr. O'Brien: Well, a further objection lies to the fact that your Honor does not make it clear whether you are talking now about a company to be installed.

The Master: Oh, yes, I have made it perfectly clear.

Mr. O'Brien: It is further vague, because you do not say whether the company has got a monopoly in a rich territory, or whether it is going into virgin fields.

The Master: I am going to take everything you want me to take, and I have taken some of them. I am going to take a monopoly, and I am going to take an established business, and I am going to take every possible advantage that you can have in a gas company that I am talking about, and I am going to take as low a percentage of its property as you care, and as fair a return as you like, will you be able to sell the bonds if the company is losing money on the sale of its gas?

The Witness: No.

Mr. O'Brien: I will take an exception.

Q. There is a point at which you would want to see some percentage of earnings by the company?

A. Exactly.

1348 Q. What percentage, I would ask, assuming a monopoly and every other advantage?

A. Assuming that there is not more than half the value of the property in bonds, the stock ought to earn ten or twelve per cent as representing the other half.

Mr. O'Brien: Your Honor, I must assert to you just——

The Master: I must insist that I do not have any argument now. You will have your opportunity on a motion to strike out.

Mr. O'Brien: Well, will you wait a minute until I show you where you are veering away from the proper moorings?

The Master: No. Will you please stop? I am going to give you the opportunity on your motion to strike out.

Mr. O'Brien: I will stop if you tell me to stop. I must stop and note my exception.

The Master: I will give you the opportunity to move to strike it out.

Mr. O'Brien: What is the use of putting it on the record?

The Master: Because I want it.

Mr. O'Brien: The only way in which this gentleman could be

called is to tell how much money is earned in New York in every line of endeavor.

The Master: Stop it. Next question. I am talking about a New York gas company with a monopoly.

The Witness: Yes, practical monopoly.

Q. With a practical monopoly, or a complete monopoly. Does it make any difference if you have a complete monopoly, if it is losing money on the sale of gas?

1349 A. There would not anyone want your securities, of course.

By Mr. Ransom:

Q. Are you, Mr. McMillin, familiar with what has taken place recently with respect to the Brooklyn Union Gas Company's bonds?

Mr. O'Brien: Same objection, your Honor. Now you are trying to prove one case by trying another.

The Master: I won't take that. There may be some special circumstance, there may be certain manipulation of bonds, or manipulation of stock. I will take his general statement.

Q. Mr. McMillin, has the cost of money for public utility purposes increased or decreased in the past few years?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Same ruling.

Mr. O'Brien: What the bankers can do with money in making it high or low, expensive or cheap, hasn't any part in this rate case, your Honor.

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. O'Brien: We have had the evidence of what they can do recently.

The Master: I have had that for many years.

Q. Would you say it has increased very largely?

A. It has increased, yes, from year to year.

Mr. O'Brien: Same objection and exception.

1350 Q. Do you have occasion to keep in close touch with the cost of operating gas properties owned by you and by the American Light & Traction Company in various parts of the country, including New York and vicinity?

Mr. O'Brien: Same objection.

The Master: Objection sustained. I do not think I will take that. Objection sustained.

Mr. Ransom: Well, you don't think you will take exactly what?

The Master: I won't take testimony as to what other gas plant in the country are doing.

Mr. Ransom: I am not going into that.

The Master: That is, whether it costs more to run gas plants somewhere else. I am dealing with one gas company here in one locality.

Q. Mr. McMillin, do you make it your business to keep in general touch with the trend of cost of operation and of the prices of the commodities which are used in operation?

Mr. O'Brien: Same objection. He has not been qualified here.
The Master: Objection sustained.
Mr. Ransom: Exception.

Q. Would you say, Mr. McMillin, that the unit cost of operating gas properties is greater or less at the present time than it was five years ago?

Mr. O'Brien: Same objection.
The Master: Same ruling.
Mr. Ransom: Exception.
The Master: You need not ask any more questions on that line. I won't let this witness testify.

1351 Mr. Ransom: I wish to show by this witness, in the first place, that there is at the present time a higher level of prices with respect to labor and materials used in the gas business and necessarily used and that for reasons which the witness will state, this condition represents a higher and a permanently higher level of prices, at least for a long period of time.

The Master: I won't take his testimony on that.
Mr. Ransom: I think he is one of the best qualified men in the country. If your Honor thinks that you have had enough on that score so that it becomes merely cumulative——
The Master (interrupting): I won't take this witness's testimony.
Mr. Ransom: Your Honor will allow me an exception.
The Master: Yes.

Cross-examination.

By Mr. Chambers:

Q. Mr. McMillin, I understood you to say that in order to market bonds of a gas company in the City of New York, you were of the opinion that the net earnings on the stock ought to be ten or twelve per cent?

A. To market them at some particular price?
Q. Well, do you think you could not market them if the stock earned net eight per cent?
A. Market the bonds?
Q. Yes.
A. A percentage of the value of the property, yes.

1352 Q. That is a pretty good per cent, eight per cent?
A. Eight per cent?
Q. Net?
A. Net earnings?

Q. Yes.
A. Yes.
Q. Now, supposing it was seven, do you think you would have any trouble in marketing them then?
A. I think you could not market them at all.
Q. At seven?
A. No, not now.
Q. Then between seven and eight you fix a line of demarkation, do you?
A. I think that if a stock was paying eight per cent dividend, you could market bonds, but usually when it pays eight per cent it is earning ten or twelve per cent, if it is a well managed company.

The Master: I don't think Mr. Chambers understands the distinction between a stock getting the eight per cent and earning ten or twelve per cent.
The Witness: It is a good deal different.
The Master: You better explain to him.

Q. Suppose it was earning eight per cent on the stock——

The Master: What do you mean now, earning it or getting it?
Mr. Chambers: Meaning that, just what I am saying, the net earnings.
The Master: Based on that, what do you figure the stockholder would get out of that eight per cent?
Mr. Chambers: Why, eight per cent on par.
1353 The Master: No. I knew you did not understand it. A stock will earn a great deal more, it must earn a great deal more than it pays its stockholders. In other words——
Mr. Chambers (interrupting): I don't care what it pays. I did not reach that question yet. I am asking if he could sell these bonds if the stock was earning eight per cent. They may not pay anything. What difference does that make?
The Master: Have you got the question that Mr. Chambers now has in mind, earnings as distinquished——

Q. If a company was earning net eight per cent on its stock, could you then sell its bonds?
A. Its bonds would not be desirable, earning eight per cent, unless they were of a high price bond, someone might take them for the possible high rate of interest.
Q. Suppose it was earning ten and paying eight on the stock, then would you have any trouble?
A. In selling at what price, the bonds?
Q. The bonds at par, say?
A. Well, at what rate of interest?

The Master: That don't interest Mr. Chambers.

Q. Say four or five per cent?
A. There would not anybody have them at all.
Q. Now they would not?
A. No.

Q. A few years ago they would?
A. Yes.
Q. They were very desirable?
A. Yes.
Q. Why is that situation prevailing now?
A. Because money is high.
1354 Q. Money is high?
A. Yes.
Q. On account of the war, isn't it?
A. Money is high and——
Q. Isn't it on account of the war?

Mr. Ransom: Let him answer.
The Master: Let him answer.

The Witness: Money is high, and affairs are so uncertain. We don't know whether we are going to make the interest on these things next year or not.
Q. Times are normal, aren't they?
A. Now?
Q. Yes.
A. Normal.
Q. Abnormal?
A. Abnormal, absolutely, everywhere.
Q. Everywhere, everything, isn't that so?
A. Absolutely.
Q. In all your vast business it is abnormal?
A. Absolutely.
Q. Wages are abnormal, is that right?
A. Abnormal, yes.
Q. Prices, moneys, everything is abnormal?
A. By comparison only.
Q. What?
A. By comparison, in comparison with pre-war periods.
Q. Have you ever in your experience known of such abnormal times as now?
A. Yes.
Q. When?
A. After the Civil War.
Q. How does the present check up with the Civil War
1355 times?
A. Well, my horizon of observation was smaller then than now. I can only make a fair comparison.
Q. How old were you then?
A. I was old enough to observe four years, three months in the Civil War.
Q. Conditions were abnormal then, weren't they?
A. Absolutely.
Q. But they leveled out to normal conditions after a little time, didn't they?
A. Yes, but now——

The Master: Well, were the low prices again abnormal when they got very low?

The Witness: When you get the low price, it was abnormal instead of the high prices being abnormal, and I fear, and I say I fear because it is pretty hard to tell people now that the abnormal may be the low prices after we have an abnormal condition heretofore, it would be a low price, that the abnormal condition of today compared with pre-war periods will be the normal basis for a long time.

Q. Did you ever know money to be so high as it was loaning recently, on call at thirty per cent?

A. Oh, yes, I have seen it loan at seventy-five per cent.

Q. When, in 1875?

A. '75.

The Master: He said he saw it loan at seventy-five.

Q. When was that?

A. 1892 or 1893.

Q. 1892 or '93?

A. Yes.

1356 Q. We had a panic?

A. Yes.

The Master: Why, call money went up to nearly that in 1907, didn't it, in the fall of 1907, in October?

The Witness: Yes. I do not think it went much over thirty per cent.

The Master: In October, 1907, it went pretty high, didn't it?

The Witness: It was pretty high, but I do not think——

Q. Not so high as that?

A. More than thirty per cent, I should say.

Q. In 1907?

A. I should say so, yes, but I remember in 1893 it was loaning up to seventy-five per cent.

Q. Those were panicky times?

A. Absolutely.

The Master: Well, it is the high money that makes it panicky, isn't it?

The Witness: What is that?

The Master: It is the high cost of money that makes it panicky, isn't it?

The Witness: Panics make high call money. Whether they do—I don't know which way to put that.

Q. Would you say, Mr. McMillin, that the financial world was nervous just now because of the abnormal condition?

A. The abnormal conditions, that the world is nervous?

Q. Financial world?

A. I am afraid that most people are. I am not greatly troubled myself. We see these things occur every decade.

1357 Q. Now, I want to ask you another question. If you were about to market some bonds upon a gas company, established gas company, in the City of New York, and it appeared that that gas company earned ten per cent net on its stock, we will say, for the first question, covering a period of ten years, but during two of those ten years it fell as low as say, two per cent, but the average of the ten years was ten per cent, so that when you were all through it averaged ten per cent every year, the lean with the fat, would you then say that you could market those bonds?

A. I do not think you could market bonds under those conditions, if the last two years is to guide.

Q. Put the last two years then in the middle?

A. Oh, that would be a different thing, but the two years now would indicate conditions that might pertain to some time, and therefore nobody would want the bonds if the company was earning only two per cent.

Q. Even though the average was ten per cent?

A. Even though the average was twenty per cent.

Q. Even though the average was thirty per cent?

A. Yes.

Q. As high as thirty? Supposing the gas company made a net of thirty per cent?

A. Yes.

The Master: In days gone by?

Mr. Chambers: So that the average was thirty per cent.

The Master: And the two years now——

Mr. Chambers: So that the average was thirty per cent, with the good years and bad, what do you say about that?

1358 The Witness: Then it came down in the last two years to two per cent?

The Master: Yes.

The Witness: I would not want the bonds.

Q. Suppose it came down to four per cent in the past two years, during these abnormal times it made four, but the average was still ten, you could market those bonds, then, couldn't you?

A. Not easily.

Q. But you could market them, if they could make four per cent during these abnormal times, so that the average was ten, that would show they were in pretty good condition, wouldn't it?

A. Not in the last two years, if it came down to four per cent.

Q. You would not say so?

A. These abnormal conditions are likely to obtain, in the eyes of bankers and people generally, for some time.

Q. How long?

A. That is a hard question to answer.

Q. There can't anybody answer it, can they?

A. There can't anybody answer it, but a good while.

The Master: By that you mean, Mr. McMillin, four or five years?

The Witness: Yes, I should say five years. We are paying every month or so higher wages.

Q. You are paying what?
A. Higher wages. Wages go up, up, up, ever since——
Q. Is not that because the cost of living is high?
A. The cost of what?
Q. Because the cost of living is high?
1359 A. That is the basis of the claims, at any rate. We are paying it because we cannot help it.
Q. Suppose the cost of living goes down.
A. The cost of living will go down and the condition of the laboring man will be better. The price of labor will not go down appreciably for many years.
Q. That is your opinion?
A. That is my opinion and my desire.
Q. It is your desire?
A. And my desire, yes, sir.
Q. That it will not?
A. Yes.
Q. Well, your desire may not be realized?
A. That is right.
Q. It is a guess, is it not?

The Master. Why of course it is a guess. Every prophecy is a guess.

A. Yes, it is all a guess.
Q. Is eight per cent a fair return, do you say?

The Master. What do you mean by return?
Mr. Chambers: Wait a minute; I have not finished my question.
The Master. But do not let us get mixed up on those terms.

Q. Is eight per cent, net eight per cent on the stock of a company a fair return?

Mr. Ransom. I object to a question like that. You do not figure that in percentage on stock.
The Master. The question is not clear, in view of the witness's testimony that there is a good deal of difference between a stock earning eight per cent and a stock receiving eight per cent dividends. I want counsel to make it perfectly clear whether he is talking
1360 about the dividend payments or the stock earnings?
Mr. Chambers: I am talking about earnings all the while. They do not have to pay their stockholders, of course.
The Master. Mr McMillan, is eight per cent as an earning on the stock a fair return to the company?
The Witness: Knowing that I can buy stock on the basis of twelve per cent dividends, not earnings, I would not want to pay for my stock at eight per cent.

Q. That is the best answer you can give me to that?
A. That is a practical one. I can go out and buy lots of stock at a twelve per cent dividend basis.
Q. So you would not care to invest in one earning eight per cent on its stock?

A. I would not care to invest in an eight per cent stock.

Q. Supposing a gas company were paying eight per cent on their stock right along through the present period, would you have any trouble in marketing those bonds?

A. It might be paying eight per cent out of surplus.

Q. Would that be a good policy?

A. We know companies pile up surplus for just such occasions as this, and it continues to pay eight per cent although it was not earning it.

Q. Is it not fair to assume that all companies do pile up a surplus for abnormal conditions like this?

A. Yes, they ought to.

1361 Q. They ought to?

A. Yes.

The Master: How long does surplus last if they do not have any earnings at all and pay the same rate of dividends?

Mr. O'Brien: That has a pessimistic tone.

The Master: That surplus would not last very long, would it?

The Witness: It would not last very long.

The Master: Do not waste any more time on this. They are pure simple business propositions. The only point I was willing to take Mr. McMillan's testimony on—and in that he is more expert than any of us—is what the financial world figures a stock must earn to make its securities salable; in other words, what a gas company must earn to make its securities salable. Mr. McMillin's testimony is that it should earn, not pay dividends, but should earn a net earning of ten to twelve per cent. That is your testimony, is it not?

The Witness: Yes.

Mr. O'Brien: That is Utopia you are in now, your Honor. He has not given the whole range of investment and investment securities. There are billions of dollars out now and they never had that to invite them in or to lure them in.

The Master: Maybe you can get it. I will give you a few minutes to see what you can do. Outside of that, Mr. Chambers, Mr. McMillin's testimony is intensely interesting and I am glad to hear it, but I do not think it adds anything to this case, because it is a matter that any intelligent man who follows the trend of events

1362 in the world and who has studied economic conditions at all can tell probably with as great certainty as Mr. McMillin, as to what the future will bring. Isn't that so—it is a pure guess?

The Witness: Oh yes, it is a guess. Yes, sir.

Q. Do you own any stock in the Consolidated Gas Company?

A. No, sir.

Q. You are not interested in it in any way?

A. In no way at all.

Q. These corporations that you mentioned, the one in New Jersey, what corporation is that you are interested in?

A. Long Branch and along the coast down there.

Q. Long Branch?

A. Yes.

Q. How much are you earning over there on your stock?

The Master: I will not take that.

A. We are paying eight per cent dividends now.

The Master: I will not take that, Mr. McMillin, because that will not help us in this case. It might well be that all of Mr. McMillin's companies are making the same complaint that this company is making, or it may be that owing to a lack of restrictive legislation, or other things, they are making a great deal of money. It does not help us here at all.

Q. Are you connected with the Public Service Gas Company of New Jersey?

A. I knew of it and knew officers of it.

Q. You have not any stock or bonds in it?

A. I have not any stock.

1363 Q. You are not an officer of it?

A. No.

Q. Did you mean that you are a director of all these different companies in these different states?

A. How is that?

Q. You are a director of gas companies in all these different states?

A. I mentioned the states there where we have had companies, but we do not have them all now. We probably have fifteen or eighteen.

Q. What do you do, you underwrite, do you?

A. What?

Q. You underwrite public utilities?

A. Not for a long time.

Q. Did you underwrite the Bronx Gas & Electric Company?

A. The Bronx?

Q. Yes.

A. No.

The Master: Is that all, Mr. Chambers?

Mr. Chambers: That is all.

The Master: Mr. O'Brien, do you want to ask him something?

Mr. O'Brien: Yes.

The Master: Have in mind, Mr. O'Brien, that the only point I am accepting Mr. McMillin's testimony on is his statement that a public utility having a practical monopoly, in order to market its securities, being a going concern, ought to show a net earning on its capital or investment—that is the actual cost of its plant—of from ten to twelve per cent. That is all that it amounts to.

Mr. Ransom: Of course, as to your limitation of the witness's testimony the complainant excepts. We say that concern-

1364 ing the matters to which he has testified and concerning the other matters to which he has not been permitted to testify, he is well qualified and——

The Master: I am not questioning Mr. McMillin's qualifications.

Mr. Ransom: Certainly as to the matters to which he has testified, his testimony is pertinent to the issues, highly probative, and we are entitled to the full benefit of it.

The Master: There are some points of his testimony that I shall accept his statement on, namely, the opinion of bankers as to the abnormality of the times; because that was brought out by Mr. Chambers and not by you. I am not going to let Mr. O'Brien cross-examine him on something that Mr. Chambers brought out. The point of my statement to Mr. O'Brien is that all I am going to let him inquire about is Mr. McMillin's statement that a company of the kind we are discussing ought to earn ten to twelve per cent.

Mr. Ransom: I wanted to show on the direct that they present level of prices, although abnormal compared with what went before the late war, is normal now and will be for a long period.

The Master: I did not let you show it and Mr. Chambers showed it himself. Why do you complain?

Mr. Ransom: I am not complaining.

Mr. O'Brien: I am going to complain before I start——

The Master: You always do.

Mr. O'Brien (continuing): To your Honor placing one of
1365 these big Hindenburg walls about what I am going to ask on cross-examination.

The Master: If you think a protest from you is going to get you through that wall, you are wrong; the wall is going to stay there.

Mr. O'Brien: When I proceed to cross-examine a witness—and it is not with Mr. McMillin alone, but with pretty nearly every witness I examine—you proceed to outline for me just how far you are going to let me go, before I tell you how far I wish to cross-examine him. That is what I am protesting against.

The Master: And I outline it this time and that outline goes and will stand.

Mr. O'Brien: Questions and answers are on this record, and I am going to assume that I have the right to cross-examine him on anything that bears upon what was brought out on the direct, irrespective of what is in your Honor's mind as a salient matter or a salient statement, and what is not.

The Master: If I am in the position where I can limit the cross and control it, I will enforce the rule that I have just stated, that your cross-examination be directed to one point and no other. If you will not do that I will take the witness off the stand.

Mr. O'Brien: Your Honor can do as you see fit. I have no power to overrule you, you know. I am the attorney, you are the judge.

The Master: No, it will have to be for the higher court to do that.

1366 Mr. O'Brien: But still there is stuff put in here by Judge Ransom that you think does not impress you. It is in the record and Judge Ransom thinks it is impressive and he is going to impress the record with it, and I want to ask the witness about those same things.

The Master: Ask your questions. Your cross-examination will be limited to what I have outlined.

Cross-examination.

By Mr. O'Brien:

Q. Mr. McMillin, have you any stock in any of the subsidiar companies of the Consolidated Gas Company?

A. I have not.

Q. Have you any stock in the Standard Oil Company of Ne Jersey?

A. I have not.

Q. In the Standard Oil Company of New York?

A. No Standard Oil.

Q. Have you any relations in connection with any kinds of co porations with Mr. Nicholas F. Brady or Mr. William Rockefeller

A. Well, I do not know whether I have stock in the same com panies that they have, but I have no knowledge of being associate with them in any way. But I cannot know who the stockholder are of the various companies I have securities in.

Q. Will you say that you do not know that they have any con nection with the companies in which you have stock?

A. I can say that I do not know that they have any connectio with any company in which I have stock.

1367 Q. Have you any stock in any oil companies?

A. One.

Q. One?

A. Yes, one.

Q. Which one is it?

A. Pierce Oil.

The Master: If the witness is willing to state it, all right.

The Witness: I am sorry, but it is true.

The Master: What is the matter with Pierce Oil?

The Witness: It is going down.

The Master: So are others. I have some that is going down.

Q. The Standard Oil of New Jersey is not going down, is it Mr McMillin?

The Master: Objection sustained. The question is not allowed.

A. I don't know.

Mr. O'Brien: Exception.

The Master: Well, the witness has answered he don't know.

Q. Are you not acquainted with the returns that the Standard Oi of New Jersey and the Standard Oil of New York are getting upo their investment?

Mr. Ransom: Objected to.

The Master: Objection sustained, and I direct the counsel's atten tion to the fact that if he has any other questions to ask bearing upo

the witness's interest in the litigation, his association or connection with the company or its subsidiaries, I will let him ask it; otherwise nothing but the question in the statement made by the witness.

1368 Q. Have you had any business relations in the last decade and a half with Mr. Rockefeller?

A. There are three or four Rockefellers.

Q. William Rockefeller?

A. No.

Q. Or any of them. John D.?

A. I have had no business relations with any of them.

Q. Have you had any banking relations with them?

A. No.

Q. Or with companies in which they are interested?

A. I have had correspondence with J. D., Jr., on industrial matters, particularly with his various schemes for bettering labor conditions, but that is the only connection I have had with any of the Rockefellers.

Q. Have you ever had any stock in either of the two Standard Oil Companies of New York or New Jersey?

A. Of the oil companies?

Q. Yes.

A. I do not think I ever had. But that is a pretty hard question, handling several hundred thousand shares a year, in fifteen, twenty or thirty years. It would be hard to remember, but I do not remember that I ever had any.

Q. You mean you are buying and selling all the time and you might have taken over some stock?

A. I might have had it; but I would say no, that I never had any in any of those companies.

Q. When you testified today in the cross-examination concerning return that might entice a banker to put his money out, in-

1369 vest it in gas companies, were you testifying as a banker, as one who is loaning money and underwriting bonds in corporations?

A. I was testifying as one that was familiar both with the purchase and sale and the operation of the properties and what they have done, and what they probably will do.

Q. Have you made a business of underwriting bonds in companies—gas companies?

A. Oh, not a business. No, not a business.

Q. Have you done it to any great extent.

A. No, I often have joined in it, though.

Q. In your day you have been a successful financier?

Mr. Ransom: I object to the question.

The Master: Mr. McMillin can admit it if he wants to.

Mr. O'Brien: I am trying to get the man's point of view, and I know Mr. McMillin will give it to me frankly if we go along together for a while.

Mr. Ransom: I think the question is improper.

The Master: I will allow it.

A. I have no objection to answering the questions at all myself.

Q. Mr. McMillin, I am not going to get into your income tax return, but you have been a successful man?

A. I have had good health, three meals a day and three or four suits of clothes a year, and I have been able to help my neighbors.

Q. And you have acquired some wealth?

A. Yes.

Q. You have gotten a big return on the moneys you have laid out?

1370 The Master: I will sustain an objection to that.

Mr. O'Brien: I want to get the witness's point of view. If he is just giving us the opinion of bankers in Wall Street, that is not the part we want.

The Master: Well, do not let us waste any time.

Q. In the investments generally speaking into which you have put your money you have never been satisfied with six per cent, have you?

A. Never been satisfied with it?

Q. Yes.

A. I am always satisfied with the conditions as they exist. I have never troubled about anything at all.

Q. You are a philosopher?

A. Yes, sir, in that respect.

Q. But where you put money out you have not put it in investments that show merely a return of six per cent?

A. No.

Q. You have looked for a more generous return than that, have you not?

A. Yes.

Q. You would want even ten years back a return of ten or fifteen per cent, would you not, putting any substantial amount of money in the business?

A. Not in operating on Wall Street.

Q. Talking now about a business concern.

A. The public utility business, yes.

Q. You would look for that much?

A. Yes.

Q. You always have looked for that much?

A. Yes.

1371 Q. From ten to fifteen per cent?

A. In Public Utilities.

Q. It would not interest you unless you did?

A. Not much.

Q. When you made your statement as to how much you would require as a banker underwriting bonds to be the showing of a return upon stock, you included there as one of the elements the relation which the outstanding bonds bore to the stock, didn't you?

A. I think so, yes, sir.

Q. One of the conditions you laid down was that there should be not more bonds outstanding than one-half the stock?

A. In reply to certain questions, yes.

Q. And that was a condition precedent to your admitting that there was anything like a fair return?

A. Yes.

Q. And as I understood it, you said that if the bonds were not more than one-half the stock, the outstanding bonds, that you would underwrite further bonds if the stock showed a return of eight per cent. Is that correct?

A. I don't think I said that.

Q. Am I in error?

A. If the stock showed a return of eight per cent?

Q. Yes.

A. No. I didn't say so. I might underwrite the bonds at a price. The price comes in all the time.

Q. Is it not a fact that bonds are underwritten at various prices?

A. Yes.

1372 Q. And they are underwritten on all kinds of concerns?

A. Yes, and various commissions, and all that sort of thing.

Q. And bonds are being underwritten every day, even during the past year?

A. Yes.

Q. In various concerns?

A. Yes.

Q. And they have been underwritten as to gas companies?

A. Yes.

Q. That is a fact.

A. Oh, yes.

Q. When you gave your answer a few minutes ago, did you have in mind just how many bonds, and the total aggregate amount outstanding of the Consolidated Gas Company there were?

A. I don't know anything about the bonds of the Consolidated Gas Company.

Q. That did not enter into it, the condition of the Consolidated Gas Company did not enter into your mind at all in making the answer to that question?

A. No.

Q. Why did you exclude that from your view?

A. I didn't know anything about it. I thought of those things about which I knew.

Q. Did you have in mind particularly the companies you have been interested in?

A. The companies I am interested in now and have been, yes.

Q. Is it fair to assume that what you had in mind is that it would not interest you, Mr. Emerson McMillin, unless the utility showed a return under the conditions that you have named?

1373 A. As a utility. Now, don't get the impression that I am a Wall Street broker. I am anything in the world from that. I buy no stocks even on Wall Street, on the Stock Exchange, except for investment. I may sell them again in a month, but I do not do

that kind of business. I have not made my money in Wall Street, I have made it from public utilities that I have operated.

Q. Well, you believe in the management of a public utility setting aside reserve, you have stated that, a surplus to take care of crises?

A. Yes.

Q. Rainy days?

A. Yes.

Q. Lean days?

A. Yes.

Q. A wise policy, isn't it?

A. I think so.

Q. That has been pursued by the companies in which you have been interested?

A. Yes.

Q. And the design is to bridge over the period when there may be great demands upon the utility?

A. You must have something above interest and above dividends. Any well managed company must set aside in some form or another, ordinarily surplus.

Q. Wouldn't you say it would be a wise thing for any public utility to undertake, as does the National Government, to spread the heavy burdens of a particular period over a long term in the future?

A. Yes.

Q. Now, Mr. McMillin, when you were giving your testimony you had in mind other forms of investment into which
1374 people's money is put in and around New York?

A. Yes, but they don't have to sell, at any rate they will sell on a lower basis of earnings.

Q. Let me ask, Mr. McMillin, if you will give us approximately the amount of money during the last two years that was put into United States bonds. It ran up into something like twenty-five or thirty billions, didn't it?

A. I think so.

Q. And the return to the investors on those bonds is only three and a half to four and a half per cent, is that correct?

A. The return net to me was about 1.43 per cent

Q. On the United States bonds?

A. When I paid taxes on them, yes.

Q. But there has been twenty-five to thirty billions invested in that form of security?

A. Yes.

Q. Do you know what the aggregate amount is that is invested in public utilities in the country at the present time?

A. Those statistics are frequently published, but they have not been fixed in my mind.

Q. That would not run above twenty-five billions, would it?

A. No, it would not run that high.

Q. You are acquainted with the market for United States bonds, are you not?

The Master: What has that to do with this?

A. I have known to my sorrow——

The Master: What has that got to do with this?

1375 Mr. O'Brien: I am sorry that your Honor does not see it. I hope before the end of the case that you will see it has some bearing.

The Master: will not allow the question.

Mr. Ransom: The taxing power of the United States Government——

The Master: No.

Mr. O'Brien: Now, we will hear the superman testify.

Q. Have you followed, Mr. McMillin, the returns for the last three or four years upon real estate in and around New York City?

A. No.

Q. Are you acquainted with it at all?

A. Yes, I own some.

Q. Do you know, or is it the fact that for three years practically every piece of property sold under foreclosure was bought in by the mortgagee?

A. No.

The Master: I will not allow that. I don't see how it is useful at all

Mr. O'Brien: I assume that the witness was placed upon the stand here to show that the complainant company was entitled to as fair a return as the majority of lines of investment in and around New York?

The Master: I don't know anything about that; I know I am going to limit this cross-examination.

Mr. O'Brien: If that is not the point of the testimony then it should be stricken from the record.

The Master: I have told you what I understood the substance of his testimony is, and I will let you cross-examine on it. If 1376 there is no further question on it I will take the witness off the stand.

Q. Mr. McMillin, have you followed the bond market during the last year?

A. The bond market?

Q. Yes.

A. I have not had occasion to sell any in the last year.

Q. I mean have you kept yourself conversant with the bond market?

A. Oh, I look over the quotations from day to day; not otherwise.

Q. Just in a casual, corsory way?

A. Yes.

Q. You have not bought or sold many bonds during that time?

A. I have a good many hundreds of thousands, perhaps millions, in government bonds, on which I lost four or five points.

Q. But outside of that, no?

A. I have probably sold no bonds.

Q. When you stated that a banker would not care to invest his money in so and so under such and such conditions, you were speaking about an ideal situation, were you not?

A. I had in mind the present condition; it is not ideal to me.

Q. What I mean, Mr. McMillin, is you were picking out what would be a choice investment to lure the banker in?

A. No, I could not say that, because I have said that ten per cent of earnings ought to sell the securities.

Q. Well, you have looked down the bond market from day to day?

A. Yes.

1377 Q. And you have seen thousands upon thousands of bonds sold and bought where the conditions were not anything near as alluring as those you have pointed out in the questions and answers put to you by Judge Ransom?

The Master: Where does that get us anywhere? You can buy and sell anything.

Mr. O'Brien: Your Honor, the witness has testified that you could not get money in. Now, he may mean that he would not put his own money into a concern unless it showed——

The Master: You are talking of one thing and Mr. McMillin is talking of another. Of course, if you and I and other poor simpletons go in and buy securities, and when we find that the company is not earning enough to pay interest, we are going to sell, and then the shrewd men in the street go and buy them from us.

Mr. O'Brien: I am trying to get where Mr. McMillin stands.

The Master: He is talking about advising you or me, if we were his customers and came to his banking office, whether we ought to buy some bonds of the X Y Gas Co., which is not earning interest on its bonds.

Mr. O'Brien: No, I didn't take it that way. He has in mind putting in quite a considerable sum of his own money. Isn't that so, Mr. McMillin?

The Witness: Yes.

Q. You were not talking about O. P. M.—other people's money—were you, when you gave your answer as to whether bankers would put their money in?

1378 A. I was speaking in general terms, general conditions as they exist today. I would not want to buy properties, and would not buy properties, public utility properties on a ten per cent basis today.

The Master: The banker, Mr. McMillin, the man who underwrites the bonds, expects to sell them to the public, doesn't he?

The Witness: Yes.

The Master: He won't underwrite the bonds unless he knows the public will buy those bonds, isn't that so?

The Witness: That is right.

The Master: So when you talk of what you would do, you have in mind whether you could sell those securities, isn't that so?

The Witness: Yes.

Q. Mr. McMillin, your statement as to what you would advise people to do was not predicated on what other people have done, say in the last decade? There have been thousands and millions of dollars' worth of bonds sold?

A. Yes.

Q. And they have been sold in concerns that did not yield the return that you have spoken about?

A. Oh, we don't know when we see a bond sold on the Stock Exchange, we don't know what the company is doing at all. It may be earning 25 per cent on its stock.

Q. Well, it represents invested money when it is a sold bond, doesn't it?

A. Bonds are supposed to represent invested money.

Q. When you speak of a return of eight or ten or eleven per cent, or whatever you determined to be fair, a satisfactory return,
1379 did you have in mind upon the original cost of the property?

A. Upon the value of the property. It may be the original cost or otherwise, but upon the value of the property with not more than 50 per cent of its value in bonds, and the other in stock. Now, the bond holder has got what he conceived to be a sure thing. He is content with seven or eight or six per cent, but the stockholder does not know whether he is going to have a dividend or not, and therefore the returns must show big in order to induce him to make the purchase.

Q. Because of the uncertainties with which his investment is surrounded?

A. Yes.

Q. And many men in putting in money do not go into the history of the company?

A. No.

Q. The amount of inflation there is, they don't go behind the return given to them by somebody who follows the tape, do they?

A. No.

Q. And the question of the history of the capitalization of the company would be a very important matter in connection with any investment that is under consideration?

A. There are many things that interfere or influence. For instance, we sold in one of our companies two years ago between two and a half and three millions of bonds. Now, the banking house that took those bonds and sold them, in their advertisements showed them on a basis of less than six per cent. There was no other company's bonds offered down that low. Now, in the first place that was a good company, and in the second place it was owned by the American Light & Traction Company, whose stocks have sold for
1380 many years above anything else in New York until last year.

Now, the fact that they owned that company made it possible to sell those bonds down that low. The men who took them felt that they were taking no more risk than they would with a government bond.

Q. Because of the reputation of the company?

A. Yes, and the dividends it had been paying.

Q. Its prestige established through many years?

A. For many years its dividends were 50 per cent on par.

Q. Then that past history influenced the present buyers, didn't it?

A. It is paying 30 per cent on par, and 15 per cent on the purchase price now.

Q. Are there many other companies that you belong to that have the same prestige and the same prosperity?

The Master: That is very interesting, Mr. McMillin, but we won't spend time to find out. I don't want an answer to that question.

Mr. O'Brien: We are gradually getting the viewpoint of the witness.

The Master: I think I have got his viewpoint.

Mr. O'Brien: If a man is making 50 per cent on his money, there isn't any reason why he should not run away from a public utility that pays ten per cent.

The Witness: 50 per cent on par might be only ten per cent on what it cost. It was selling for 400, for many years.

Q. If you were going searchingly into the question, say in order to advise a lady client, you would want to know the history
1381 of a particular company, would you not?

The Master: The question will not be allowed?

Q. How much the property originally cost?

The Master: The question is not allowed. How much do you say, Mr. O'Brien, a public utility corporation ought to earn, not pay its stockholders, but earn on the fair value of its property determined in the way in which you say it ought to be determined?

Mr. O'Brien: Your Honor, I can best answer that in a thoroughly hibernian way.

The Master: Well, give me the Irish of it.

Mr. O'Brien: When I say to you that public utilities should not expect any more than people in other lines of endeavor get——

The Master: What do you say is the average?

Mr. O'Brien: I don't suppose, from my knowledge of real estate in New York City, in which millions and millions of dollars are invested, and which is the foundation stone of this municipality, because it bears practically all the expense of running it, that it has shown more than 3 per cent or 2 per cent on the average during the last two or three years.

The Master: What do you say the Consolidated Gas Company ought to earn on the actual cost or value of its plant?

Mr. Chambers: How is that material? The question is, what rate is confiscatory. Isn't that all immaterial?

The Master: Not on the question of this cross-examination.

Mr. Chambers: Oh, but I mean in the case. We are dealing with a confiscatory rate.

1382 The Master: Counsel is challenging Mr. McMillin's statement that a public utility corporation ought to show earnings of 10 to 12 per cent. Now, the purpose of the cross-examination is

to show that Mr. McMillin is wrong about it. Now, if you agree that it ought to be 10 per cent say so. What do you say it ought to be?

Mr. O'Brien: I get your point. What I want to bring out from the witness, if he is able to tell us, is, what has been the average return shown by similar public utility companies throughout the country for the last three or four years.

The Master: I will not take that. I will let you ask Mr. McMillin what should have been the average throughout the country.

Mr. O'Brien: What does your Honor mean by that, what it should be? Of course a stockholder would say that it should be a whole lot of money, that he is entitled to everything he can get.

The Master: I don't think we need waste any more time on this. Mr. McMillin has given you his judgment, he has told you how he works it out. You don't get anywhere by asking him a lot of questions as to what may happen ten years from now.

Mr. O'Brien: Let me go on uninterruptedly for a few minutes and I will finish this.

Q. Now, Mr. McMillin, your statement as to whether you would put money into a concern that did not show a certain percentage on the value of the property was a personal viewpoint that you gave, that meant that you would not put it in?

1383 Mr. Ransom: Objected to as fully covered.

The Master: I will allow it once more.

Mr. Ransom: Exception.

A. Well, I would not put money in at those prices, because I can do so much better. Public utilities—this has not been brought out I believe—because of the hazardous character of the business must earn more to make them appeal to investors than other properties. The railroad securities that I own net me about eight and one quarter per cent. The industrials earn me nine per cent. The public utilities earn me a great deal more.

Q. In the ones in which you have invested?

A. Yes, and they ought to.

Q. And you have a choice collection?

A. Because they may become almost worthless. Prices everywhere have been fixed by franchise, and occasionally we find the public willing to correct them, but I think we have had only two or three, about three out of twelve or fifteen that have permitted us to increase the price above what we could do without their permission. In nearly all places we were already selling away below the ordinance when the war came on. We could go as far as the ordinance allowed us to go, and above that we could not. There are lots of companies that when they got up to the highest point they could go under their franchises still could not make it pay. In other words, if you get 10 or 15 per cent of a raise, and wages and material cost 100 per cent more, you cannot possibly make the two ends meet.

Q. Well, that has not been your experience in the companies in which you are interested?

1384 A. Well, our companies originally had less investment. That is the secret of our success.

Q. They were what?

A. We bought them for less money.

Q. You bought them cheap?

A. We bought them on a better basis.

The Master: I am not going into all this. The question is not allowed.

Mr. O'Brien: The witness has made a statement here as to returns that he is getting from certain lines of investment, and I think it should be brought out that that does not reflect the whole market by any means, is the wise selection and choice of a wise financier. Isn't that correct, Mr. McMillin?

The Master: The question is not allowed. I am going to stop this examination somewhere.

Mr. O'Brien: Exception.

Q. When you speak about this fair return that would attract investors, have you in mind the beginning of a new company in a new field?

A. Not especially so. It would apply in nearly the same degree to an established company.

The Master: Your answer to my question included a company that had a monopoly and was an established business.

The Witness: Yes.

The Master: And you said it should be ten or twelve per cent?

The Witness: Yes.

Q. Well, you have always had this same view as to the return, the minimum return of about ten or twelve per cent? I mean to say you had that in the last decade or two, you have always had that view?

1385 A. Yes, for many decades.

Q. Would you be influenced to hold a slightly different view where the monopoly is far reaching, as it is with the complainant company, in a great metropolis, with valuable franchises and the possibilities of no competition of any kind?

Mr. Ransom: I object to the question. There is no proof here of a monopoly. It is no more a monopoly than any other gas company.

The Master: I will allow it.

Mr. Ransom: Exception.

A. All these things influence the value of the stock. I only know about two companies in the United States that have an absolute monopoly.

Q. Which are they?

A. Waukegon, Wisconsin——

The Master: Assume for the purposes of the argument, Mr. McMillin, that the Consolidated Gas Company has an absolute monopoly in the City of New York?

The Witness: Well, I built a company here in the city some years ago.

Q. What company was that?

A. East River, with the same franchise they have today.

By the Master:

Q. What I am trying to get at, Mr. McMillin, so as to eliminate any question about it, I will assume, and would like to have you assume for the purposes of my question, that the Consolidated Gas Company owns all the stock of every other company on Manhattan Island. What would you say then? Would you say that the return ought to be less than ten or twelve per cent because of that?

1386 A. With the present conditions, no, I would not modify that. In ordinary times that sort of condition would influence the price.

Q. How low would you go then?

A. Well, I might say nine or ten, instead of ten or twelve.

Q. Now, I have taken the most complete kind of a monopoly, and you say in normal times you might go as low as nine or ten, but at this time you say ten or twelve?

A. Yes.

The Master: Now, Mr. O'Brien, that is Mr. McMillin's view.

By Mr. O'Brien:

Q. Would you look for your return upon the cost of the plant, the amount of the original investment?

A. The cost of the plant to me if I was buying it, or its value to whoever operated it. Not watered stock or anything of that kind.

Q. You have in mind a reproduction value?

A. No, I didn't have in mind a reproduction value, but you have got to put away something out of your earnings other than simply to pay dividends and interest.

The Master: Mr. O'Brien, I am going to limit the cross-examination. I don't think it is going to help us to ask any more questions.

Mr. O'Brien: I will be through very shortly, your Honor.

The Master: Well, you have got to be through shortly. I have limited the cross-examination now.

Q. Would you hold the same view were you asked the

1387 same questions as you have been asked this afternoon about a company in Chicago or San Francisco or Boston or Detroit?

A. All of those have their conditions that make every one different.

Q. You were given us a composite——

The Master: Wait a minute. Mr. McMillin has not finished his answer.

A. (continued). In San Francisco I would not want to own them at any price. In Chicago, not a great deal better. In Boston, very good. Detroit is the best city in America.

The Master: I am going to stop the cross-examination. You can go, Mr. McMillin.

Mr. O'Brien: Your Honor, I have not finished.

The Master: I have finished. You can go, Mr. McMillin.

Mr. O'Brien: I note an exception to your Honor's ruling.

The Master: It is too bad that I have to do that with every witness. I have absolutely got to cut the examination.

Mr. Chambers: May I move formally on the record to strike out Mr. McMillin's testimony upon the ground that it is immaterial and irrelevant; that the question here for decision is whether the company is or is not enjoying a return sufficiently large to say that the statute does not take away its property without due process of law.

The Master: Motion denied.

Mr. Chambers: Exception. That is to say, that if the return had been say 6 per cent covering a period of years, that then the statute cannot be said to be confiscatory?

1388 Mr. O'Brien: Your Honor, I join in the motion to strike out the testimony and note an exception to your Honor's ruling. I base it on the same ground as Mr. Chambers, on the ground that it was entirely improper, and as not being directed to any line of testimony approved by the courts in rate cases.

The Master: The stenographer will note on the record that Judge Ransom has here produced an original tax bill against the New York & Queens Gas Company, paid July 28, 1919, for additional capital stock tax, $471, which I have no doubt is the tax bill testified to by Mr. Teele.

I do not think it is necessary to have Mr. Teele come back and identify it as the bill which made up his $1,298 item, and I would like to hear whether there is any reason for not marking it subject to the same objections and the same rulings that I made when the $827 voucher was marked.

Mr. Neumann: This is the receipt that the witness Teele said was missing, and that referred to the retroactive tax of 1918?

The Master: Yes, $1,298.

Mr. Neumann: It goes to make up that amount?

The Master: Yes. I want to know whether that shouldn't go in subject to the same objections and the same rulings.

Mr. Neumann: Just give me a minute to confer with counsel.

Mr. Ransom: It is already in evidence.

Mr. Neumann: If it is already in evidence why put it in now?

1389 The Master: I wanted to have it marked separately, although it is already in evidence in conjunction with the other vouchers.

Mr. Neumann: The defendants make no objection to this being marked as an exhibit based on the reason that Mr. Teele is not now here to identify, but they do urge all the objections heretofore urged

against the one that was a companion to this and went to make up the total amount.

The Master: Yes, I told the stenographer to note the same objections and same rulings.

Now, mark this as a complainant's exhibit.

Mr. Vilas: It is already part of Exhibit 68.

The Master: Well, that was a batch of vouchers marked as one exhibit but I am having this marked as a separate exhibit.

Mr. Vilas: I understand, I just wanted that to appear.

Marked Complainant's Exhibit No. 99.

(At this point there was informal discussion while waiting for Mr. Chambers.)

The Master: Put down on the record that when we adjourn today we will adjourn to Thursday morning, June 3d, at 9:30 a. m. I will sit on that day from 9:30 to 1:00, from 2:00 to probably 6:00, then from 8:00 to 10:00, approximately six hours. I may sit after 10:00. I am going to finish this case.

On the 4th of June I am going to start at 9:30 and run as long as I can that day; then, beginning on Monday morning, the 7th of June I shall start at 9:30 in the morning and have three sessions until I finish this case. I shall be prepared to take, at the
1390 close of the testimony, any memorandum that counsel want to give me.

Mr. Ransom: Will you have oral argument?

The Master: No, the case is short.

Mr. Neumann: If you are going to keep us here at night, there will hardly be time enough to prepare a satisfactory memorandum.

The Master: You will have to do the best you can on it; you will have to get somebody from your office to assist you in preparing the memorandum.

As soon as the case is finished, I am going to prepare my report and I am not going to give over forty-eight hours for consideration because I am going to get through with the case.

Now go on with Col. Miller.

Mr. Neumann: Do you think we can formulate our objections in forty-eight hours, go through the record?

The Master: Yes, if you don't do what Mr. Chambers did in the Consolidated case, and Mr. O'Brien—and I guess yourself—except to every finding; that didn't help me any.

I do not understand that you are to except to my preliminary report; I understand that, having in mind what I intend to find, any suggestions that you think will be of benefit or something that you want to add, without in any way prejudicing either the report or any findings, is what is to be handed to me.

Now, out of the whole mass of stuff that the defendants gave me, there was just one single thing that I took, and that was
1391 a suggestion to the effect that the Rowland Appraisal did not contemplate service meters, or something like that, and I accepted that and put it in; it was the only thing that was of any use to me.

Cross-examination

By Mr. Chambers

Q. Mr. Miller, in your item of working capital, so far as the purchase of appliances is concerned, did you investigate to see how that was handled by the company?

A. Gas appliances?

Q. Yes.

A. You mean stoves and lamps?

Q. Yes.

A. No.

Q. You don't know whether the consumers pay a year in advance or not, do you—that is, if you made no investigation?

A. Are you speaking of the purchase of appliances or the sale of appliances by the company?

Q. I am speaking of appliances generally.

A. You used the expression "purchase" and your language sounded as though it meant purchased by the consumer from a sale by the company.

Q. Yes, I do.

A. Which do you refer to?

Q. Purchase by the consumer and sale by the company to the consumer.

A. No, I don't know just how they handled that.

Q. The rental of appliances, did you find that the consumers rented appliances?

A. Yes.

1392 Q. Did you ascertain how they paid for them, how they paid this rental?

A. No, I didn't investigate.

Q. You don't know whether they paid a year in advance or not?

A. No.

Q. Did you know it was the practice of the Consolidated to collect a year in advance for the rentals?

A. No.

Q. You didn't know that?

A. No.

Q. Would that have made any difference if these consumers paid the rental of these appliances a year in advance?

A. A difference in what?

Q. In your item of working capital.

A. No.

Q. You would have made it just the same?

A. Yes.

Q. Did you take into consideration consumers' deposits?

A. In what way? In the working capital, no.

Q. You didn't consider that at all?

A. Not as part of the working capital, no.

Q. I didn't say as part of the working capital; did you consider it in relation to the amount of working capital?

A. No.

Q. You didn't think that that was important?

A. No.

Q. Did you take into consideration the fact that the Consolidated Gas Company purchases oil and coal for this company?

A. No.

1393 Q. Makes the purchase?

A. I took into consideration the conditions not exactly as they are, as I specified. In taking the amount of working capital that I considered that this company would need, I took into consideration if it operated as an independent company and didn't have an older brother to lean upon

Q. Now, having the Consolidated to lean upon, it would make a considerable difference, wouldn't it?

A. If the Consolidated company carries it, it does make a difference as I testified. The actual capital as shown by the company is only about $140,000, and I estimated about $165,000.

Q. Now, if the Consolidated Gas Company, an enormous and rich corporation like it is, as appears here that this is one of its children, this company could dispense with working capital almost entirely, couldn't it?

Mr. Ransom: Objected to as assuming a state of facts contrary to the fact.

Mr. Chambers: You mean it is not one of its babies, or children?

Mr. Ransom: All this demagogic description which is indulged in out of the air, there is on warrant for in this record.

The Master: The cross examination as to these things has been pretty broad—I will allow it.

Mr. Ransom: Exception.

The Witness: Will you please read the question?

Q. (Read.)

The Master: Strike out "enormous and rich."

1394 Q. But if it had this Consolidated to lean upon it would make a considerable difference, wouldn't it, it would not need near so much?

A. I stated it made a difference between a hundred and forty thousand and a hundred and sixty-five thousand.

The Master: Mr. Chambers, I am going to make this ruling; I shall not permit that line of cross examination. This last question was not objected to, therefore I cannot rule on it.

I shall rule that the consumers of this company are not entitled to the benefit of having the Consolidated Gas Company finance this complainant company without paying what it would otherwise have to pay for the return on working capital; the consumers, in my judgment, are not entitled to get something for nothing.

Mr. Chambers: Well, the Consolidated did actually loan this company money.

The Master: That is all right—they wouldn't have to loan it so much if the company had more working capital.

Mr. Chambers: Then you are disregarding what already appea in the case.

Mr. Cummings: You are disregarding the actual facts.

The Master: I am going to rule that in arriving at the return which this complainant company is entitled, I shall include amount for working capital for this company as a separate entity

Mr. Cummings: Disregarding the facts as proven.

1395 The Master: Disregarding the fact that the company, reason of its condition, owned by the Consolidated, can pro ably, at all times, borrow enough money for working capital; but the other hand, they would have to, or should pay the parent co pany interest on those advances.

Mr. Cummings: Of course that is assuming a false premise beca the fact is otherwise.

The Master: What is the fact?

Mr. Cummings: The fact is that it is a subsidiary.

The Master: I am assuming that it is a subsidiary of the Cons dated in the sense that the Consolidated owns the stock of this co pany, and this company is entitled to a fair return on the value of property included in the enterprise, and included in that, th should be an amount for working capital.

Mr. Chambers: Exception.

Q. Now, Mr. Miller, did you take into consideration gas furnish to consumers but not billed?

A. Yes.

Q. Why did you do that?

A. Because the company has to deliver gas in advance of the t when the meters are read, and billed, and it costs money to make a distribute that gas, and that amount must be raised somewhere advance of the time that it is collected.

Q. How long did you assume it would be before those bills w collected which were not even billed?

1396 A. The company delivers gas on an average of someth between fifteen and twenty days before the bills are collec

The Master: My recollection is, Col. Miller, that you had th items in your working capital.

Mr. Ransom: Four.

The Master: Material on hand——

Mr. Ransom: Accounts Receivable, Gas Furnished but not billed, which is a little bit different than accounts receivable.

The Master: Cash, materials and supplies, receivables and gas nished but not billed?

The Witness: Yes.

The Master: That of course applies generally to gas compa throughout the country, doesn't it?

The Witness: Yes—that is, if the company does not read meters at the end of the month it applies generally to them; if t read the meters every day of the month——

The Master: What is the general practice?

The Witness: The general practice is to read them every day of the month, but some companies read them at the end of the month.

The Master: But generally speaking they are read at the end of the month?

The Witness: Yes.

The Master: And generally speaking a gas company has to have certain materials on hand?

The Witness: Yes.

1397 The Master: And must have certain cash on hand?

The Witness: Yes.

The Master: And always has certain unpaid bills, that is receivables?

The Witness: Yes.

The Master: And always has some gas out that has not been billed for?

The Witness: Yes.

The Master: That is a condition that has obtained for a great many years throughout the country?

The Witness: Yes.

The Master: Have you ever studied the relation between the amount of working capital, that is, the amount of average material on hand, average receivables, average cash, the average billed gas to the output generally?

The Witness: Yes.

The Master: And as to the cost of working capital? In that relation?

The Witness: Yes.

The Master: Per thousand cubic feet?

The Witness: Yes.

The Master: And how many cents per thousand cubic feet in your judgment, based on your experience, does it usually represent?

The Witness: In 1914 it took about thirty cents.

The Master: As much as that?

The Witness: Yes, in order to have the money on hand with which to discount bills, pay them promptly; in order to take advan-

1398 tage of market conditions and buy supplies under the best conditions.

The Master: What is it now, would you say?

The Witness: I would say fifty cents now.

The Master: You say fifty cents now?

The Witness: Yes—that is the basis of these figures.

The Master: In other words you have taken fifty cents per thousand cubic feet?

The Witness: Yes.

The Master: I thought there was only three hundred and thirty-odd thousand cubic feet?

The Witness: Yes.

The Master: Oh, that is where you make it $165,000?

The Witness: Yes.

Mr. Chambers: What per cent?

Mr. Cummings: Fifty cents.

The Master: It strikes me as being pretty high, Col. Miller.

The Witness: This company has to have, with all of its advantages—it actually had $140,000 on the 31st of December, and I think that was low.

Q. I want to ask you right here if you can point out any gas company in the universe where a court had ever approved any allowance as high as fifty cents a thousand cubic feet for working capital?

The Master: Well, that is not important to me; the question is, what is necessary, what is usual, not what some court has approved, because I am not interested in that.

1399 Mr. Chambers: You rule that out? I think he should be allowed to struggle with his brain and point out one; it would be pleasant to hear it.

The Master: No, I won't permit the witness to say what any court has done.

Mr. Chambers: Exception.

The Master: He says it is fifty cents based on the present conditions. Perhaps no case has ever come up yet.

Q. Now, it depends, doesn't it, upon the practices of the company, how much would be allowed for working capital?

A. Not how much should be allowed, but how much it uses. As a matter of fact, under the stress of recent conditions, most companies have run away below what they should have.

Q. I didn't ask you that, I asked you if it did not depend upon the practice of the company; why can't you, Colonel, get down to the real question?

Mr. Ransom: I object to that.

The Witness: Will you read the question, please?

Q. I will repeat it verbatim: Doesn't it depend upon the practice of the company as to how much working capital is necessary?

A. That is not the question you asked me.

Q. Well, answer that.

A. No, it depends not how much they can get along with but on how much is necessary for good management, good operations and good conditions. Many companies are not able to discount their bills—you say that the capital is not necessary; I should say it is necessary in order to discount the bills and save that money.

1400 Q. You say it is absolutely necessary that a company discount its bills?

A. No, I don't say it is absolutely necessary; I say it is necessary for good management; it is a question of the definition of the word "necessary." For good management, I should say it was necessary to take advantage of discounts—it is not necessary for the existence of the company.

The Master: Approximately 340,000,000 cubic feet, that means a total business of about three and a half million dollars, doesn't it?

Mr. Ransom: Of course there is some city gas——

The Master: It is over a three million dollar business.

Mr. Ransom: Yes.

The Witness: I think it is three hundred and thirty-odd thousand dollars.

Mr. Ransom: Yes, not million.

The Master: Well, I never ran a gas company, but it does seem high to me that a concern doing a business of three hundred and thirty to three hundred and forty thousand dollars a year should have one hundred and fifty thousand dollars working capital.

The Witness: Its business ought to be very much more than that for the amount of gas distributed.

Mr. Ransom: Fifty thousand dollars cash in the office and banks, does that seem high?

$50,000 for materials and supplies, that certainly can't be considered high.

$35,000 of accounts receivable certainly is not high.

1401 $20,000 of gas furnished to consumers but not yet billed—it could not be less on that volume of business.

Mr. Cummings: That is more than Judge Hough allowed in the Consolidated back in 1904.

Mr. Ransom: It could not run its business on less than $50,000 cash in the bank and in the offices; $50,000 would be very low—how could you discount bills?

The Master: In the Consolidated case they did a business of eighteen million, didn't they?

Mr. Ransom: Well, it reuired a larger working capital.

The Master: I mean eighteen billion, which would be about $14,000,000, and I allowed pretty close to $4,000,000.

Mr. Chambers: Three million eight hundred thousand, I think.

Mr. Ransom: To a big company twenty cents was allowed. The element of cash, in proportion, would be larger in the case of a small company than a large company; the element of materials, perhaps a little larger, because they are all the same kind of materials that you have to have anyway, whether the company is large or small.

The Master: Well, go ahead—What do you claim it ought to be?

Mr. Chambers: Well, Mr. Maltbie has not given me his figure yet but it will be a good deal lower than they claim, of course. All their claims here, you know, are puffed up and blown up; they are trying to make the public believe that they ought to have an

1402 increased rate so that the public will have to pay them a return on a great big working capital.

The Master: Mr. O'Brien seems to have had an awful effect on you.

Mr. Chambers: Well, something has had an effect on me. In one consideration, I do not think they ought to have any here.

The Master: What?

Mr. Chambers: I think it ought to be taken care of by the Consolidated.

The Master: No, I am against you on that.

Mr. Ransom: You did not allow any working copital to the Consolidated, so that it could loan money to the New York & Queens.

The Master: No, I am against Mr. Chambers on that. I cannot

follow that at all. The question here is, What is a fair working capital for a concern of this kind and this size. You see, in the Consolidated case I practically allowed two-sevenths of the total money business done in the year.

Mr. Chambers: I do not know whether your $3,800,000 was for the Consolidated Gas Company of Astoria or what.

The Master: No, it was for the Consolidated.

Mr. Chambers: Alone?

The Master: Alone. That is including the necessity of making the gas at Astoria, of course.

Mr. Chambers: You did not say so.

Mr. Neumann: You say two-sevenths of the total?

1403 The Master: Practically. This would bring this to about $100,000.

Mr. Neumann: About $90,000—ninety odd.

Mr. Ransom: But there is a difference in the size of the companies.

The Master: Two-sevenths would be approximately $100,000. I suppose, without knowing very much about it yet, that a small company of this kind probably needs more proportionately than a large company. Is that so, Colonel Miller?

Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial, purely speculation and guess.

The Witness: Yes, they do need more.

By the Master

Q. In other words, a very large company like the Consolidated company would need on the basis of percentage, of volume of business done, perhaps a little less than a small company like this?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant, immaterial.

A. Yes.

Q. What do you say was the actual amount December 31, 1919?

A. $140,000.

By Mr. Ransom:

Q. Does that include gas not yet billed?

A. Yes.

Mr. Ransom: Just take this, take the ordinary coal and oil stock it amounts to $38,000—just coal and oil alone.

Mr. Neumann: Paid for by the Consolidated.

1404 The Master: I do not want to be misunderstood as deciding this case in advance of the defendants' proof, but the impression I have is if it is at all doubtful, if there is any wide variance between the defendants' proof and the testimony of Col. Miller, I shall probably take the actual working capital of December 31, 1919 of $140,000.

Mr. Chambers: That would not be right.

Mr. Ransom: I agree that it would not be right. The compa

was not operating under normal conditions, it was up against it financially there.

Mr. Chambers: First they tell you they have to carry a lot of coal, and a little while ago they were claiming they could not get any coal, and did not have any.

By Mr. Chambers:

Q. Materials and supplies, what did you do, take all the materials and supplies they have at the present time and use $60,000; that is all they got?

A. This is my estimate of an average condition. This is not the actual condition.

Q. That is, you do not know how much of materials and supplies they have?

A. Yes, I do know.

Q. What is it, the actual amount, of all kinds?

A. I could not tell you today.

The Master: On December 31, 1919.

The Witness: On December 31, 1919, it was $39,375.13

Q. That is pretty near about half what you got, is it not?

A. That is 66 2/3%.

1405 The Master: That is materials on hand?

The Witness: Materials and supplies on hand, yes.

The Master: I thought you said coal and oil on hand was——

Mr. Ransom: But the stock was way down. The ordinary stock of coal and oil alone was $38,000.

By the Master:

Q. What was the cash on hand December 31, 1919?

A. $42,137.88.

Q. And receivables?

A. I counted also as cash $2,200 of Liberty Bonds which were carried there. I carried those as cash. The receivables were $36,450.07.

Q. And the unbilled gas?

A. The unbilled gas, you understand, is my estimate.

Q. It did not appear from the books?

A. Because that is not on the books. That is $20,000. That I have to estimate.

Q. What you really have done is you have allowed a little more for cash on hand, about seven or eight thousand dollars?

Mr. Chambers: $10,000 more for cash.

The Master: About $7,000.

Mr. Chambers: He said $2,000 Liberty Bonds.

The Master: And about $21,000 more for materials.

A. Yes.

Mr. Chambers: No, more than that.

The Master: Yes, it is twenty-one, I think.

The Witness: A little less than twenty-one.

1406 Mr. Chambers: And in cash he said——

The Master: Forty-two to fifty.

Mr. Chambers: $2,000 of Liberty Bonds comes off of that.

The Master: No, he says he included it.

Mr. Ransom: Liberty Bonds held for employees in lieu of cash.

By Mr. Chambers:

Q. Did you know the balance at the close of the year was, say, about $13,000 in cash?

A. This is the balance sheet I have before me of December 31, 1919.

Q. And the balance was what you gave?

A. That is the balance.

Q. $42,000?

A. $42,137.88.

Q. What was it at the beginning of the year, the next day?

A. I do not know.

Q. The previous year, the beginning of the previous year?

A. I do not know.

Q. About $13,000, was it not?

A. I do not know.

Q. These materials and supplies, did you ascertain which ones of them might be used in the capital account?

A. No.

Q. You took them all?

A. Yes.

Q. If some of those materials and supplies, like pipes or mains, for example, should go, be laid as mains, then go into the capital account, you would not need that in the working capital, would you?

A. Surely.

1407 Q. You put all the materials, no mattter whether they go into that capital account or not, into working capital?

A. Surely.

Q. If they were making extensions of mains, would you include all that material and all the expense of that in working capital?

A. No, in the case of this company most of the main extensions are hauled directly to the ground and do not go through the storehouse. If this company really had accumulated any stock of material and had it in its store account, I should have taken it as materials and supplies.

Q. Do you know in this very year in which you have your figures here they made a very important and material extension to their mains?

A. Yes, I have just stated, though, that that was not in this storehouse, that material.

Q. How do you know it was not?

A. Because I was so informed by the president of the company.

Q. You took somebody's word for it?

A. I took somebody's word for it.

The Master: The proof is that the work was finished in November.

Mr. Chambers: What?

The Master: The proof is that the work was finished in November.

Mr. Chambers: 1919?

The Master: Yes. The material could not have been in the store house December 31st if it was in the ground.

The Witness: Furthermore, there is not enough there to cover a small part of that material, even.

1408 Q. Has this company any prepayment meters?
A. Yes.

Q. What proportion, did you ascertain?

A. Yes, I did.

Q. What proportion were prepayment meters?

A. I could not say offhand. It is in my appraisal here.

The Master: Will you have any line of examination other than this working capital, Mr. Chambers:

Mr. Chambers: Yes, I wanted to ask him a few more questions on his items of appraisal.

The Witness: There is something less than 3,200 prepayment meters.

The Master: Out of how many?

Q. What is the total?

A. The total is 10,670.

Q. About a third?

A. A little less than a third.

Q. They certainly do not have to carry those prepayment meter customers?

A. Sure they do.

Q. They have to carry them?

A. Absolutely. They go to those once a month, and meanwhile the gas is furnished.

Q. How do you know they only go once a month; somebody told you that?

A. That is the general custom.

Q. I mean this company, did somebody tell you they only went once a month?

A. No, they did not tell me.

Q. You do not know that?

A. Absolutely.

Recess.

1409 Afternoon Session.

ALTEN S. MILLER resumed:

Cross-examination continued.

By Mr. Chambers:

Q. Now, Mr. Miller, speaking of cash that you said the company had on the 31st day of December, 1919, you don't know what that cash was derived from or what it was for, do you, do you know anything about it?

A. I presume it was derived from the business and for the purpose of the business.

Q. No, what was it, do you know?

The Master: Do you know where it came from specifically?

The Witness: No.

Q. Following that up, you don't know whether it was money that was used in the business or not, or what money it was, do you?

A. I don't suppose it was earmarked for any particular purpose.

Q. Well, you don't know?

The Master: You don't know?

A. No; it was the balance in bank.

Q. You don't know but what it was a fund created by some real estate so far as you know—you have no knowledge?

A. All I know is that they had a balance in bank as shown by the balance sheet of the company.

Q. Did you take into account that this company had certain moneys due it known as Accounts Payable?

A. This company's accounts payable are due other companies.

1410 Q. I mean accounts receivable, didn't this company have accounts receivable?

A. They are shown on this list.

The Master: Thirty thousand odd dollars.

The Witness: $35,000 accounts receivable is shown.

Q. Where did you get this from?

A. As a matter of fact the accounts receivable were $36,450.07, as shown by the balance sheet.

Q. Where did you get those from?

A. The balance sheet was given me by Mr. Spear.

Q. Aside from that, you don't know whether they had any other accounts receivable or not?

A. The balance sheet does not show any other accounts receivable.

Q. Why did you pick out one particular day?

A. Because that was the end of the year.

Q. Don't you think you ought to look into the average and see how this thing is run to strike a figure for working capital?

A. I did not get the working capital, I did not make up my opinion of the working capital from the books at all. The question was raised here as to what working capital the company had at some particular time. I did not use the actual operating conditions. I know about what working capital this company requires to do this amount of business.

Q. Did you ascertain if they had any fund known as the contingency reserve, and whether this cash in hand didn't have something to do with that?

A. I have the balance sheet here. All of the accounts are shown on it.

1411 Q. How much is under contingency reserve there?

Mr. Ransom: I object to that, it has nothing to do with contingency reserve.

The Master: I will allow it.

A. The balance sheet shows contingency account of $101,149.66.

Q. You don't know whether this cash that you spoke of represents something that belongs to that fund, do you?

Mr. Ransom: I object to that as utterly immaterial. The question is how much money the company has to have to carry on the business.

Mr. Chambers: That is the question, certainly.

The Master: Objection overruled.

A. I have never known of cash being earmarked by any gas company as belonging to any particular fund.

Q. You just took the amount of cash into consideration?

A. That is what I testified.

The Master: How did you get the figure of $50,000?

The Witness: In my estimate that is about what I considered a company of this size would need in its ordinary operations.

The Master: For what purpose?

The Witness: The company will flow back and forwards into materials and supplies and into accounts receivable. Sometimes it would be $50,000, sometimes less, and the other accounts would be up. It is only the total of $135,000 which is the amount I think should be maintained. The cash would be used in connec-

1412 tion with materials and supplies, probably some of it would flow into that, increasing there, some of it might flow into accounts receivable, increasing there. Those three items will change. The capital should be liquid.

The Master: What do they need money for other than for materials and supplies and receivables?

The Witness: Materials and supplies and receivables, and this amount furnished but not billed, that is all.

Mr. Ransom: And payrolls.

The Witness: Well, that will appear—well, on construction they

need money, they need money for construction purposes, they need cash for that.

The Master: What do you figure the payroll of a company like this ought to be on the average per month or week?

The Witness: I haven't made any estimate. I don't know about how it would run.

The Master: Isn't that something that bears on the amount of working capital they ought to have?

The Witness: Yes, but of course the payroll is indirectly reflected in the accounts receivable, and gas furnished to consumers and not billed. Those pretty near represent the expenditures.

The Master: I was wondering whether you needed additional cash. You need the cash to make the gas and distribute it.

The Witness: Yes.

The Master: They put that money in there, and it is represented by receivables, and gas not billed.

1413 The Witness: Yes.

The Master: You don't need cash again for that purpose?

The Witness: No, not for that, if that stood at these particular figures, but these items of materials and supplies, accounts receivable and gas furnished but not billed, vary, it may be up and down, particularly materials and supplies, and if you put your cash in materials and supplies it will appear there and cash will be that much reduced.

Q. You have some of these duplicated, haven't you?

A. No.

Q. Of course you would not say so. Did you show your figures to Mr. Ransom, your testimony, not only on working capital, but other things? Did you go over this with him?

A. You mean this volume?

Q. Yes, all your testimony?

A. Not all of it, no.

Q. Did he know what you were going to swear to in regard to reproduction cost?

A. I went over this Exhibit 66 for Identification.

Q. With him?

A. Yes.

Q. And he expressed his approval of your testimony?

A. Not necessarily.

Q. He didn't not necessarily?

A. No.

Q. Did he make any changes in it?

A. No.

Q. Did he suggest any?

A. No.

1414 Q. How about Mr. Carter, did you go over these figures with Mr. Carter?

A. No; I gave him a copy of this, but I never went over it with him.

Q. And he didn't make any changes?

A. No.

Q. Did Mr. Ransom say to go ahead?
A. No.
A. He said not to go ahead?
A. No.
Q. What did he say, not to give this testimony?
A. He didn't say anything. I gave him my testimony, and that is all there is to it.
Q. He didn't believe in your figures there, did he?
A. He knew that they were right, therefore there was nothing said.
Q. You said he did not necessarily agree with you?
A. I didn't say that, did I?
Q. Did you talk over the theory with him?
A. No.
Q. How much time did you spend with him telling him about your reproduction cost, and that a thing does not wear out?
A. I don't know that I spent any time talking about that.
Q. Did you ever talk your theory over with Mr. Carter?
A. I have.
Q. Did he agree with it?
A. He does.
Q. He wants you to continue to testify like that in these cases?
A. I don't know what he wants. I have talked it over with many of the men in the Consolidated Gas Company organization.
1415 Q. And Mr. Carter approved your theories?
A. That is Mr. Carter's idea as well as mine, and it is the idea of the other men in the company based on their experience in operation.
Q. Did Mr. Carter know your views before you were retained in this case?
A. He did.
Q. On depreciation and reproduction?
A. He did. We discussed it many times over a long period of years.
Q. He knew your views away back in 1915, did he?
A. He did. We discussed it in 1915, and at previous dates. The matter has been broadly discussed by all the gas people.
Q. You are working on the Brooklyn Union case, too, aren't you?

Mr. Ransom: I object to that. That has been asked about a dozen times.

The Master: Well, let us have it thirteen times.

A. Yes.
Q. What is the period of credit on which this company purchased supplies, do you know?
A. No.
Q. What period did you take into consideration?
A. I didn't take any into consideration.
Q. You figured they would pay cash, did you?

The Master: He figures that they get the cash discount.

Q. What cash discount did you figure they would get?

A. It varies with different supplies. Some of them they don't get any, and some they get two per cent.

1416 Q. What did you figure on oil? Do they get more than two per cent on oil?

A. I don't think they get any—I don't know that they get any cash discount on anything. I don't know that the company has enough working capital to discount its bills.

Q. You say that they ought to take advantage of the cash discounts?

A. I say they ought to have enough working capital to permit them to take advantage of the cash discounts.

Q. I am asking you if there is a cash discount on oil?

A. I say as far as I know there is not; I don't know.

Q. All right, there is one where there is not?

A. I didn't say there was not.

Q. Well, is there?

A. I don't know.

Q. How about coal?

A. I don't know.

Q. Is there a cash discount on coal?

A. I don't know.

Q. Generally—I am away from this company, I mean generally?

A. I have never had a cash discount on coal or oil in my experience in the gas business.

Q. Well, those are the principal items, are they not, that are used to make gas?

A. They are important items.

Q. So as to the two big items there is nothing in your proposition that they should take advantage of the cash discounts?

A. There is no cash discount as far as I know on coal and oil.

1417 Q. Then I ask you—you don't answer categorically, so that there is nothing in your proposition that they ought to take advantage of the cash discounts so far as two of the biggest items are concerned in making gas, is there?

A. Not as far as I know.

Q. Do you know whether it is a fact or not that it is the practice of this complainant company to disregard unbilled gas on its books?

A. Looking over this balance sheet I do not see any item that will cover that.

Q. Did you ever see it on any company's balance sheet?

A. Oh, yes.

Q. But you didn't see it on this company's balance sheet?

A. I don't see it; just looking hurriedly over this balance sheet I don't see it.

Q. Does it appear either as revenue or as an asset, speaking now of the unbilled gas?

A. I have just stated that as far as I can see it does not appear at all.

Q. If such gas delivered to consumers but not yet billed is in-

cluded as part of the company's assets then should it not be considered in the revenue accounts of the company?

A. As far as I can see it is not in here.

Q. Well, can't you answer that question?

A. I don't think it is in there at all. It should not be included if it is not in there.

Q. You cannot answer that question? Shall I repeat it?

A. What kind of an answer do you want? It is not here.

Q. What is that?

A. It is not here, as far as I can see.

1418 Q. Well, answer that question?

A. I have answered it.

Q. I will repeat it. If such gas delivered to consumers but not yet billed is included as part of the company's assets, then should it not be considered in the revenue accounts of the company?

A. It should be considered in the assets accounts of the company, not in the revenue, because there is no revenue account for that until the meters are read and it is entered on its books.

Mr. Ransom: That is the very point, that it is not in the revenues account but is in the expense.

The Witness: Surely it is in the expense.

Q. Is this statement correct or incorrect: Unless surplus and revenue are so revised an allowance for unbilled sales would be one sided and unjust to the consumers, for the true profits of the business will not be revealed.

A. Read that again, please.

Q. Unless surplus and revenue are so revised——

The Master: Revised how?

Mr. Ransom: This is another definition, I judge.

Q. That is, if you are going to allow this unbilled gas in your working capital your books ought to be revised so that——

A. So that it will show in the working capital?

Q. Yes, it will show in the revenue.

A. The books should be revised so it would show in the working capital.

Q. That is, you would not show income account if you in-

1419 cluded it in working capital, your unbilled gas if you had it in your working capital, you would not show a correct income account on the books?

A. Certainly there is a correct income account in the books, that is, a correct asset account.

Q. You would have it in working capital and you would have it in the income account also?

Mr. Ransom: I object to that as absurd on its face.

A. Certainly not, under any circumstances.

Q. Why wouldn't you?

The Master: I think we have had enough of that. The poi about it is that your questions would indicate, and they did to n for a minute, that the company's books did not correctly reflect t amount of its revenue for 1919 in that they did not show the amou of gas which was actually sold, but for which they had not deliver bills.

Mr. Chambers: That might be so, they might sell more 1919——

The Master: That is so, there might be a little more or a litt less gas sold in 1919 than in 1918; but taking the years and the ov lapping periods they come pretty near averaging, so that the g that is not billed in 1919 is cared for by the gas that is billed in 19 that was sold in 1918.

Mr. Chambers: That is why you cannot take one period of a ye and determine one of these cases to save your life and get it rig

The Witness: Working capital has to be invested all the tim The company is always two or three weeks behind in its billing, working capital must be provided.

1420 Q. Did you consider at all, and did you know the practi of this company in regard to the sending out of bills, h often they are sent out, exclusive of prepayment meters?

A. Bills are sent out substantially all days in the month.

Q. By this company?

A. Yes. Meters are read every day.

Q. Between the reading of a meter and the time when the b is sent out, how much average time elapses?

A. Usually two or three days.

Q. Are the meters read every day in the month constantly?

A. Yes.

The Master: That is, not the same meter?

The Witness: Oh, no, meters are read every day. A meter is re once a month.

Q. Take an individual consumer who has a meter in his ho that is not a prepayment meter, how long a time elapses from time that meter is read until the bill is sent out?

A. Usually two or three days.

Q. How long a time is the meter read for—how long will it before the meter is read again?

A. A month.

Q. Thirty days?

A. A month, a calendar month. They are usually read, as fa possible, on the same day of each month.

Q. That is the practice of this company, then, to read the dividual meters every thirty days?

A. Every month.

The Master: Some months have thirty-one days.

1421 Q. That is, they visit the consumer's premises——

The Master: The same day of the month as far as possible?
The Witness: Yes.

Q. How do you know that, whom did you get that information from?
A. I got that from Mr. Spear.
Q. You took his word for that?
A. I did, and that is the custom of all the gas companies that I know.

Mr. Neumann: I move to strike out the last part of the answer on the ground that it is not responsive.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. Well, then, the result of that would be that you would have a continuous income?
A. Exactly.
Q. Some of the money would be flowing in regularly all through the month?
A. All through the month, about 16 or 18 days behind the outgo.
Q. You would have then 16 or 18 days only that would have to be carried, that is each consumer?
A. Each 16 or 18 days, less the accounts receivable. The gas supplied but not indexed would represent 16 to 18 days in the month. In addition to that you have accounts receivable which may be paid at any time.
Q. That is to say, they are only carrying these consumers 16 days from the time they read the meter until they get the money?
A. No, that is not it.

The Master: That is not what the witness said.
1422 Mr. Ransom: It would appear in accounts receivable as soon as billed.

Q. How much money a company needs for working capital is dependent largely upon its credit, is it not?
A. No, not at all.
Q. Credit hasn't anything to do with it?
A. Of course if he does not pay its bills it would not have the working capital.
Q. The question is, credit has nothing to do with the amount of working capital?
A. That depends. You might substitute credit for cash, and a company might possibly get somebody else to father it, but I don't know of any case where it is done.

The Master: Have you in reaching your figure of working capital allowed anything for credits?
The Witness: Only the ordinary operating credits. Bills are usually payable from 15 to 30 to 40 days.
The Master: You have allowed that, have you?
The Witness: I have assumed that.

Q. You figure that this company did not have any credits, in your working capital?

A. I figured that it would finance itself. I figured that it would have the usual credit with the merchants and coal people and oil people, and people from whom it bought supplies, not that it would lean upon some one to furnish cash for it any day it happened to need it.

The Master: I don't think that is entirely clear. In fixing the amount of working capital did you estimate that bills would be paid immediately upon their rendition?

1423 The Witness: No, I took it under the ordinary working conditions. I don't know how they run, 15, 30 or 40 days.

Q. If this company could be carried for 60 days on its oil and coal, and the principal items that go to make gas, it would not need any working capital, would it?

A. Yes. The coal and oil and materials are capital, and if the company's credit is good enough to get them without paying for them it should still be considered a part of its capital.

Q. What would it want the money for?

A. Well, it would not pay the bills, it would not need the bills.

Q. If they were doing a cash business, and the gas was paid for every night, they would not need any working capital, would they?

A. Certainly they would. They have to make the gas probably on the average 40 days before they get paid for it.

Q. I am saying if they got their pay every night, if all their meters were prepayment meters they would not need any working capital at all, would they?

A. It would cost more to collect the money from those meters than they would get out of it. If they were all prepayment meters and if they collected from the meters every day, you would not get a new dollar for the old one on collections alone.

Q. The men are paid by the week who collect that money, they would not get their money for six days, and the company would get it every day?

A. I know, but the gross receipts would not pay those men.

1424 Q. Did you ever figure that out?

A. No, but I can estimate it. The income per meter is about 2½ cents a day, and it would cost 2½ cents to collect from the meter.

Q. Have you testified in any other case on working capital?

A. Yes.

Q. Where did you give such testimony?

A. I testified in the Newtown case.

Q. How many cents per thousand cubic feet did you allow for working capital there?

A. 30 cents.

Q. Where else did you testify? What year was that?

A. 1914 or 1915.

Q. Where else did you ever testify?

A. I have testified in Paterson and Passaic, I think; I am not sure.
Q. Was that Newtown case a confiscatory case?
A. It came pretty near it; it was a public service commission case.
Q. Well, it was a rate case, was it not?
A. Yes.
Q. Before the Public Service Commission, wasn't it?
A. Yes.
Q. It was not in a court of justice, was it?
A. No, it certainly was not.
Q. How about the Kings County case, did you testify there?
A. I think I did.
Q. How much did you testify per thousand cubic feet?
A. I don't recollect; I am not absolutely sure that I did testify to that.
1425 Q. Any other cases now except the Kings County Lighting and the Newtown case?
A. Yes, in Washington.
Q. Washington, D. C.?
A. Yes.
Q. How much did you allow there for working capital per thousand cubic feet?
A. 30 cents.

The Master: When was that?
The Witness: That was in 1913, I think, or 1914.
The Master: Let me ask you. You of course have increased the working capital per thousand cubic feet because, I take it, you have figured on the present prices realized from gas?
The Witness: No, on account of the increase in the cost of gas.
The Master: But if the amount realized, the amount charged for the gas proportionately increases the working capital would not necessarily have to be higher, would it?
The Witness: No, not to cover the increase in price, but to cover the increase in the cost of gas.
The Master: What I am getting at is this: In 1915, to illustrate, in that Newtown case you figured 30 cents per thousand cubic feet?
The Witness: Yes.
The Master: You figured 30 cents at that time having in mind the cost of materials?
The Witness: Yes.
The Master: And the amount of revenue got from the gas itself, isn't that so?
The Witness: Yes, having in mind the cost of materials and labor only.
1426 The Master: Does not the amount realized from the sale of gas enter into it?
The Witness: Yes, as accounts receivable it does.

Mr. Ransom: It would increase the amount of working capital on which the company is entitled to a return.

The Master: In other words, the more they charge for the gas the more working capital they would have to have?

The Witness: Yes, the accounts receivable increase——

Mr. Chambers: You had better not increase the rate here.

Mr. Cummings: You will have to increase them continually.

Mr. Ransom: It increases the amount of mobile or floating assets on which the company is entitled to a return. That is all covered in the uniform system of accounts. There is a certain fixed capital on which the company is entitled to a return, and there are certain floating assets. If you increase the gas rate it increases the amount of accounts receivable.

The Master: There is something wrong about that.

Mr. Neumann: I think the gentlemen who expound it are wrong. There is nothing wrong about what you are driving at, but what the gentlemen try to expound is wrong.

The Master: If you are taking the receivables for the purpose of figuring working capital—and my recollection is that Mr. Maltbie did—then that is so, that the more you get for your gas the more your receivables are and the more your working capital is; but there is something wrong about it.

1427

Mr. Ransom: The question is how much has the company got in the business. Whatever amount it has got in the business it is entitled to a return on, under your Honor's theory. What it has in the business is in two forms. One is the fixed capital, as the Public Service Commission calls it, namely, the fixed tangible capital. The other is that the Public Service Commission calls the current floating or mobile assets, to use the Commission's term. It is in various forms. The company has got to have money enough, whether it is in the form of materials and supplies, whether it is in the form of moneys in the banks, or whether it is in the form of accounts receivable, or whether it is in the form of gas on which money has been laid out but which has not yet been billed. Whatever form the amount is in that the investors have in mobile or floating assets they are entitled to a return on it. Of course, when you increase the rate for gas there is more in the form of mobile and floating assets.

The Master: Yes, I can see that it works that way, that it must work that way, but somehow or another it does not hit me right.

The Witness: The profits of almost any enterprise are part of the enterprise as soon as the selling takes place.

The Master: I understood the working capital to be the amount of money you need for stock on hand, for your manufacturing expense, while you are waiting to get your money back for merchandise that you are selling; that is what I understood to be the working capital.

1428

Now, I have taken the testimony in the Consolidated case and this case as a method of calculating the working capital—I do not know how it could be done otherwise.

I can see where, when you have a lot of material on hand, that is capital that is laying there, it is dormant, it is invested, I can see where the cash you need to meet your payrolls with for

day to day has got to be considered—you need that. Now, I assume that the receivables must likewise be considered——

The Witness: Of course, you have laid out, as against your receivables, all of your operating costs so that in any case the only kind that could be questioned——

The Master: Would be the profit?

The Witness: Would be the profit.

Mr. Ransom: And that would be distributable, that is, it is money which, if it had been paid in, the company would be entitled to deal with?

The Witness: If there was a profit on it?

Mr. Ransom: If the company was making a profit, it would become distributable; consequently, as long as it is all in the hands of consumers or persons who owe it, it becomes a part of working capital.

The Uniform System of Accounts provides that a part of the working capital is the Accounts Receivable.

The Master: Well, go ahead. As I have already stated, I don't get it clearly in my mind, but I will hear what Mr. Maltbie says when he gets on.

1429 By Mr. Chambers:

Q. Is this correct, the necessary working capital needed is to take care of operating expenses in advance of the collection of the company's bills to the consumer and not the total cost of gas delivered for which payment has not been received?

A. Working capital is way more than that, way in excess of that.

Q. Well, in what particular?

A. It must take care of material and supplies; it must take care of the gas——

Q. Isn't that an operating expense?

A. No; materials and supplies in stock are not operating expenses, no, certainly not. They must take care of the gas that has been billed and not collected for, furnished and not billed.

The Master: I know in the Consolidated case, Mr. Chambers, you made no point about receivables not being a proper element of working capital.

Mr. Chambers: I made some contention about it.

The Master: You rejected and contested certain receivables, certain moneys due from the City of New York. Now, I ignored that in my consideration of it; I didn't think that they were the kind of receivables that were intended.

Mr. Chambers: You didn't take into consideration the four hundred and some odd thousand, did you?

The Master: That was on deposit?

Mr. Chambers: Yes.

The Master: I resolved that by taking Little's estimate of
1430 about twenty cents—he said 22½ cents really, and I didn't quite accurately quote him when I said twenty. There was

enough in the record for me to make it twenty; back in my mind there was $400,000 floating around that I did not want to discuss in detail, but I had it in mind.

Mr. Ransom: And as usual, you resolved all doubt against the Company.

Q. Where else did you testify, except in these places you have stated, on working capital?

A. I think I testified in the Haverhill case; I think I testified on working capital in that case.

Q. What was the cents per thousand cubic feet?

A. Thirty cents.

Q. There you always uniformly held it thirty cents?

A. My experience in 1914 and previous to that was that thirty cents was about what was required.

Q. 1919, you are going to hold uniformly to fifty cents?

A. At present prices, about fifty cents. If prices change, of course it will change the amount of working capital required by the company per thousand feet of gas.

Q. You have given all the cases, now, on which you have testified on working capital?

A. I don't know that I have—I don't believe that I testified in all the cases that I have given.

Q. Where have you had any experience with any company in the last few years as to what working capital is necessary in a gas-manufacturing company?

A. I am president of the Hyattsville Gas & Electric Company and am hard put to it to get the working capital required by that company.

1431 I have been in touch with the reports of other companies, examining operating conditions of these companies in New York and in Brooklyn.

Q. I didn't ask you that. Where is Hyattsville, what is that, a little, small, company?

A. It is a small company.

Q. Those are all the experiences you have had—in this small company?

A. Only one experience?

Q. In that one company, I mean.

A. I testified here that I was vice-president and manager of the Consolidated Gas, Electric Light & Power Company of Baltimore a long time; I operated the East River Gas Company for a long time.

Q. In the last five years, what companies have you been connected with except that one small one?

A. That is the only company I have been actively connected with as an officer. I have been in touch with a great many gas companies.

Q. Can you give me the items in your reproduction cost in which you used the costs as given you by the company for your reproduction cost?

The Master: Read that question.

Q. (Read by the stenographer.)

The Master: Do you understand that question, Col. Miller?
The Witness: I think so.
The Master: What do you understand that question to mean?
The Witness: I stated that I secured, from the company's books, cost of automobiles and used that cost in my appraisal. He wants to know whether I used any other figures from the com-
1432 pany's books in my appraisal—that is my understanding.

Q. I want to know if you used that for street mains?

The Witness: Whether this——
The Master: Whether it was the Company's cost in arriving at his cost of reproduction?
Mr. Chambers: No, he said for typewriters and automobiles he used the company's cost.
The Witness: I did not say that, for typewriters.

Q. You did for automobiles?
A. I said I used the cost to the company for automobiles, yes.
Q. And you did not for typewriters?
A. No.

The Master: Now, what you want to know is whether, in his reproduction cost, he has used any other cost figures?
Mr. Chambers: No, I will ask him.

Q. Buildings and apparatus, did you use the company cost as reflected, as you said, for your figures?
A. No——
Q. Well, you said no, that is sufficient.
A. Wait a minute, let me see how broad that "building and apparatus" account is, and see whether there is anything in there. There is a bare possibility that there are one or two gauges or other small items bought in 1919, where I may have used the cost, but in a very large proportion the whole, if not the whole, I did not get the cost from the company's records of the item "buildings and apparatus."
1433 Q. Street mains?
A. Street mains did not come from the cost of those items as paid for by the company.
Q. Services?
A. Wait a minute, let me finish. I did check up the actual cost of laying certain items of mains in 1919——
Q. I didn't ask you that.
A. (Continuing:) —to see whether my estimate agreed approximately with the actual amount being paid by the company.
Q. All right, just for buildings and apparatus, your figure is substantially fifty per cent. more than you paid, isn't it, than you found they paid?
A. I don't know.
Q. You didn't figure out the percentage?
A. (No answer.)

Q. Now, services is that your own figure or did you, for convenience, adopt the cost to the company?
A. Let me check this.
Q. As given to you?
A. Let me check that other question. Answering the previous question, the estimate for 1920, January 1st, is about fifty per cent. more than the summary of cost—than shown on the summary of cost.
Q. That is for buildings and apparatus, is it, or street mains?
A. I was speaking of everything.
Q. Well, now, as to services, your figure is 62.2% more than it cost the company?

The Master: According to their summary.
Mr. Chambers: According to their summary.
1434 The Master: Where does that lead us anywhere? You can show that by a comparison of figures, can't you?
The Witness: I could figure that out for you if you like.

Q. I am just asking you, services, you used your own figure?
A. Yes, checked by the actual payments made by the company in 1919.
Q. How about meters?
A. Meters, I used the actual payments being made for meters at the present time—as of January 1st.

Mr. Neumann: 1920?
The Witness: 1920.

Q. Just as if the meters were brought on reproduction cost as of now?
A. The whole thing is reproduction cost as of January, 1920, the whole estimate.
Q. Well, automobiles are not?
A. Well, for purposes of convenience, it may be a little before that, but substantially the whole estimate is as of January 1, 1920.
Q. How about gas appliances?
A. That was based as of January 1, 1920.
Q. Is that your own or did you substitute the cost there——
A. That is the price which was being paid, the market price of those appliances as of January 1, 1920.
Q. How about arc lamps?
A. That was the price of arc lamps as of January 1, 1920.
Q. That is your own estimate, isn't it?
A. My own estimate.
1435 Q. For arc lamps it is your own estimate?
A. Yes.
Q. Tools and implements, is that your own estimate?
A. That is the price of those items as of January 1st.
Q. Is that your own estimate,—I didn't say anything about price
A. That is the price of those items, that is what they were worth
Q. Did you use the cost to the company?

A. No, I didn't use the cost to the company. I used the market price of those items as of January 1st.

Mr. Chambers: I move to strike out the last part of it.
The Master: Motion denied.
Mr. Chambers: Exception.

Q. Did Mr. Carter give you any of these prices for street services and mains, appliances, meters and arc lamps?
A. No.
Q. Did Mr. Spear?
A. I don't think that he gave me any prices except the amount that he paid for the mains and services in the latter part of 1919.
Q. Who gave you the price of Underwood Typewriters?
A. I got that from the Underwood company.
Q. That is the price at which those machines were selling, $112.50, in 1919?
A. January 1, 1920.
Q. Did any other officer of the company give you any prices, connected with the New York & Queens Company?
A. Not as far as I can recollect.
1436 Q. Why can't you recollect?

Mr. Ransom: Objected to, he hasn't said he did not recollect.
The Master: Well, do you recollect any others?
The Witness: No, I don't recollect any others.

Q. Did you ask the Underwood Typewriter Company what their price was on second-hand typewriters?
A. No.

Mr. Ransom: Objected to as immaterial.

Q. Do you know that it was about $30, or $40?

Mr. Ransom: Objected to.

Q. On any kind of machine that was used some, did you inquire?

The Witness: Do you overrule the objection?
The Master: Yes.
The Witness: I made no inquiry regarding any second-hand typewriters.
The Master: You were talking about a new typewriter?
The Witness: Yes.
The Master: Reconstruction, new?
The Witness: Yes.
The Master: Of all these items?
The Witness: Yes.
The Master: This whole plant?
The Witness: Yes.
The Master: You were not interesting yourself in junk value or second-hand value.
The Witness: No.
Mr. Neumann: Or in depreciated value?

The Witness: No.

1437 Q. Did you make any inquiry as to the price of a second-hand 1913 Model Ford Runabout?

The Master: I won't allow the question, it has been sufficiently covered.

Mr. Chambers: Exception.

Q. Did you find some of the complainant's mains that were in the open, uncovered—are there some?

A. There are two or three bridges——

Q. Well, are the mains out in the open?

A. Well, the pipes are in the open, yes.

Q. They are exposed?

A. Yes.

Q. They are iron pipe?

A. Yes.

Q. Exposed to the salt water, any of them?

A. No.

Q. None of them?

A. No.

Q. Exposed to any water?

A. No.

Q. Exposed to the rain, aren't they?

A. Well, these particular ones that are on the bridges, I am not sure whether they are exposed to the rain or covered, I don't recollect—they may be exposed to the rain.

Q. You didn't see that line of pipe that runs through the marsh, did you?

A. I didn't see the pipe.

Q. Where is the pipe?

A. You refer to the only pipe——

Q. The line that runs out to College Point through the marsh?

A. No, I didn't see that line.

Q. Those pipes are not exposed?

A. They are in the ground.

1438 Q. They are in the ground.

A. Surely they are in the ground.

Q. Any pipes that are exposed to the atmosphere, rain and so on, I don't suppose those rust or wear out?

A. Not when properly painted in the case of wrought iron; in the case of cast iron, no, whether painted or not.

Q. Those will last indefinitely?

A. Those will last indefinitely.

Q. So that a pipe that is exposed will last just as long, in your opinion, as one that is buried?

A. If kept properly painted, yes.

Mr. Chambers: That is all.

Cross-examination.

By Mr. Neumann:

Q. You stated that you have testified in the Kings County case, Mr. Miller?
A. Yes.
Q. That was before the Supreme Court of the State of New York?
A. Yes.
Q. Do you recall testifying on January 24, 1919?
A. I don't recall the specific date, no.
Q. I want to direct your attention to some questions and answers.

The Master: With what are they in conflict with what the witness said here?
Mr. Neumann: Something that he said here this morning.
The Master: What did he say here this morning?
Mr. Neumann: On the question of depreciation.

1439 Q. Do you recall this question being asked of you:

"Q. Therefore, when a machine is started up and assuming, as we must, as you intimated a few moments ago there must come a time, when, for any reason, wear and tear, inadequacy, obsolescence, catastrophies, whatever they may be, that machine will come to a point where it cannot be used any longer, should we not undertake to forecast, with such accuracy as we can, by the experience of those whose experience we are able to get, some period which will represent the life of the work of that machine, so that those who have investigated will be able to require, from the consumers or others who benefit from its use, a contribution to carry the cost of the replacement cost of that machine by other machinery?"

Do you recall that question?
A. No, not definitely. A great many questions were asked me on that general subject.
Q. And your answer to that was,

"Taking the plant as a whole, I should say yes."

Do you recall that?
A. No, I do not.
Q. If the record so states you would say that is correct, would you?
A. I am not sure of that, I would like to see all the context.
Q. Would you want to look over this record?
A. Yes.

The Master: Let the record show that on the request of the witness the record in the Kings County case is handed to him
1440 for his inspection.
Mr. Neumann: The stenographer's minutes.

The Master: The stenographer's minutes.

The Witness: That is correct. I stated something should be provided for retirements.

Q. No, I did not ask you that, Mr. Miller. I asked you whether you recalled that question and that answer?

A. Yes.

The Master: He says yes, that is correct.

Mr. Neumann: I am going to follow them right along.

The Master: Go ahead.

Q. This question was asked you——

Mr. Ransom: The next question; you are going to read continuously, are you?

Mr. Neumann: Yes, continuously. What did you think I was going to do, read them intermittently?

The Master: Proceed.

Q. The next question is:

"Q. I observe that you have intimated, and I am not sure but what you have definitely stated, that you object to the word 'depreciation' in connection with what I have just spoken of, because usually where depreciation seems to imply that a less value in the course of its life by the amount of what is conceded to be its depreciation. Is that true, so far?"

and your answer is:

"That is correct."

Do you recall that question and that answer?

A. Yes.

1441 Q. And you made that answer to that question?

A. Yes.

Q. Then the next question:

"Q. And you suggest that there should be some provision made in view of the possible necessary retirement of the property, for which you suggest should be replacement of that property at the end of the term?"

and your answer was "Yes."?

A. Yes.

Q. Is that true?

A. Yes.

Q. And the next question:

"Q. Now, personally I am not interested in the name by which this thing is called, whether you call it depreciation or call it replacement cost, but I do want to get clear the fact. I think your testimony has indicated that in your judgment there ought to be, in any well regulated and common sense scheme for the creation and operation of this gas company or any other gas company, some anticipation of the fact that machinery or property which the company devotes

public use will come to an end for some reason at some time, and that the company, and therefore the consumers, should make a proper provision for that time, so that whatever property may be necessary to take the place of that which is in use shall be provided. That I understand is your idea?"

and your answer is:

"That is correct."

Do you recall that question and that answer?
A. Yes.
1442 Q. And that is correct, is it?
A. Yes, so far as it goes.
Q. Now, the next question:

"Q. And it is your idea, as I remember it, that this should properly be spread over a certain period of time, that this provision which might be made should be carried along from time to time and should not be allowed to wait until this indefinite point comes at which the property is necessarily thrown out?"

and your answer is:

"That is correct."

Do you recall that question and that answer?
A. Yes.
Q. And you made that answer to that question?
A. Yes.

The Master: Is that all?
Mr. Chambers: I have just a question or two. I do not want to prolong this.

By Mr. Chambers:

Q. Do you know the kind of generator sets, these three generator sets, that are used by this company?
A. Yes.
Q. The make?
A. Yes.
Q. What make are they?
A. United Gas Improvement Company.
Q. Do those or do they not have an expectancy of life?
A. I never knew of one being discarded, of that type, except for inadequacy.
Q. You concede that they wear, those sets wear out, the parts wear?
A. Yes.
1443 Q. And that those parts will have to be replaced?
A. From time to time, yes.
Q. So that finally you might replace pretty near the entire machine, say?
A. Yes.
Q. If the gas consumers are paying a return sufficient to keep the

parts of that machine replaced right along, they are really paying for a new machine, are they not?

A. No, certainly not.

Q. You say not?

A. Absolutely not.

Q. What are they paying for?

A. They are paying to maintain that machine.

Q. It finally becomes a new machine?

A. No.

Q. After a certain number of parts——

A. No, it is the old machine. It may not have anything left of the original machine, but it is still the old machine.

The Master: That is enough of that. Is there any distinct, new line?

Mr. Chambers: Here is another question.

Q. Do you know what percentage or about what percentage of the fixed capital assets of this company were acquired during the so-called war period, 1915 to 1919?

A. No.

Mr. Chambers: To be fair, that is about all.

The Master: Judge Ransom has some questions.

Mr. Chambers: Then I have a motion to make.

1444 Redirect examination.

By Mr. Ransom:

Q. Colonel Miller, are you able to say from your experience what is the reasonable and necessary investment per thousand cubic feet of gas sold of a plant and distributing system of about this size, in a similar territory, assuming such investment made prior to 1916?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

Mr. Chambers: I object to that as immaterial, irrelevant and incompetent.

The Master: Will you make that 1915?

Mr. Ransom: Well, part of 1915.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not proper proof, based on speculation, a guess, and from a witness not properly qualified to testify to that fact.

The Master: Overruled.

Mr. Chambers: And on the additional ground that that is not the way to ascertain working capital.

The Master: No, it is general value of the entire property. It is another method of figuring the value of the whole property, and——

Mr. Chambers: Or the way to ascertain the value of the investment—not the proper was to ascertain *in* the value, fair value, upon which a return should be allowed.

The Master: Overruled.

Mr. Chambers: For rate making purposes, or this kind of a purpose.

The Master: The question is, can you state?

A. Yes.

1445 Q. Will you state?

Mr. Neumann: Same objection.

Mr. Chambers: Same objections.

The Master: Same ruling.

Mr. Chambers: Exception.

A. Between $5.50 and $6.00 per — cubic feet.

Q. Sold?

A. Of sales.

Q. Colonel Miller, you have been interrogated regarding the time when various units of the property inventoried and appraised by you were installed, and as to the cost of it when installed. Did you examine the books and the records of the company to ascertain what the various items of property had cost the company?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and the witness not competent to testify, and the answer would be worthless.

The Master: Overruled.

Mr. Chambers: Exception. He says he does not know anything about it except by hearsay.

A. Yes.

Q. In many instances did you also examine the vouchers and the contracts and other supporting records?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. Yes.

Q. For example, on mains and services did you examine all of the vouchers and the inspectors' reports?

Mr. Chambers: Same objection.

1446 Mr. Neumann: Why not let the witness state what he did, without asking him these questions in that form. They are very dangerous, to say the least.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Chambers: They are not proper redirect, either.

A. All covering the mains and services laid since August 1st—I mean mains laid since 1901.

Q. On the larger items of property did you find and examine contracts as well as vouchers?

A. Yes.

Q. And in many instances did you go to the vouchers for additional details and information supplementing what you found in the books?

A. Yes.

Mr. Chambers: Just a minute. I object on the ground, among other things, it appears he would not have time to do that.

Mr. Cummings: A physical impossibility.

Q. Did you at my request make up from these books and records a detailed statement of the cost to the New York & Queens Gas Company of the plant and distributing system and other properties which you inventoried as of January 1st, 1920?

Mr. Chambers: I object to that as incompetent, irrelevant, immaterial and improper. The witness is not competent to testify to it.

The Master: Overruled.

Mr. Neumann: In addition to that, if the Master please, the present state of the record is such that he was going on in at
1447 least nine cases at one time, it would have been a physical impossibility for any man to have done what Mr. Miller here testifies he did.

Mr. Chambers: And on the further ground it is hearsay.

The Master: That does not affect the relevancy or materiality of the testimony.

Mr. Chambers: It is hearsay and secondary evidence.

The Master: Overruled.

Mr. Chambers: Exception.

Mr. Neumann: It is surprising that a court will listen to any such preposterous testimony.

The Master: Answer the question.

A. Yes.

Q. And is this such statement, referring to Complainant's Exhibit 96 for Identification?

A. Yes.

Q. On pages 3 to 48, both inclusive, did you set forth the cost of each item of property shown by the books and records to have been added since August 1st, 1904, which you found to be in use as of January 1st, 1920?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: See what he is leading to. He is about, I assume, to offer that in evidence, opening up a new chapter in this case, delaying the case. If he was going to put it in he might have put it in before and examine this witness about it, and it is entirely improper; anyway, the witness is not competent to testify to that or anything else. Exception.

1448 Mr. Neumann: May I add that this is not an ordinary law suit, that we are not dealing with ourselves at arms length. This is at least the third time to my recollection that complainant's

counsel has brought a witness up to a certain point, got him to identify an exhibit, dropped him, sought to compel us to put the exhibit in, objected to the cross-examination of the witness on this particular exhibit, and after we get through then introduces the exhibit. I think that is a little bit beyond orderly procedure.

Mr. Chambers: I want to say one thing more, and it is just as good a time to say it here and now as any other. This witness has certainly not been shown competent to do any accounting. He is not an accountant, and I won't say what else he is not; there are a lot of things I might say, I might be in contempt if I said it all. But it seems to me it is entirely improper to trot out here this worthless piece of paper, that should be made by an accountant and not by a so-called engineer, and it is pretty late, I think, to bring this up.

The Master: Overruled.

Mr. Chambers: Exception.

A. Yes.

Q. And did you show the date of its acquisition or installation according to the books and records, the ledger references showing the sources from which you derived the respective items?

Mr. Neumann: Same objections as last urged.

The Master: Overruled.

Mr. Neumann: Exception.

1449 A. Yes.

Q. As to property which you found was in use on January 1st, 1920, but which was not added from August 1st, 1904, to January 1st, 1920, what did you do?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and upon all the other grounds last urged, and upon the additional ground that the question is not quite clear.

The Master: Overruled.

Mr. Chambers: I will take the exception.

A. I made an estimate of the value of that property as of August 1st, 1904.

Q. And the details of that are shown on page 2 of this statement?

A. Yes.

Q. And the figures shown on these pages 3 to 48 are correctly taken by you from the books?

A. Yes.

Mr. Neumann: Objected to on the grounds as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Q. And the items and figures shown on page 2 are correct, according to your best knowledge and judgment?

A. Yes.

Mr. Neumann: Same objection.

945

The Master: What do you mean by correct?

Mr. Ransom: They are correct according to his knowledge and judgment.

Mr. Neumann: What does that mean?

The Master: Correct for the books, or correct and reasonable values and costs?

1450 Mr. Ransom: They are the reasonable cost to the company.

Mr. Chambers: It is an estimate on an estimate.

Mr. Neumann: I object to it.

By the Master:

Q. How about these other items, where you find cost in the books; did you examine those cost items at all to determine in your opinion whether they were reasonable costs at that time?

A. Yes.

Q. What have you to say about that?

A. I think they were very reasonable.

Mr. Chambers: I object to the question on all the grounds heretofore stated in full, and which I have got strength enough to repeat again if necessary.

The Master: Overruled.

Mr. Neumann: I move to strike the answer out as not responsive, as vague, indefinite and meaningless.

The Master: Motion denied.

Mr. Neumann: Exception.

By Mr. Ransom:

Q. And the note set forth on the opening page of this Exhibit 96 for Identification is an explanatory note showing the manner in which the statement was prepared?

A. Yes.

Mr. Tobin: I do not know whether you are aware of it, if your Honor please, but the costs attempted to be established here are not the actual costs to the company.

The Master: No, I understand some of it is estimated.

1451 Mr. Tobin: I mean going back to the time of the acquirement.

The Master: I know it.

Mr. Ransom: I offer Complainant's Exhibit 96 for Identification in evidence.

Mr. Chambers: I object to it on the ground it is incompetent, irrelevant and immaterial, hearsay, secondary evidence, hearsay on hearsay; no foundation laid for it. The witness is incompetent to testify to it; it ought to be made a penal offense to waste paper on such an exhibit.

The Master: Anything else?

Mr. Chambers: That is enough.

The Master: Is this the paper that was served in accordance with the order of Judge Mayer?

Mr. Ransom: It is.

The Master: How long ago?

Mr. Ransom: Why, I cannot exactly state the date from memory. I should say it was upwards of a month.

The Master: I will overrule the objection. Mark it as an exhibit.

Mr. Tobin: Exception.

Mr. Neumann: Objection.

Marked Complainant's Exhibit No. 96 in evidence.

The Master: Cross examine.

Mr. Chambers: First I move to strike out the entire testimony of Mr. Miller upon the ground that he has projected into the case an unheard of and unsound principle and theory, such that no court in this land has ever even considered, to say nothing about
1452 adopting; and on the further ground that it is incompetent, irrelevant and immaterial and not helpful to the Court in reaching a decision in this case.

The Master: Motion denied.

Mr. Chambers: The same is contrary to all rules laid down by all courts in rate cases and confiscatory cases.

The Master: Motion denied.

Mr. Chambers: Exception.

The Master: Cross examine on this Exhibit 96.

Mr. Chambers: Then I move to strike out his testimony, especially as to going value, on the ground that he has not considered the actual experience of this company, the original investment, the earnings from the stock, time actually required, and expenses incurred in building up the business.

The Master: Motion denied.

Mr. Chambers: And all the grounds mentioned in the case of People ex rel. Kings County Lighting Company vs. Wilcox, in 210 New York, page 479, at page 495; also the Knoxville Water Company case, 212 U. S., page 1; also the case of Des Moines Gas Company vs. The City of Des Moines, 199 Federal Reporter, 204, and also 238 U. S., page 168.

The Master: The motion is denied.

Mr. Chambers: Exception. Now shall I cross examine on this new exhibit?

The Master: Yes.

Recross-examination.

By Mr. Chambers:

Q. You did not know the age of the property that was installed by the predecessor company in 1904, did you?

1453 A. No.

Q. Have you given any cost prior to 1904?

A. No. I have given an estimate of value as of 1904.

Q. In other words, you start off in the first place with a pure estimate?

A. With an estimate, yes.

Q. And you did not know what property they had of your own knowledge?

A. Yes, I estimated ——

Q. Of your own knowledge now?

A. I estimated on all of the property that I could not find from the books, which was established—I mean which had been put in since 1904, but which was there.

Q. How did you know what was put in prior to 1904?

A. Oh, there is a great deal more property—must have been, because a very large part of this plant has been rebuilt since 1904, and I only took what remains in the plant, and which according to the records was not put in since 1904.

Q. How do you know that was put in? In 1919 how did you know that any single piece of plant or property was there prior to 1904, of your own knowledge?

The Master: As I understand it, Mr. Chambers, Mr. Miller says that he undertook to establish the cost of all of the property that he found there from the books; that he found certain property that the books did not indicate had been put in since 1904. He therefore could not establish cost according to the books, and he thereupon assumed that it must have been there in 1904 and put in there
1454 at some time prior to 1904, and he therefore estimated the cost. Is that the idea, Colonel Miller?

The Witness: That is correct, sir.

Q. Was there a holder there prior to 1904 that you have included here?

A. Yes, two holders.

Q. You do not know how old that holder was?

A. No.

Q. What unit prices did you put on that holder in your 1904 estimate?

A. That holder was $23,700, and foundation $3,000, total $26,700.

By the Master:

Q. What page is that, Colonel Miller, on your paper?

A. I am giving now the details of what appears in Apparatus, on page 2.

Q. It is on some subsequent page, is it not?

A. No, it is not in that paper you have. That is a 250,000 foot holder that I am giving you the figures for. The 100,000 foot holder was $14,500, and $1,500 for the foundation, making a total of $16,000.

By Mr. Chambers:

Q. What were your units?

A. I do not remember.

The Master: The details are not in here?

The Witness: That is the price that my company was charging for that sized holder as of that date.

Q. So you just put the price or estimated the price of a new holder as of that date?

A. Yes.

Q. You started off with a new holder?

A. Yes.

1455 Q. Although it probably might have been a good many years old?

A. Yes? I took a new holder as of August 1, 1904.

Q. It might have been as old as 1856?

A. Oh, no.

Q. Not quite as old as that?

A. Not by many decades.

By the Master:

Q. How do you know?

A. Because they did not build the steel tank holders as of that date.

By Mr. Chambers:

Q. You do not know how old it was?

A. No, but it was not and it could not have been more than five or ten years old—it could not have been more than ten or fifteen years old, because the steel tank holders were not built then.

Q. And you go to work in 1904 and put the price of a brand new holder down for that?

A. I put the price of a brand new holder down, yes.

Q. In 1904 you put a price for a new holder?

A. I put a price of a new holder, and in 1920.

Q. Did you do that with all of them?

A. With all the apparatus, all the buildings and apparatus, mains and services.

Q. For your $280,000 that is what you did?

A. That is the price reproduction new as of that date on a subcontract basis.

Q. Where did you get your land value from?

A. Looking over the sales of land in that neighborhood at subsequent dates, and in view of the testimony of Mr. Halleran, I estimated that land on a basis of 30 cents per square foot.

1456 Q. I am speaking of your value of $19,423 in 1904.

A. That was the estimate of the land that was owned in 1904.

Q. Halleran did not testify to that.

A. At 30 cents a square foot.

Q. Halleran did not testify to any value of land in 1904.

A. He testified to values of previous dates for a period of ten years, and I took 30 cents as the value in 1904.

Q. You just made a wild guess?

A. That is not a wild guess.

Q. I call it so. How much land did you figure they had; where did you get that from?

A. I took the land that is now owned and deducted from it the purchases since 1904.

Q. Have you ever bought and sold any real property, or did you around 1904, in that locality?

A. I never bought or sold any in that locality in 1904.

Q. You do not know anything about the value of real property there, do you?

A. No, I based it on the records of this company and on the——

Q. What records? You said there were none.

A. No, I have not.

Q. What records did you base it on?

A. The company bought one lot 50 feet by 75 from one Rogers in May, 1909; he bought another piece 50 by 75 from Rogers in 1911; it bought another piece 25 by 100 from Rogers in 1911; it bought another piece 25 by 100 from Kirby in 1911; it bought a piece in 1915 from Coretti, 50 by 125, and it bought a piece from McMillan, 100 by 150 with a little extra piece on it in 1915.

1457 It bought a piece 50 by 100 from one Powers in 1912; it bought an odd-shaped lot, having about 75,000 square feet from Halleran in 1912, and I had all those figures before me.

Q. So you decided you would be expert enough to put a price on this?

A. I estimated in view of the prices that it paid for those, and in view of the statement that Mr. Halleran made here, that thirty cents was about a fair price for that property in 1904.

Q. And the prices that you spoke of were 1909 and 1911, and so on?

A. The dates given.

Q. Then you went back and fixed a price of this land for 1904?

A. 1904.

Mr. Neumann: I move to strike out the witness' exhibit, so far as it relates to land, page 2, $19,423, from the record.

Mr. Ransom: He has a right to take Mr. Halleran's statement on this record for prices back to that time.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. What were the prices of these pieces of property that you had given to you? Who gave them to you, first I will ask you?

A. I got them from the books of the company.

Mr. Ransom: The details are shown in the exhibit.

The Witness: The details are shown in the exhibit; I will turn to them.

By Mr. Neumann:

Q. You mean page 4 of your exhibit?

A. Page 3. On page 3 they are summarized. Page 4 gives the details. The plot bought from Rogers, 50 by 75, cost $1,200.

1458 Q. Is that plot A on Schedule 3?

A. Yes.

Q. What are the dimensions?
A. That dimension is 50 by 75. Plot B is 50 by 75, Plot C is 25 by 100, and Plot D is 25 by 100.

By Mr. Chambers:

Q. You are just reading off page 3 now, that is all?
A. I am reading off page 3 and reading off a print showing the dimensions.
Q. That is all you know about this item of land, is it not?
A. That is the basis of my estimate of this item of land.
Q. And you want to be understood now as testifying that is the fair and reasonable value of that property?
A. In my opinion.
Q. In your opinion?
A. Yes.
Q. With that knowledge that you had?
A. Yes.
Q. The next item is $320,350. Where did you get that from?
A. I estimated that as being the probable expenditure of this company in bringing together the various small companies, of which it was composed, in getting the rights, in developing its property from an old coal gas plant through various stages up to the present time, and securing the funds, covering the interest and taxes during construction, administrative, legal and miscellaneous general expenses, superintendence, general contractors' expenses and profits.
Q. How much did you allow for preliminary organization, development expense?
1459 A. $100,000.
Q. Cost of financing? Or are those set forth here in detail?

The Master: No, they are not in there.

A. They are not set forth.
Q. Cost of financing?
A. $120,350.
Q. That is cost of financing?
A. Yes.
Q. Financing what?
A. Financing this proposition as it existed as of 1904.
Q. You do not know whether they financed anything or not?
A. In my experience with companies of this kind the financing is very, very expensive.

Mr. Neumann: I move to strike that answer out as not responsive to the question.

Q. All I am asking is if they financed anything, if you knew anything that they financed?
A. They must have financed——
Q. What did they finance?

A. They must have financed the cost of the proposition at that time.

Q. What was the proposition?

A. The proposition was a gas company made up of the consolidation of at least two plants and of systems in several territories.

Q. Do you mean it took that amount of money, in your opinion, to consolidate two or three companies—all that money?

A. No, in order to build the plants in the beginning, to rebuild them, and to bring together into a whole the money—not the money of financing, but the money that was financed.

1460 Q. They were already built when they came together

A. There was building in the beginning. This is the cost of financing the original project and financing the capital necessary to bring them together.

Q. They were already built, the plants

A. But they were financed. The money had to be raised to build them before they could be built.

Q. That is your idea about it, is it?

A. That has been my experience.

Q. Interest and taxes during construction, how much for that?

A. I had not separated that

By the Master:

Q. Admini-strative?

A. I figured for the contracting, admini-strative, financing——

Q. All the other items?

A. Yes.

Q. Preliminary organization $100,000, cost of financing one hundred and twenty-five odd?

A. Yes $100,000

Mr. Chambers: Haven't you overlooked something there in that item?

Q. How about the rest of these items, have you subdivided them at all?

A. There are three items there, one $100,000, $100,000 and $120,350

Q. What is the first $100,000?

A. The expense of consolidation.

Q. Preliminary organization and development?

A. Yes

Q. What is the next $100,000?

A. The other items other than financing.

1461 Q. And the financing is the balance?

A. Yes

By Mr. Chambers:

Q. Did you ever bring together two or three gas companies in this State?

A. I have been a party to it.

The Master: I will not take any more about that. How about franchises and rights, where did you get $500,000 for that?

Mr. Chambers: Let me ask one more question—if he has not overlooked something in that item there.

The Master: Do not let us waste time on it.

Q. Now franchises and rights, $500,000.

A. In my experience with small companies and large, as of this early period it cost a good deal to secure franchises. Franchises were dealt in; franchises were regularly bought, sold and dealt in.

Q. Do you mean you had to heel somebody, some political leader or somebody?

A. I have never done anything of the kind, but I have seen franchises bought in the market. They have a real value for purposes of construction and operation.

By the Master:

Q. Colonel Miller, you understand this exhibit is intended to be a statement of the cost?

A. Outside of these few items, and those are estimates.

Q. But it is an estimated cost?

A. Yes.

Mr. Chambers: To this company.

The Witness: Yes.

382 Q. To this company?

A. Yes.

Mr. Chambers: The New York & Queens.

Q. How do you estimate that it costs this company $500,000 for franchises and rights; that is what I want to know?

A. Do you mean the New York & Queens?

Q. Yes.

A. I think the New York & Queens paid for it.

Q. What?

A. I think they must have paid for it when they bought the other companies.

Q. How much did they pay for everything they got?

A. I have forgotten the figures.

Q. Your three figures here——

A. I think it is more than the sum of those three figures.

Mr. Neumann: Of over a million dollars.

Q. Yes, three figures of the property on hand today, which must have been on hand on August 1, 1904, is approximately $1,130,000. That is $1,468,000, I think.

A. I think it is something like that the property has cost.

Q. Where did you get that figure from?

A. From the books, the opening entries in the books.

Q. Am I to understand, then, that you took the opening entry

of something over a million dollars and divided that into the classes that you have here?

A. No, I did not, but the opening entry is somewhat higher, to the best of my recollection.

1463 Q. Has your estimate of costs any relation to the book cost as it appears as of August 1st?

A. Not entirely. I just had to estimate those figures, and I did look to see whether the opening entry was fairly comparable with that.

Q. Well, has your testimony of cost any relation to your estimate of value at that time?

A. No.

Q. Is your figure of $500,000 here in this exhibit the statement of your estimate of value or your estimate of cost?

A. It is my estimate of what it was worth at that time — or what it probably cost the underlying companies ——

Q. I don't care about the underlying companies. What I want to get is this: You have given me here a statement which shows the cost to this company, the New York & Queens Gas Company, of property installed since August 1, 1904?

A. Yes.

Q. That you have taken from the books of the company and the vouchers?

A. Except in so far as property existed as of that date.

Q. I am talking about property which was installed after August 1, 1904.

A. Yes. That, your testimony is, is what it actually cost them according to their books, records and vouchers?

Q. Yes, and that was a reasonable expenditure, you say, at the time when made?

A. Yes.

Q. For the material that went in there?

A. Yes.

1464 Q. Taking approximately $1,000,000 of property on hand August 1, 1904, it would show that about $900,000, approximately, has actually been put into this property since August 1, 1904?

Mr. Tobin: If your Honor please, don't miss this point, that in 1908, when the ownership of this company changed, that is, when it was taken into the Consolidated Gas Company's system, they established an entirely different basis of cost, so far as their books are concerned?

The Master: I don't know anything about that.

Mr. Tobin: That will be shown.

The Master: What I am trying to do is to get clear in my mind this witness' testimony. His testimony is that according to the books, records and documents that he examined, the New York & Queens Gas Company since August 1, 1904, actually expended on additional plant that is now there approximately $900,000, and that

that was a reasonable expenditure for the property which it represents.

A. Yes.

Q. That brings me to property on hand now, which must have been on hand August 1, 1904?

A. Yes.

Q. Including the plant and distributing system that was there, then the preliminary organization, and the like, franchises and rights?

A. Yes.

Q. Now, what I want to get clear from you is whether in these figures of $280,000 approximately for plant and distribution
1465 system, $320,000 for preliminary organization and the like, and $500,000 for franchises and rights, you are giving me your estimate of value as of August 1, 1904, or whether you are giving me your estimate of what it must have cost the company at that time?

A. That is an estimate of value.

Q. Of value?

A. Yes.

Q. Not of cost?

A. No.

Mr. Chambers: Will your Honor strike it out now?

The Master: I think I have got to ignore it as a statement of cost.

Mr. Chambers: It is terrible to have a thing like that in there.

Mr. Tobin: Very unfortunate.

The Master: Don't I have to ignore it, Judge?

Mr. Ransom: Why, no.

The Master: The witness says it is his estimate of value, not of cost. The value may be entirely different, higher or lower than what it cost.

Mr. Ransom: The rule, as I understand it, is that where you cannot ascertain the actual cost, the actual outlay in creating a certain public utility plant, property or system, that then you have got to take estimates. For example, you give an estimate as of today of the cost of reproducing new, if you could not find book cost. Here is the situation of a plant, a property, a system which has been built
up from 1853 down. The only period for which we have
1466 complete cost records is from 1904 down.

The Master: Let us see about that, let me interrupt you at that point. In or about the year 1904 the New York & Queens Gas Company purchased either the Newtown & Flushing property, or the stock and securities of the Newtown & Flushing company, didn't it?

Mr. Ransom: Yes.

Q. Now, following the same principle that I followed in the Consolidated case, it cost them something at that time, didn't it?

Mr. Ransom: The situation I think is different from the Consolidated case, unfortunately. In the Consolidated case of course

there was a starting point established by the legislative authority in 1804 under which, by legislative sanction, the sanction of the legislative body for whom the defendants in that case were appearing in the Consolidated case, securities were issued, dealt in, and ever since have been traded in in reliance upon the value established at that time under legislative sanction. The Supreme Court has held, and your Honor held, that under those circumstances that was a starting point.

Mr. Chambers: That is all wrong.

The Master: Don't interrupt.

Mr. Ransom: I do not feel confident that the cost of a public utility property to the last one of a series of companies is the measure of original cost or investment as you call it.

The Master: But you don't get my point. This exhibit was intended to show cost, was it not?

1467 Mr. Ransom: This exhibit was intended to show the actual cost, in so far as it was available, and then as bearing upon—let us say from your point of view—you have got to determine whether the amount which the New York & Queens Gas Company on August 1, 1904, paid for the tangible and intangible properties which it acquired was reasonable or unreasonable, whether it was in good faith——

The Master: Yes.

Mr. Ransom: Now, as bearing on the question of good faith, as bearing on the question of the reasonableness of price, certainly proof as to the value of the property which they acquired at that time is probative in this case.

The Master: Yes, but you don't get my point.

Mr. Neumann: May I not say this?

The Master: No, you cannot say anything just now. I am not going to argue with you the proposition that when you show me that the New York & Queens Gas Company issued certain securities, or paid certain moneys for the Flushing plant in 1904, that you ought not and should not supplement that by some expert or opinion evidence as to the probable value of the plant at that time. I did not say I was going to strike it out——

Mr. Ransom: You said you were going to ignore it.

The Master: His testimony of cost. Do you get my point?

Mr. Ransom: I appreciate the difference of course between
1468 the question of what was the cost to this company in August, 1904, and the question of what was the investment in that enterprise up to August, 1904.

The Master: And what was the value in August, 1904. I purposely used the word "ignore" in the connection that I did, and not "strike it out" for this reason: This Exhibit No. 96 is intended to be and purports to be a statement or summary of the cost of the plant and distribution system of the New York & Queens Gas Company to and including December 31, 1919, and included in that is a statement of the cost of the plant and distribution system acquired by the complainant company August 1, 1904, estimated as of that date.

Mr. Ransom: Yes.

The Master: Now, Mr. Miller, instead of sustaining an estimate of cost as of that time has testified to his estimate of value. Do you get my point?

Mr. Ransom: Yes.

The Master: Now, don't I have to ignore his testimony as establishing a cost as of that time?

Mr. Ransom: No, I don't think so, because in determining what was the cost as of that time of tangibles and intangibles there comes an inquiry whether the given price paid, what elements made it up, whether it was reasonable in amount, whether it represented an acquisition of property which was worth about what was paid for it, whether the investment up to that date probably was at least as much as was paid for it.

1469 The Master: How much was paid for it? There is no evidence in this record as to that.

Mr. Ransom: There is not at the present moment.

The Master: Of course the cost of a piece of property is some evidence of its value, isn't it? That is the rule.

Mr. Ransom: Yes.

The Master: Some evidence of its value. Is there any rule that says that value is some evidence of cost?

Mr. Ransom: Well, where you have an inquiry as to the reasonableness of cost—I think the difference between your Honor and myself is this, your Honor has the impression, and I don't say that it is incorrect, that the criterion of the investment in this enterprise upon which a return is to be computed is the investment of this company in the enterprise. I am not at all sure that that is the rule. I think it is the investment in the enterprise, what has been necessarily expended in building up this enterprise through the years, or as I personally believe the authority requires you to find, what it would cost now to reproduce that kind of an enterprise. But, leaving aside that question, certainly the testimony of what the probable investment and reasonable investment was up to August, 1904, is probative in the absence of the actual books of record, both on the question of showing the probable investment up to that time, and on the question of supporting the opening entries in the books, which is some sum close to a million and a half dollars.

1470 The Master: Mr. Neumann, did you want to say something?

Mr. Neumann: I wanted to have the record clear in this respect: There is a way of proving definitely what this company started with, and that can be proven by taking the balance sheet from the books of the Newtown & Flushing company on July 31, 1904, which will show $169,435.61, and the very next day, overnight, August 1, 1904, the New York & Queens Gas Company starts with an opening entry of $1,073,036.37.

The Master: Suppose the New York & Queens in order to acquire that property on August 1, 1904, had to pay $600,000 more than the book value?

Mr. Neumann: Then there ought to be proof of it in this record.

If they paid it they should be able to show it, and if they did not pay it they should not be entitled to it.

The Master: Mr. Chambers, do you want to say anything in this connection?

Mr. Chambers: Just this. It already appears in evidence what the value of the property of the New York & Queens company was that belonged to the Newtown & Flushing, in the streets and outside the streets. It was only about $60,000. Here it is, their sworn report.

The Master: Did I have under consideration any motion to strike out?

Mr. Chambers: Yes.

The Master: I will deny the motion to strike out.

1471 Mr. Chambers: Exception.

Mr. Neumann: Exception.

The Master: I don't think you want to spend any more time with this witness.

Mr. Chambers: I do not on those items. These additions——

The Master: He says they are all taken from the books, and you won't get anywhere with cross-examination on that.

By Mr. Chambers:

Q. Who took it off the books, these additions since 1904, who did that?

A. They were taken off by my staff.

Q. You didn't do it?

A. No.

Q. How much of a staff have you got working on that end of it?

A. I haven't any now.

The Master: How many people did you have?

The Witness: I had eight or ten men at different times on this work.

The Master: How many men worked on this end of it?

The Witness: Two.

The Master: What were their names?

The Witness: Graham and Matthews.

The Master: Did you supervise them at all?

The Witness: Yes.

The Master: Did you check it back at all?

The Witness: I checked enough items to satisfy myself——

The Master: That they were doing the work right?

1472 The Witness: Yes.

The Master: You see the answer to this line of cross-examination is that you have that statement, you have your engineers and accountants checking it up, and if you find it is not so you will point it out quick enough.

Q. Now, Mr. Miller, when you estimated your amount prior to August 1, 1904, what unit prices did you put on them?

A. Unit prices as of August 1, 1904.

Q. I didn't ask you that, what unit prices?

The Master: What was it?

The Witness: Oh, excuse me.

The Master: Mr. Chambers wants some dollar signs now. Is it in the statement?

The Witness: No. This is on a sub-contract basis:

3-inch mains 35 cents per foot, cast iron;
4-inch cast iron 45;
6-inch cast iron 60 cents;
8-inch cast iron 90 cents;
10-inch cast iron $1.15;
12-inch cast iron $1.30;
1½-inch steel or wrought iron mains 25 cents;
2-inch steel or wrought iron mains 30 cents.

Q. The same for services?

A. ¾-inch services $13.00 each;
¾-inch branch services $9.50 each;
1-inch services $14.00 each;
1-inch branch services $10.50 each;
1¼-inch services $15.00 each;
1¼-inch branch services $11.00 each;
1½-inch services $16.00 each;
2-inch services $18.00 each.

1173 Q. What was the average length of service just prior to 1904?

Mr. Ransom: The same length as they are now, they have not lengthened.

Mr. Chambers: I thought maybe they went up, too, or lengthened out.

A. About 48 feet.

Q. Whatever sums you have in here for 1904 were taken right from the books, is that it?

A. Yes.

Q. You did not exercise any independent judgment at all?

A. I did. I looked at them to see whether I thought they were reasonable.

Q. You didn't make any changes, did you?

A. I did not.

Q. Just copied from the books?

A. They all seemed reasonable.

Q. I didn't ask you that, I asked you if it was just a copy from the books?

A. They were copied from the books.

Q. Right from the books?

A. Yes.

Q. And the prices, the dollars, were taken right from the books?

A. Yes.

Q. What items are included for labor after 1904?

A. I have not separated labor and materials in the accounts.

Q. What elements of cost are included?

A. All the costs as shown by the books.

Q. Whatever the company put down you put down?

A. Yes.

1474 Q. You don't know how they proceeded, what elements they used, do you?

A. Yes, whatever there is in it is shown here on the books.

Q. Well, is engineering in there?

A. There is a small amount for engineering.

Q. Show me any of that, will you show me where you set down any engineering?

A. On page 18 there is an item, engineering and superintendence on certain items, $12,974.42.

Q. What items are those on?

A. I cannot tell from this record just what items they are on. The items are shown in the books. All the engineering items shown in the books, as far as I could find them, were brought together on this page 18. My recollection of it is that some of it was in connection with the Douglaston Extension, and some of it in connection with the million-foot holder. That is based on recollection; I did not separate it out of here.

Q. Then these items of cost do cover engineering superintendence and inspection?

A. Only in so far as that $12,974.42 is included.

Q. What do you mean by including in this paper here some services of the Consolidated Gas Company's staff? Where did you get that from?

A. I got it from the books.

Q. On page 20 you have $746, services of the Consolidated staff. What staff? Mr. Carter?

A. No, that was the engineering staff of the Consolidated.

Q. Then there is another engineering?

A. That is another engineering item?

Q. So you were wrong when you said that $12,000 was the only engineering item?

1475 A. I was wrong.

The Master: Well, he didn't say so positively.

Q. On that same page is another item, services of Consolidated and Astoria staff?

A. Yes.

Q. Is that engineering?

A. Yes.

Q. All the way through we find such an item. Is that engineering all the way through, wherever it appears?

A. Wherever it appears it is the engineering staff, yes.

Q. Either in the name of the Consolidated or any of the other companies?

A. It is the Construction Department of the Consolidated Gas Company.

Q. On page 34 is another one; page 35 is another one. They seem to be very large itmes here, that Consolidated staff. On page 34 it is $944; on page 35 it is $693, and so on.

A. A very small item for that size of contract.
Q. What size of contract do you refer to on page 34?
A. That is the details of the holders which cost something over $100,000.
Q. Who put up this holder?
A. The Bartlett-Hayward Company.
Q. Why does this company have to pay for engineering if the Bartlett-Hayward Company put it up?
A. The Bartlett-Hayward Company was very glad to furnish engineering if they were paid for it; the company preferred to furnish its own engineers.
1476 Q. You said that was a small amount of engineering for that size contract. Now the Bartlett-Hayward Company were doing that work, so why should this company be paying for any engineering? In other words, this engineering hasn't anything to do with the contract, has it?

The Master: Isn't the answer to that question that the Bartlett-Hayward contract did not include engineering?
The Witness: It did not, no.
The Master: Then why don't you say so.

Q. How do you know it did not?

Mr. Ransom: Somebody had to supervise.

The Witness: Because I was familiar with the contract.
Q. That is, the Bartlett-Hayward Company puts up all their holders and lets somebody else do the engineering, is that it?

The Master: The witness didn't say so at all.

Q. Is that the fact?
A. No, it is not the fact.

The Master: Does the Bartlett-Hayward Company undertake a job including superintendence and engineering or excluding it, as the other party may desire?
The Witness: Yes. The engineering on the holder itself is done by the Bartlett-Hayward Company.

Q. What engineering could this possibly be?
A. In this particular case it was the engineering of locating the holder, of deciding on the size, drawing a contract and providing specifications, inspecting the material in the shop as it was erected.
1477 Q. Well, on page 34 you have quite a substantial item for inspection?
A. Inspection of what?
Mr. Neumann: Pipe and steel.
Q. Yes, pipe and steel, on page 34?
A. Yes, that is a mill inspection.

Mr. Chambers: That is all. I move to strike it out again.
The Master: Motion denied.

Mr. Chambers: Exception.

The Master: Is there anything else, Mr. Neumann?

Mr. Neumann: Just a moment—I have nothing.

The Master: Anything else?

Mr. Ransom: Nothing from me.

The Master: Is that the complainant's case?

Mr. Chambers: I would like to spend a little more time with this witness but I don't think we ought to. I think it would be worthless, really.

Mr. Neumann: It would be worse than that, it would be useless.

The Master: Is that the complainant's case?

Mr. Ransom: Complainant rests.

The Master: Are there any motions to dismiss?

Mr. Chambers: Can't we make our motions it will only take a minute, next time, right at the opening?

The Master: I would rather you make them now.

1478 Mr. Neumann: If you will give us just a moment, we will get together.

May I not say this, may I not renew my motion to strike from the record all of the testimony of the witness Miller upon all the grounds as urged when I originally made that motion and throughout his entire testimony?

The Master: Motion denied.

Mr. Neumann: Exception.

The Master: I don't think I have any power to dismiss anyhow.

Mr. Chambers: Why not dismiss one and give us a chance?

The Master: I haven't any power to dismiss: I am ordered to take the proof and report my opinion.

Mr. Chambers: Will you put on the record that you would like to dismiss?

The Master: That is not the point, I don't want any inference drawn: I think motions to dismiss are useless.

Mr. Neumann: May we not submit that? We have it, but not in proper form now.

Mr. Tobin: We will put it in typewritten form, that is what we will do.

The Master: If you think motions to dismiss are proper in this kind of a case, put them in writing and hand them to the stenographer.

Mr. Tobin: That will be acceptable to the Master? It is quite long.

The Master: Why surely. I don't think I have any power to dismiss, do you?

1479 Mr. Chambers: Well I wish that would be stated on the record and then it will look as if you did not consider it on its merits and it will be over.

The Master: I won't permit any such inference to be drawn from it; I am simply indicating that motions to dismiss are unnecessary. I have got to deny them.

The complainant has proved the cost of making gas, on the evi-

dence as it stands, that it costs them more to make gas than they sell it for or are compelled to sell it for.

The question of invested capital. I don't know as that is especially important at this time, in the light of the record, and I have got to deny the motions to dismiss on the ground that the proof now shows that it costs more to make gas than they get for it.

I think the quicker counsel for the defendants get to the point of meeting the testimony offered by a man like Woods, that it requires so much coal, so much oil, so much labor and so forth, to make a thousand cubic feet of gas, the quicker they will make some headway with me.

We will adjourn now until Thursday, June 3rd, 1920, at 9:30 A. M.

I do not want counsel to have any argument with me hereafter, this is what I intend them to do; I expect the defendants to go forward with their case, from hour to hour and witness to witness and finish it.

I shall expect counsel for the complainant to be prepared, as far as is humanly possible, to cross-examine. If I find that it is going to save time to let you send some table out to have it checked,
1480 I am going to do it and I shall expect the defendants to go on with the next table and put them all in.

Mr. Ransom: If they will give me any tables today or tomorrow, I will have them checked over the holidays.

Mr. Neumann: I would have given them to you a week ago if I had had them ready, and you know that.

The Master: Just mark down that we are adjourned until next Thursday.

Adjourned to Thursday, June 3, 1920, at 9:30 A. M.

Last Complainant's Exhibit—99.
Last Defendants' Exhibit—L.

1481 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 3, 1920.

Adjourned by consent to Monday, June 7, 1920, at 9:30 A. M.

New York, June 7, 1920.

Before Abraham S. Gilbert, Special Master.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Neumann: The defendants move to strike from the record Exhibit 30 upon the ground that it has not been properly proven.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Neumann: The defendants move to strike from the record Exhibits 52, 53, 54, 55 and 56 constituting the books of account of the complainant company upon the ground that they have been shown to be incorrectly kept, and based upon underlying data which has been incorrectly kept and the errors in the underlying
1482 data have found their way into the books of account. Upon the further ground that the books have not been properly proven and upon all the grounds urged against their admission into the record at the time they were offered and received in evidence.

The Master: Motion denied.

Mr. Neumann: Exception.

The defendants move to strike from the record Exhibits 64 and 65 upon the ground that they purport to be extracts from the books Exhibits 52, 53, 54, 55 and 56. It affirmatively appears that the underlying data and the books themselves are incorrectly kept and that errors appearing in the underlying data have found their way in and are contained in the books, and upon all the grounds urged against these exhibits at the time of their introduction and receipt into evidence.

The Master: Motion denied.

Mr. Neumann: Exception.

The defendants move to strike from the record Exhibit 77 upon all grounds urged against its introduction into evidence at the time it was offered and received, and upon the ground that the facts contained therein were susceptible of actual proof from the operations of this company if economically and efficiently managed. That the introduction of this exhibit based on hypothesis was erroneous, incompetent and greatly prejudiced the defendants. The Master erred in receiving Exhibit No. 77 into evidence because the facts themselves were easily ascertainable and susceptible of proof by witnesses now or heretofore connected with this company, and the Master thereby dispensed with the degree of proof re-
1483 quired by the decisions in rate cases for the proving of one of the vital and essential elements in a rate making case.

The Master: Motion denied.

Mr. Neumann: Exception.

The defendants move to strike from the record all of the testimony of the witness Alten S. Miller, including his exhibits, upon all the grounds urged during the course of his examination and all of the objections to the introduction of the exhibits prepared by him. If all of his testimony be not so stricken from the record, then the

exhibits should be stricken from the record upon all the grounds urged against their introduction and the reception into evidence and upon the further ground that both the testimony and the exhibits of this witness are based upon hearsay and upon records of the company which have been shown to be incomplete, incorrect and not properly and correctly kept so as to reflect the property and business of the complainant company.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: The defendants move to dismiss the bill of complaint herein on the complainant's evidence, upon the following grounds:

(1) Complainant has failed to show sufficient facts to constitute a cause of action.

(2) Complainant has failed to show any cause of action.

(3) Complainant has failed to show beyond a reasonable
1484 doubt that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at $1.00 per thousand cubic feet, is confiscatory to complainant, in that it does not allow a fair return on the capital actually invested in the business of making and distributing gas.

(4) Complainant has failed to show beyond a reasonable doubt that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at $1.00 per thousand cubic feet, is confiscatory to complainant, in that it does not allow a fair average return on the capital actually invested in the business of making and distributing gas.

(4a) Complainant has failed to show that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at $1.00 per thousand cubic feet, is confiscatory to complainant in that it does not allow a reasonable average return upon capital actually expended.

(5) Complainant has failed to prove what it cost to make and distribute gas to its private consumers.

(6) Complainant has failed to prove the amount of capital actually invested in making and distributing gas and upon which it would be entitled to a return.

1485 (7) Complainant has failed to show by evidence beyond a reasonable doubt that Chapter 125 of the Laws of 1906 is unconstitutional.

(8) Complainant has failed to show that it has complied with all of the provisions of said Chapter 125 of the Laws of 1906, and furnished to its private consumers gas of a lighting capacity of 22 candles, and of the pressure required by said statute.

(9) Complainant has failed to prove ownership and value of its property other than its real estate.

(10) Complainant has failed to prove the extent of its tangible property in and outside of the streets upon which it is asking for a return.

(11) Complainant has failed to prove the physical or actual condition of its tangible property in and outside of the streets.

(11*a*) Complainant has failed to establish confiscation beyond reasonable doubt in deliberately refraining from furnishing the books or producing witnesses still alive which would have furnished the original cost of construction of property.

(11*b*) Complainant has failed to prove that the increase of business will not sufficiently overcome abnormal conditions of operation during the year 1919.

1486 (11*c*) Complainant has failed to prove operations for an average number of years in determining a fair return. It was error to confine the inquiry to the abnormal year 1919.

(12) Complainant has failed to prove that the company, its plant or properties is efficiently and economically operated and conducted.

(13) Complainant has failed to prove the value of its capital stock and has failed to prove that the same was duly issued. And further was not given for reasonable value of plants and franchises purchased by it and has failed to prove that any of its capital stock was issued for valuable consideration.

(14) Complainant has failed to prove that it has a floating debt and the amount thereof.

(15) Complainant has failed to prove the reasonable value of its property devoted to the gas business.

(16) Complainant has failed to prove that it is entitled to have considered in fixing the amount upon which the return should be based the item of "going value."

(17) Complainant has failed to prove, and in fact upon testimony of its own witnesses it affirmatively appears, that it has not kept its books in accordance with the Uniform System of Accounts.

1487 (18) Complainant has failed to prove by any competent evidence such as is required by the decisions of the United States Courts what its gross operating revenues have been and what its gross expenses have been in the gas making business in the year 1919 or any other year.

(19) Complainant has failed to prove that during no year since its organization in 1904 have the earnings of your orator been sufficient to provide a return of as much as 6 per cent upon the reasonable value of its property devoted to the public use.

(20) Complainant has failed to prove that the reasonable value of its property is in excess of the sum of $3,000 and therefore this Court is without jurisdiction to hear and determine this suit.

(21) Complainant has failed to show that it has no adequate remedy at law.

(22) Complainant has failed to show by any evidence that the matters and facts alleged in its bill of complaint are in contravention of Section 10, Article I, and also the Fourteenth Amendment of the Constitution of the United States.

(23) The defendants respectfully show that they have not had their day in court such as is guaranteed to them by the Constitution of the United States. Common law proof has been dispensed with despite the fact that the underlying data which finds its
1488 way in the books of account, has shown to be erroneous and incorrect the books nevertheless have been admitted in evidence and this without proper common law proof The burden of proof has been erroneously shifted from complainant to the defendants, the law and decisions of the United States Courts requiring that complainant has proved its case beyond a reasonable doubt.

(24) That the bill of complaint should be dismissed upon the ground that the City of New York, a proper and necessary party to the action, has not been included as a party defendant and that complainant in the proofs submitted has sought to include and did so include items of disbursement and income derived from the sale of gas to the municipality separate, apart and distinct from that supplied to its private consumers.

(25) That complainant in its proofs has failed to separate and keep distinct and apart the operation of its gas business so far as it affects its private consumers, but on the contrary has included and commingled in both its operating and expense revenues the results of its gas business to both its private consumers and the City of New York

The Master: Motion denied.

Mr Tobin: Exception

Mr Neumann: I have some motions here on which I respectfully ask the Master to find and forthwith report to the Court as follows:

1489 The Master: I will hear those. Do you mean you are resting?

Mr. Neumann: No, this is at the conclusion of the complainant's case.

The Master: I know, but I cannot make a report until the case is finished.

Mr. Neumann: That may be your Honor's interpretation of it, but we contend that if these facts are true as we state here, that your Honor must then report and find forthwith that there is no cause of action.

The Master: I won't make a report until the case is finished; I won't find anything until the case is finished.

Mr. Neumann: We want to make our record.

The Master: Hand them to the stenographer to be copied in.

Mr. Neumann: The defendants respectfully ask the Master to now find and forthwith report to the Court as follows:

(1) Complainant has failed to show sufficient facts to constitute a cause of action.

(2) Complainant has failed to show any cause of action.

(3) Complainant has failed to show that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at $1.00 per thousand cubic feet is confiscatory to complainant, in that it does not allow a fair return on the capital invested in the business of making and distributing gas.

1490 (4) Complainant has failed to show that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at $1.00 per thousand cubic feet, is confiscatory to complainant, in that it does not allow a fair average return on the capital invested in the business of making and distributing gas.

(5) Complainant has failed to prove what it does cost to make and distribute gas to its private consumers.

(6) Complainant has failed to prove the amount of capital actually invested in making and distributing gas and upon which it would be entitled to a return.

(7) Complainant has failed to show by evidence beyond a reasonable doubt that Chapter 125 of the Laws of 1906 is unconstitutional.

(8) Complainant has failed to show that it has complied with all of the provisions of said Chapter 125 of the Laws of 1906, and furnished to its private consumers gas of a lighting capacity of 22 candles, and of the pressure required by said statute.

(9) Complainant has failed to prove ownership and value of its property other than its real estate.

(10) Complainant has failed to prove the extent of its property in and outside of the streets upon which it is asking for a return.

1491 (11) Complainant has failed to prove the physical actual condition of its property in and outside of the streets.

(12) Complainant has failed to prove that its plant is efficiently and economically operated and conducted.

(13) Complainant has failed to prove the value of its capital stock and has failed to prove that the same was duly issued. And further was not given for reasonable value of plants and franchises purchased by it and has failed to prove that any of its capital stock was issued for valuable consideration.

(14) Complainant has failed to prove that it has a floating debt and the amount thereof.

(15) Complainant has failed to prove the reasonable value of its property devoted to the gas business.

(16) Complainant has failed to prove that it is entitled to have considered in fixing the amount upon which the return should be based the item of "going value."

(17) Complainant has failed to prove, and in fact upon testimony of its own witnesses it affirmatively appears, that it has not kept its books in accordance with the Uniform System of Accounts.

(18) Complainant has failed to prove by any competent evidence such as is required by the decisions of the United States Courts what its gross operating revenues have been and
1492 what its gross expenses have been in the gas making business in the year 1919 or any other year.

(19) Complainant has failed to prove that during no year since its organization in 1904 have the earnings of your orator been sufficient to provide a return of as much as 6 per cent upon the reasonable value of its property devoted to the public use.

(20) Complainant has failed to prove that the reasonable value of its property is in excess of the sum of $3,000 and therefore this Court is without jurisdiction to hear and determine this suit.

(21) Complainant has failed to show that it has no adequate remedy at law.

(22) Complainant has failed to show by any evidence that the matters and facts alleged in its bill of complaint are in contravention of Section 10, Article I, and also the Fourteenth Amendment of the Constitution of the United States.

(23) The defendants respectfully say that they have not had their day in court such as is guaranteed to them by the Constitution of the United States. Common law proof has been dispensed with despite the fact that the underlying data, which finds its way in the books of account, has shown it to be erroneous and incorrect; the books nevertheless have been admitted in evidence and this without proper common law proof. The burden of proof
1493 has been erroneously shifted from complainant to the defendants, the law and decisions of the United States Courts requiring that complainant shall prove its case beyond a reasonable doubt.

(24) That the bill of complaint should be dismissed upon the ground that the City of New York, a proper and necessary party to the action, has not been included as a party defendant and that complainant in the proofs submitted has sought to include and did so include items of disbursement and income derived from the sale of gas to the municipality separate, apart and distinct from that supplied to its private consumers.

(25) That complainant in its proofs has failed to separate and keep distinct and apart the operation of its gas business so far as it affects its private consumers, but on the contrary has included and commingled in both its operating and expense revenues the results of its gas business to both its private consumers and the City of New York.

The Master: The Master states that he has no power to make any report or to make any findings until the case is concluded.

Mr. Neumann: Exception.

Mr. Neumann: I offer in evidence two notices to produce, with admission of service by Shearman & Sterling, solicitors for the complainant, dated June 1, 1920.

The Master: What is the purpose of having a notice to produce offered in evidence?

1494 Mr. Neumann: Why, the record ought to indicate that we have asked for certain books.

Mr. Vilas: I object to the reception of the notice.

The Master: I will sustain the objection with this statement. If the complainant does not produce any paper which you desire to offer or to use, I will permit you to prove that you required its production in proper form. Until then I see no sense in marking the notice to produce.

Mr. Neumann: May I ask that they be marked for identification?

The Master: Certainly.

Papers marked Defendants' Exhibits M and N for Identification.

Mr. Neumann: I offer in evidence the papers in support of a motion to quash a second writ of certiorari in the case of the People of the State of New York, ex rel. New York & Queens Gas Company, relator, against Oscar S. Straus, Travis H. Whitney, Charles S. Hervey, F. J. H. Kracke, and Charles Bulkley Hubbell, Commissioners constituting the Public Service Commission of the First District of the State of New York, before the New York Supreme Court, Appellate Division, First Department.

The Master: What is the purpose of that? What do you expect to prove by that?

Mr. Neumann: I expect to prove two things. The first thing is that there is a contradiction there of Mr. Spear's testimony. In the next place, it indicates the contention that I have been trying to make right straight along through the complainant's case, and that is, the unreasonable delay in having complied with the

1495 order of the Public Service Commission of 1915.

The Master: What does that prove? Assuming that I find there was unreasonable delay, what would happen?

Mr. Neumann: Extent of expenditures, the fact that they cannot now charge even into capital invested and seek a return on it, the abnormal amount that they have had to expend by reason of the fact that they delayed and resisted this order of the Commission.

Mr. Vilas: I object to it as incompetent, irrelevant and immaterial and no foundation laid——

The Master: I will let Mr. Neumann make his record.

Mr. Neumann: I am offering the whole record, I am not offering part of it.

The Master: I assume there is no question but what this book handed me is a correct copy of the papers in support of the motion of respondent, Public Service Commission, to quash second writ of certiorari presented by this complainant company in the Supreme Court, Appellate Division?

Mr. Vilas: It is not objected to upon that ground. I would like to state the other grounds of objection. As to the first reason stated by the counsel for the Public Service Commission that it contains contradictory statements, there has been no foundation laid for its introduction for that purpose.

Mr. Neumann: Why, Mr. Spear testified and put in an exhibit as to what it cost.

The Master: Whether it does, or does not, Mr. Vilas, Mr. Neumann thinks he may succeed in getting from me a finding that there was an unreasonable delay in putting in the Douglaston Ex-
1496 tension, and that if I find that to be the fact, that he can cut down your investment on which you are entitled to a return.

Mr. Vilas: That is a collateral issue which has no bearing on this case at all which the Master is here to try.

The Master: I am not so sure. I am going to let Mr. Neumann make his record. My judgment at this time is that I shall not attempt to determine the good faith of the complainant company in resisting an order which they contended was improper or unfair, and I shall undoubtedly find, unless something develops to change my mind, that the complainant company, believing itself to be put into a position of expending money unnecessarily and inadvisedly, and believing that the order was improper, had a perfect right to resist that order to the full extent, and that being so it was not required to make the investment ultimately made until it had exhausted its right as a matter of law. However, I will take it and let you make your record.

Mr. Neumann: That may be something to divide up with the stockholders, not with the consumers in a rate case.

Mr. Vilas: Will your Honor also take all of the statements of the Public Service Commission there?

The Master: Statements do not make any proof.

Mr. Neumann: What statements?

Mr. Goetz: May I point out to the Court that all these papers are papers submitted on behalf of the Public Service Commission by witnesses called by the Public Service Commission, and not
1497 rulings or findings of the Commission itself; that there are no statements contained there made on behalf of the company——

The Master: I get your point. I had been ruling on the theory that they were the motion papers presented by the complainant company.

Mr. Goetz: No.

The Master: I am not going to take affidavits submitted by the Commission as proof in this case.

Mr. Neumann: May I say this, that there is an affidavit here of William L. Ransom——

The Master: I will take that.

Mr. Goetz: That was made on behalf of the Commission.

The Master: I will take any affidavits presented by the complainant company.

Mr. Vilas: That one was not.

Mr. Neumann: It contains both. Here is an affidavit of Spear, and of Clump.

The Master: You can offer affidavits of the complainant company, and I will take them.

Mr. Neumann: And here is the decision of the Commission. I don't see on what theory——

The Master: I won't take affidavits made by the Commission's witnesses on that application.

Mr. Neumann: No, but this is the opinion of the Commission in that case. That has the same force and effect as law, the opinion of the Commission.

The Master: If you stand on your offer of that entire record as it stands, I will sustain the objection.

1498 Mr. Neumann: Then I will offer it piece-meal. If I had the witness William L. Ransom on the stand, I would put him on the stand and confront him with this affidavit and get him to testify to it.

The Master: I don't know.

Mr. Neumann: I could make him my own witness, and confront him with that.

The Master: This case will not be closed until you have a chance to call Judge Ransom.

Mr. Neumann: I will offer in evidence the affidavit of William L. Ransom in the matter of the People of the State of New York, in Queens Gas Company against Public Service Commission for the First District, the same being verified on the 5th day of March, 1918.

The Master: Was that made on behalf of the complainant company?

Mr. Neumann: This is a part of the record. It is submitted in support of the motion to quash a second writ of certiorari which this Company obtained. Now, if the complainant wishes to offer other papers on the writ of certiorari it may offer them. I am offering the papers that were in opposition.

The Master: Objection sustained.

Mr. Neumann: Exception. I offer in evidence affidavit of Travis H. Whitney in the same proceeding, dated the 5th day of March, 1918.

Mr. Vilas: That is objected to.

The Master: Objection sustained.

Mr. Neumann: Exception. I offer in evidence affidavit of James B. Walker, Secretary of the Commission, dated March 5, 1918.

Mr. Vilas: That is objected to.

1499 The Master: Objection sustained.

Mr. Neumann: Exception. Now, I offer in evidence resolution of the Commission in case No. 2235, directing hearing as to standards in measurements or quantity and power of gas submitted in support of motion dated August 27, 1917.

The Master: Is that resolution adopted by the Commission as a result of a hearing?

Mr. Goetz: No, this is preliminary to the hearing.

The Master: Let me see that.

Mr. Neumann: The difficulty is, if you are going to admit only parts of these papers, there will be no continuity.

The Master: I can't help that.

Mr. Goetz: It contains no findings of the Commission. It simply means that the Commission sat at an ex-parte proceeding and decided to hold a hearing.

Mr. Vilas: It has no relevancy to this proceeding.

The Master: I will receive this.

Mr. Vilas: Exception. On what theory do you receive it?

The Master: It may be connected up in some form to show a violation of law by this complainant company. I don't know anything about it. It is an order made by the Public Service Commission under its authority.

Mr. Goetz: May I point out to your Honor that both by the decisions of the United States Supreme Court, and by decisions of the Supreme Court of the State of New York, as well as by the Public Service Commissions law a public utility against whom an
1500 order is made by the Public Service Commission of this State has the right to contest that order without any penalties being meanwhile visited upon that company.

The Master: I know that.

Mr. Goetz: The statute provides for it, and the State Court has held that any law which forces the company to comply with any order or prevents the company from contesting any order, would be unconstitutional.

The Master: I understand that. This order is a general order for an inquiry. I will take it. I don't see how it has any relevancy to the matter before us, but it may have.

Paper received in evidence and marked Defendants' Exhibit O.

Mr. Neumann: I offer in evidence memorandum of the Commission in case No. 1856, entitled "Memorandum of Commission adopted upon relator's refusal to accept order fixing new dates for commencement of construction." The opinion is by Commissioner Hervey.

Mr. Vilas: I object to that as incompetent, irrelevant and immaterial, no bearing upon any issues in this case; and on the further ground that it is not accompanied by an offer of the same communication from the company to which it purports to be an answer.

The Master: What is the date of this?

Mr. Neumann: I don't know what the date is from that paper. I can find out easily enough by telephoning over, but it must be some time around March, 1918.

The Master. I will take it. The objection is overruled.
Mr. Vilas. Exception.

Paper received in evidence and marked Defendants' Exhibit P.

1501 The Master. It is agreed by counsel that the paper just marked in evidence as Exhibit P was made on or about March 2, 1918.

Mr. Neumann. It is understood that in all these objections they do not run to the fact that the originals are not presented here, is that correct?

Mr. Vilas. That is correct.

Mr. Neumann. I offer in evidence affidavit of Maynard H. Spear in the same proceeding, including Exhibits Nos. 3 and 9 thereto attached, dated February 25, 1918.

Mr. Vilas. I object to that as incompetent, irrelevant and immaterial, first on the ground that it is not material to the issues of the case, or relevant thereto, and on the further ground that no foundation has been laid.

The Master. Objection overruled.
Mr. Vilas. Exception.

Paper received in evidence and marked Defendants' Exhibit Q.

Mr. Neumann. I offer in evidence application of complainant company to the Public Service Commission of the State of New York for the First District, for re-hearing after affirmance in the United States Supreme Court. The case number is 1856, and the application is verified by Lewis B. Gawtry, January 4, 1918.

Mr. Vilas. No objection.

Paper received in evidence and marked Defendants' Exhibit R.

Mr. Neumann. I offer in evidence order of the Commission denying application for rehearing, dated February 1, 1918.

Mr. Vilas. Objected to as irrelevant, and immaterial and
1502 not binding upon the complainant or upon the court, and having no bearing upon the issues.

The Master. Objection overruled.
Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit S.

Mr. Neumann. I offer in evidence order of the Commission fixing time for compliance with the final order, dated February 1, 1918.

Mr. Vilas: I object to that upon the grounds already stated.
The Master: Objection overruled.
Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit T.

Mr. Neumann: I offer in evidence the opinion of the Commission denying the application for a re-hearing, case No. 1856, dated February 1, 1918.

Mr. Vilas: Objected to as incompetent, irrelevant and immaterial and having no bearing upon the issues.

The Master: Objection overruled.

Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit U.

Mr. Neumann: I offer in evidence decision of the Appellate Division of the First Department, dated April 5, 1918, in this proceeding, contained in 182 Appellate Division reports, at pages 666 and 667.

Mr. Vilas: I object to that.

Mr. Neumann: I ask that that be read into the record.

The Master: I am not quite clear that it is the proper method of directing the court's attention to a decision of the court,
1503 but I will take it in order that it may be printed in the record.

Mr. Vilas: Exception.

Opinion received in evidence and marked Defendants' Exhibit V, and is as follows:

"The People of the State of New York ex rel. New York and Queens Gas Company, Relator, v. Oscar S. Straus and Others, Commissioners, Constituting the Public Service Commission of the State of New York for the First District, Respondents.

First Department, April 5, 1918.

Public Service Commission—discretionary power to grant rehearing—when certiorari will not lie to compel rehearing denied by Commission.

Section 22 of the Public Service Commissions Law, which provides that the Commission may grant and hold a rehearing if in its judgment sufficient reason therefor be made to appear, places the matter of a rehearing wholly within the discretion of the Commission, and its order denying an application for a rehearing cannot be reviewed by writ of certiorari if it does not appear that the Commission has abused its discretion.

Motion by the respondents, Oscar S. Straus and others, constituting the Public Service Commission of the State of New York for the First District, to quash a writ of certiorari brought to review an order of the Commission denying relators' application for a rehearing.

John A. Garver of counsel (Shearman & Sterling, attorneys), for the relator.

William L. Ransom of counsel (Godfrey Goldmark with him on the brief), for the respondents.

1504 PAGE, J.:

An order was made March 19, 1915, requiring the relator to extend its mains and services to Douglaston. An application was made for a rehearing on April 10, 1915, and denied April 27, 1915. The relator has by writ of certiorari reviewed the order of the Commission, dated the 19th day of March, 1915, and the order of the Com-

mission was affirmed by the Court of Appeals (People ex rel. New York & Queens Gas Co. v. McCall, 219 N. Y. 84) and the United States Supreme Court (245 U. S. 345). The relator by a petition verified on the 4th day of January, 1918, applied for a rehearing of the said proceeding, which application was denied and the relator has caused to be issued a writ of certiorari for the purpose of reviewing the order denying said application. Section 22 of the Public Service Commissions Law (Consol. Laws, chap. 48; Laws of 1910, chap. 480) provides that on such an application "the Commission shall grant and hold such a rehearing if in its judgment sufficient reason therefor be made to appear."

It is clear that the granting or refusing of the application for a rehearing rests in the discretion of the Commission. (City of Buffalo v. Buffalo Gas Co., 82 Misc. Rep. 304, 310; affd., 160 App. Div. 944, on opinion below.) Clearly, this writ could not bring before us the original determination of the Commission embodied in the order of March 19, 1915, as that order has been exhaustively reviewed by the courts. The sole question before us, therefore, is the disposition of the motion for a rehearing. That matter rest-
1505 ing in its discretion, and as it does not appear that the Commission has abused its discretion, the motion to quash the writ should be granted, with fifty dollars costs and disbursements.

Clarke, P. J., Smith, Davis and Shearn, JJ., concurred.

Motion to quash writ granted, with fifty dollars costs and disbursements. Order to be settled on notice.

Mr. Neumann: I will call Mr. Spear.

MAYNARD H. SPEAR, recalled in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Neumann:

Q. Mr. Spear, did the New York & Queens Gas Company in the year 1910 issue any securities of any kind?

A. No.

Q. Did they in the year 1909?

A. I do not think so.

Q. Is it not a fact, Mr. Spear, that in the year 1910 your company issued securities up to the amount of $66,000?

A. I am not sure of that.

Q. I do not want to mislead you; your reports show you did?

A. That may be; I had nothing to do with the books at that time.

Q. Who would know?

A. Mr. Snyder, I guess.

Q. Is he with your company now?

A. No.

1506 Q. No one else outside of Mr. Snyder would know?

A. I presume that our Board of Directors at that time would know about it.

Q. Did you not sign the reports to the Public Service Commission for that year?
A. Of 1910 and 1909?
Q. 1910.
A. I do not recall.

Mr. Neumann: I will have to withdraw this witness; I did not think there would be any question about admitting what I wanted to prove.

BENJAMIN COHEN, a witness called in behalf of the defendants, being duly sworn, testifies as follows:

Direct examination.

By Mr. Neumann:

Q. Mr. Cohen, you are connected with the Public Service Commission of the State of New York for the First District, are you?
A. Yes.
Q. In what bureau?
A. The Bureau of Statistics and Accounts.
Q. Dr. Weber is at the head of that bureau?
A. Yes.
Q. You obtained your present position as the result of an examination and appointment from the Civil Service list?
A. Yes.
Q. How long have you been with the Public Service Commission?
A. A little over two years.
1507 Q. And always in the Accounting Department?
A. The same department.
Q. You were a witness and prepared similar tables to those that you intend to introduce in this case, in the case of the Consolidated Gas Company?
A. I was a witness in the Consolidated Gas Company and prepared tables of production and costs.

By the Master:

Q. Have you prepared tables here of production and costs?
A. Some of them.

By Mr. Neumann:

Q. You prepared other tables also?
A. Yes.
Q. Those tables you prepared here are all taken from the books, are they?
A. They are all taken from the books except where we took any information anywhere from outside the books we noted the fact on the statement itself.
Q. So that where there is no indication upon the statement itself every figure is taken from the books of the company?

A. That is correct.

Q. Or its predecessor?

A. Yes.

Q. Take the first table, Schedule No. 1. What does Schedule No. 1 purport to show?

A. Schedule No. 1 is a comparative balance sheet from July 1, 1900, to August 1, 1904, shows the balance sheet year by year.

Q. Of what company?

A. Of the New York & Queens

Mr. Vilas: I move that the answer be stricken out, and I
1508 object to the present line of examination first on the ground that the witness has not been qualified; it has not been shown what his business is or his position; second, on the ground that there is no supporting evidence for these so-called tables which I have not seen. I do not know what they are, he is characterizing the contents of them improperly and has not shown the source, nothing in evidence to support them. We were held to a rigid technical proof.

Mr. Neumann: That I must object to most strenuously, rigid proof.

By the Master:

Q. The answer to it is this, that this table, Schedule No. 1, purports to be a tabulation of certain books of the Newtown & Flushing Gas Company?

A. Yes.

Q. Those books you found in the possession of this plaintiff company?

A. They have been furnished me by the company.

The Master: You will have to offer the books in evidence before I can let you prove tabulations.

Mr. Neumann: That being so, I must respectfully except to your Honor's ruling, and under legal duress and compulsion I will offer those books but not under any other circumstances because being books of the plaintiff they are declarations against interest and we are not compelled to produce them. A simple summary of them is sufficient here for our purposes.

The Master: I will not let you prove the tabulations unless the books are in evidence.

1509 Mr. Neumann: I now spread upon the record Defendant's Exhibits M and N, for Identification.

The Master: The application is denied.

Mr. Neumann: Exception.

The Master: What books do you call for there?

Mr. Neumann: I call for Ledger No. 1 and Journal No. 1 of the Newtown & Flushing Gas Company.

The Master: Let us see if they are here.

Mr. Vilas: They are in court.

The Master: Produce them.

Mr. Vilas: They are produced.

Mr. Neumann: I offer this in evidence now as I before stated under legal duress and compulsion.

The Master: I am not compelling you to, Mr. Neumann. I am not requiring you to offer them in evidence. I am simply telling you I cannot take a tabulation unless the books are here.

Mr. Neumann: I claim we have the right to.

Mr. Goetz: You ought to take your exception and rest on that.

Mr. Neumann: Why? If I am wrong, nothing that I say now will help, and if I am right everything that I say now will help.

The Master: Are you offering that book in evidence?

Mr. Neumann: I am offering Ledger No. 1 of the Newtown & Flushing Gas Company.

The Master: Any objection?

Mr. Goetz: We object on the ground that it is incompetent, immaterial and irrelevant, on the ground that the book has not been proved. It is a book kept by some other corporation than the plaintiff; it is in no way binding upon the plaintiff, the plaintiff assumes no responsibility for its contents or what the history of the New York & Flushing Gas Company may have been or the Newtown Gas Company may have been, that is not binding at all upon this plaintiff and it is incompetent, immaterial and irrelevant to any issues presented by the plaintiff.

The Master: Objection overruled.

Mr. Goetz: Exception.

Mr. Vilas: Why does your Honor take in ancient history of something that has nothing to do with the issues here?

The Master: Because I think I have got to go into ancient history to determine the facts in this case.

Marked Defendants' Exhibit W.

Mr. Neumann: Under the same circumstances and conditions I offer Journal No. 1 of the Newtown & Flushing Gas Company.

The Master: Do you offer it?

Mr. Neumann: Certainly.

The Master: Never mind the circumstances and conditions. I just want to know whether you are offering the book. If you do, I take it counsel make the same objection to this book as the last one, and the same ruling.

Mr. Goetz: And the further objection to the qualified offer of the Public Service Commission document.

The Master: Yes.

Marked Defendants' Exhibit X.

1511 By Mr. Neumann:

Q. Mr. Cohen, this Schedule A is a compilation of Defendants' Exhibits W and X just offered in evidence, is it not?

A. You mean Schedule No. 1?

Q. Yes.

Mr. Goetz: I object to that question on the ground that it is too general; it does not identify what the witness has done with anything in the books. He is asked is it a compilation of books; that does not at all describe the nature of the work done by this witness in preparing his statement or to show the extent to which it was a compilation or the extent to which the witness applied his own judgment in eliminating or adding.

Mr. Neumann: That is all cross-examination.

The Master: Objection overruled.

Mr. Goetz: Exception.

A. Yes; that is correct.

By the Master:

Q. What I want to get at, Mr. Cohen, is this: Does this purport to be more than the balance sheet as taken from these books?

A. Only such accounts as enter into the balance sheets are taken in this statement here.

Q. You did not find a balance sheet in these books?

A. I found the accounts just as they are on this paper which composes the balance sheet shown here.

Q. You did not find a balance sheet in this form in those books?

A. No ledger contains the balance sheet in this form.

1512 Q. I did not ask you that; there is not any balance sheet in these books?

A. No; there is no balance sheet.

Q. What you have done is to take the various accounts that were found in these books and have set up a balance sheet?

A. That is correct.

Q. That is all that this purports to be?

A. That is all.

Mr. Neumann: I offer Schedule No. 1 in evidence.

Mr. Vilas: May we have an opportunity to see it before we make any objection.

The Master: Yes.

Mr. Goetz: That is objected to on the ground that it is not competent, relevant or material; on the ground that the witness has attempted to make annotations of the books of this company. There is no proof before the Court of the fact that there were books of account kept by this company.

The Master: Wait a minute; as I understand it, these are the books that were handed to this witness as books of the Newtown & Flushing company in the possession of this plaintiff company.

Mr. Goetz: With no statement that they were the books of the company because we do not know.

The Master: They are the books that you have in your possession as being books of the Newtown & Flushing company, are they not?

Mr. Goetz: That is what we have. We have a book which was taken over from the Newtown & Flushing. Whether it is a com-

or a partial book, or whether it is correctly kept or incorrectly
1513 kept, we have no knowledge, and we make no assurance to this Court or to the witness.

The Master: I understand that, but these books, for whatever they may be worth, are books that were kept by the Newtown & Flushing and turned over to your company when you took over the Newtown & Flushing?

Mr. Goetz: We know they were books in the possession of that company. That they were kept by the company, we do not know.

The Master: They are the books that were turned over to you as books of the Newtown & Flushing?

Mr. Goetz: Correct. The witness has an annotation here, the ledger reads "Whitestone Gas Company, et cetera" That is a comment of the witness himself, without any foundation for it.

The Master: Strike that off this exhibit.

Mr. Neumann: I must object to that, that being a part of their books and their records.

The Master: I will not allow it. You can ask him a question that will bring that out.

Mr. Goetz: With regard to the other notes, B, C, D and E, there is one here "Transfers to Meters, Mains Service, and so forth, in April, 1904." That is a deduction of the witness himself, and it does not appear as a direct entry in the books.

By the Master:

Q. I do not understand that to be so?

A. No; that is shown on the books as a transfer in the regular bookkeeping method of making transfers.

1514 Q. In these very books of the Newtown & Flushing?

A. In these very books of the Newtown & Flushing.

By Mr. Goetz:

Q. And a cross-reference showing the transfer?

A. An a cross-reference showing the transfer.

By the Master:

Q. Now, this note D, does that appear in this book?

A. The statement as I have it here does not appear the way I have it here, but the fact of the issue to the College Point company is taken from the Journal entry. This fact was taken from the Journal entry.

Q. In evidence?

A. In evidence.

Mr. Goetz: We further object on the ground that these qualifications which the witness has inserted in footnotes have not been shown by any specific portions of the books which have been identified by the witness, from which they were taken.

Mr. Neumann: That is a question for cross-examination.

The Master: Objection overruled.
Mr. Goetz: Exception.

Marked Defendants' Exhibit Y.

The Master: Wait a minute until I get this clear in my mind.

Q. As I understand your testimony with reference to the Exhibit Y, Mr. Cohen, it is that the books of the Newtown & Flushing Gas Company, in evidence, show the various accounts on July 1, 1900, showing total assets of $405,000; is that correct?

A. 406.

1515 Q. 406 is it?

A. Yes.

Mr. Neumann: $406,000.

Q. That included an item of $203,460 for Franchises, good will and so forth?

A. That is correct.

Mr. Neumann: That is right.

Q. Those same accounts in 1901 total $622,000?

A. That is correct.

Q. $622,870.09; is that correct?

A. That is right.

Q. I see that the Franchises and Good Will account was increased from $303,000 odd to $485,000 odd.

A. That is correct.

Q. How is that increase represented on the exhibit?

A. That is explained further on.

Q. I want it explained here. That is the trouble with these exhibits: I have one statement, then I have to look at another statement, then I have to look at another cross-statement. I want to know in this connection, now.

Mr. Neumann: The underlying statements cover them all.

The Master: I do not like these underlying statements. I want to know.

Mr. Goetz: Might I interrupt in order to clear that up now?

The Master: No.

Mr. Neumann: May the examination be suspended a minute while I go out and telephone?

The Master: Yes.

(Mr. Neumann withdrew and returned.)

1516 The Master: Are you ready?

Mr. Neumann: Yes.

Q. What I want to know, Mr. Cohen, is what entry there is on these books, and where I will find it, showing the increase in Franchises and Good Will item from $303,000 odd to $485,000 odd, from 1900 to 1901?

A. You will find that in the account called Franchises and Good Will, consisting of several debits and possibly some credits.

Q. What are they? I want to know what they are now.

Mr. Neumann: May I say to the Master that this is all explained in another exhibit?

The Master: I do not care about it; I want to know what it is now. When this schedule comes in I want to understand it and know what it means.

A. There is a debit in March, 1901, called College Point Merger, $183,254.67.

Q. What do you mean a debit?

A. Charged to that account.

Q. What?

A. Charged to that account.

Q. College Point Merger?

Mr. Neumann: Why not get the account; that shows it.

Mr. Goetz: That is not an accurate description, because there is more than that.

Q. On what page of the Journal is that?

A. Page 45.

Mr. Neumann: And here is the Ledger. Now let him explain it.

Q. Now tell me what the books show and where they show it?

A. On March 1st, 1900, there is a debit College Point Company, at folio 45 of the Journal, $183,254.67. In July of the same year, Sundry Debtors, College Point, folio 63, $290

Q. Of the Journal?

A. Of the Journal.

Q. Did you analyze those accounts to see how that $183,000 was paid?

A. The $183,000 was paid, and it is shown how it was paid on our table No. 11, which I——

Q. I do not care about your Table No. 11. I want to know how it paid.

A. In the Journal on page 45——

Mr. Neumann: One minute, Mr. Cohen. If the Court please, I must except to the disjoining and disconnecting of our proofs. We have prepared our schedules here, and believe that they run along in a clear, concise and orderly fashion.

The Master: But my mind does not run in that concise and orderly fashion. My mind runs in a different kind of concise and orderly fashion. I want to know now.

Mr. Neumann: Exception. If your Honor will look at Schedule 11 you will see the whole thing.

The Master: I have the books in front of me and this witness has given me a tabulation. I am going to find out now what explanation there is for the increase from $303,000 odd to $485,000 odd, and how it was paid.

The Witness: I will explain it.

Mr. Neumann: I must respectively except to that.

Mr. Goetz: And I wish to move in behalf of the complainant that the defendants' Exhibit Y be stricken from the record, on the

1518 ground that the examination of the witness already discloses that this is not a competent method of proving the cost of this property to the complainant, or any property which the witness has attempted to set out in a statement which he has entitled "Balance Sheets of the Newtown & Flushing Gas Company, 1900 to 1904."

The Master: Motion denied.

Mr. Goetz: Exception.

Q. I have just one question now, Mr. Cohen. You say and I see here at folio 45 of the Journal the item Franchises and Good Will $183,254.67.

A. That is correct.

Q. I want to know whether you found in either of those books, or any other books, that the New York & Queens paid that amount of money in cash or by way of securities to the Newtown & Flushing Company?

A. The journal entry right in front of you on page 45 indicates an issue of $97,000 of Treasury Stock and $97,000 Treasury Bonds as payment for the assets shown in the column preceding it.

Q. Including this $183,000?

A. Including that $183,000.

Q. And that was issued at par, was it?

A. Issued at par, I believe.

By Mr. Neumann:

Q. Well, you do not know that of your own knowledge, Mr. Cohen?

A. I do not, no.

Q. All you know is what you have taken from the books of account?

A. Judging from the books.

1519 By the Master:

Q. And the same way for the years 1902, 1903 and 1904, you have taken off the same items as they appeared from the books and set up the asset side of this balance sheet?

A. Yes, sir.

Q. The liability side of the balance sheet you likewise took from these books?

A. That is correct.

Q. During each of the years?

A. Yes, sir.

Q. And you state these figures that you have put down here are correct?

A. They are correct.

Q. As taken from the books?

A. As taken from the books.
Q. And the totals are correct?
A. The totals I believe to be correct.

The Master: Go ahead with your next schedule.
Mr. Goetz: Do I understand by the ruling of your Honor, if I may make the inquiry, that your Honor indicates a view that the defendants are now being permitted to prove the cost of any property to the New York & Queens Gas Company?
The Master: Yes.
Mr. Goetz: Certainly this is not the way of proving the cost of the New York & Queens Gas Company, because the New York & Queens Gas Company never made any of these payments, never assumed any responsibilities, and do not even know what these are for.
The Master: We will see when we get through. Next question, Mr. Neumann.

1520 By Mr. Neumann:

Q. Schedule 2-A, Mr. Cohen—did you prepare that?
A. I prepared it or had it prepared under my direction.
Q. What was that answer?
A. I prepared it or had it prepared under my direction.
Q. And what does that purport to show?
A. That shows the balance sheets from August 1, 1904, to August 1, 1908, and December 31, 1908, up to December 31, 1913, of the New York & Queens Gas Company, taken from the ledgers, journals, or any record underlying those, of the New York & Queens Gas Company.

By the Master:

Q. Well, what records underlying them?
A. Well, they may have been—I do not know that they are, but there may have been a reference to a subsidiary book like the Sundry Debtors' Blotter, or to a monthly report, perhaps, from which the Journal entries are made.
Q. What I want to know is whether these figures here are tabulations of these books.
A. They are.

By Mr. Neumann:

Q. And so far as you know they are correct?
A. So far as I know——

The Master: No, not that, but are they correct?
Mr. Goetz: We object to that.

Q. I mean are they correct?
A. They are.

Mr. Goetz: We object to that question.

The Master: To the best of your knowledge?

1521 The Witness: They are.

Mr. Goetz: We object to the question and move that the answer be stricken out on the ground that the books to which the witness has referred, and as to which he attempts to testify to the correctness of the books, are not before him and not before counsel for the complainant, have not been in any way presented to the Court and not in evidence.

The Master: But this schedule is not going in evidence until those books are in.

Mr. Neumann: Now I offer this schedule in evidence.

Mr. Vilas: Objected to.

The Master: Objection sustained on the ground that the books on which the schedule is based are not in evidence.

Mr. Neumann: Then I take it by that your Honor intends to force the introduction by me of these books in evidence, the same as before?

The Master: Not at all. You do not have to offer this or offer the books. I am not going to force you to do anything; do as you please. What books do you want? Have you got those books here now?

Mr. Vilas: They are produced.

Mr. Neumann: As I before stated, under legal duress and compulsion I now introduce in evidence Ledger No. 1 of the New York & Queens Gas Company.

The Master: It will be marked.

Mr. Goetz: We object to that on the ground that the book does not relate to any matters in issue in this case; that the issues presented to the Court are as to what is the value of the property

1522 of the company, as of the time that the Court hears this case; that the offer with a qualification, which is a gross reflection upon the conduct of the Court, might leave the impression upon this record that counsel is here being compelled to do something which nothing but force or violence can compel him to do, and with a record of that kind before the Court we would have a trial like unto that in a Kentucky murder case.

The Master: Do not worry about Mr. Neumann's statement of offering these things under compulsion. The record shows that the Master has not compelled Mr. Neumann to offer anything. He takes the view that I am in effect forcing him to offer them because I will not take his Schedule 2-A unless I have the underlying base upon which the schedule is founded. He can call it anything he pleases.

Mr. Neumann: As before stated, if I am right, I am right in offering them this way. If I am wrong, I am wrong in offering them in this way.

The Master: The objection is overruled and I will receive the book.

Mr. Goetz: Exception. The Court has no power to accept offers upon any other basis than those that are made.

Marked Defendants' Exhibit Z.

The Master: Next offer, if you have any.

Mr. Neumann: General Ledger No. 2 of the New York & Queens Gas Company, upon the same conditions as the previous one.

The Master: Any objection to that?

1523 Mr. Vilas: Same objection.

The Master: Overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-1.

Mr. Neumann: General Ledger No. 3 of the New York & Queens Gas Company.

Mr. Vilas: Is that offered?

Mr. Neumann: I offer that book upon the same conditions as the previous offer.

Mr. Vilas: Same objections.

The Master: I do not recognize any conditions, Mr. Neumann. You either offer the book or do not. You can say it is under duress or compulsion or anything you like, but you cannot offer the book under conditions.

Mr. Neumann: Then I offer the book under duress and compulsion.

The Master: Under what you contend is duress and compulsion.

Mr. Neumann: Under what I contend is legal duress and compulsion.

Mr. Goetz: Same objection and exception.

The Master: Objection overruled.

Marked Defendants' Exhibit A-2.

Mr. Neumann: I offer Operating Expense Ledger No. 1 of the New York & Queens Gas Company. I understand that General Ledger No. 4 of the New York & Queens Gas Company has already been offered in evidence by the complainant.

Mr. Vilas: As Complainant's Exhibit No. 52.

The Master: And is Complainant's Exhibit No. 52.

Marked Defendants' Exhibit A-3.

1524 Mr. Neumann: I offer in evidence Operating Expense Ledger No. 2 of the New York & Queens Gas Company.

Mr. Vilas: Operating Expense Ledger No. 2, Complainant's Exhibit 54, is produced.

The Master: It is already in evidence.

Mr. Neumann: I offer in evidence Journal No. 1 of the New York & Queens Gas Company, the same being under what I consider and claim to be legal duress and compulsion.

Mr. Goetz: Same objection.

The Master: Same ruling.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-4.

Mr. Neumann: I offer Journal No. 2.

Mr. Goetz: Same objection.

Mr. Neumann: I offer that under what I contend and claim to be legal compulsion and duress.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-5.

Mr. Neumann: I offer Journal No. 3 under what I contend and claim to be legal duress and compulsion.

The Master: Same objection, Mr. Goetz?

Mr. Goetz: Same objection.

The Master: Overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-6.

Mr. Neumann: I offer Journal No. 4.

The Master: Same objection, Mr. Goetz?

Mr Goetz: Same objection.

The Master: Overruled.

Mr. Neumann: I offer that under what I contend and claim to be legal compulsion and duress.

1525 Mr. Goetz: Same objection.

The Master: Mark it.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-7.

Mr. Neumann: Then I offer in evidence Schedule *a*-A.

Mr. Goetz: We object to this document on the ground that it has not been shown that this is correctly taken from the books of account of the company, that it correctly groups the various items which are given and denominated Balance Sheets, when no such denomination appears in the books of account of the company; that the witness here by a number of notes has attempted to place his own deductions and his own judgment upon various things in the books, as, for example, using here a title "Other Fixed Capital," when no such account appears in the books of account of the company; that the issues before the court do not involve the matters purported to be set forth in this statement, and that the statement itself is irrelevant, immaterial and incompetent.

The Master: Overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-8.

Q. Mr. Cohen, coming back to Exhibit Y, Exhibit Y contained a note "The ledger reads Whitestone Gas Co. No consumers' accounts receivable were taken over from the predecessor owner." Where did you obtain that note from the books?

The Master: I struck that note out, you know.

Mr Neumann: Yes, we are having him testify to it now. You said that we could show the situation.

1526 The Master: Yes.

A. The first sentence of the note came from the books.
Q. What books?

Mr. Goetz: I object to that, if your Honor please. Let the witness specify what page of the book any note appeared.
Mr. Neumann: I am asking him that now.
The Master: He is asking for the books.
Q. What books?

Mr. Goetz: He is asking for the name of the book. Let him turn to the page and he will find it.

A. Let me have the ledger and I will give the page number.

Mr. Vilas: What one?
The Witness: Ledger No. 1 of the Newtown & Flushing (takes book). That is shown on page 207 of the Newtown & Flushing Ledger No. 1. Exhibit W.

Q. Defendants' Exhibit W?
A. Yes, at the top of the page.

Mr. Goetz: We object to the offer of that note in evidence, as I assume it will be, on the ground that this page 207 of Exhibit W is——

The Master: I took that part of the note, "The Ledger reads Whitestone Gas Co." That part I took. What I struck out was, "No consumers' accounts receivable were taken over from the predecessor owner." That is all I struck out.
Mr. Neumann: Well, we thought you struck out the whole thing.
The Master: No, I permitted the statement to read, "The
1527 ledger reads Whitestone Gas Co.," as Note A against that item. What I struck out was, "No consumers' accounts receivable were taken over from the predecessor owner."
Mr. Goetz: May I have that physically marked as an exhibit so it does not appear and be misleading afterwards?
The Master: Yes, I understood it was taken out. I struck it out in my copy. Strike it off the copies furnished, too.

Q. In Exhibit Y, where did you obtain the note "No consumers' accounts receivable were taken over from the predecessor owner?"

Mr. Goetz: I object to the form of the question.
The Master: I will have to sustain that objection. There is no such note on Exhibit Y. Why don't you ask the witness, do you or do you not know from your inspection of the books, Mr. Cohen, whether consumers' accounts receivable were taken over by the New York & Queens from the Newtown & Flushing Company?
Mr. Goetz: I object to that, because that is not what the item relates to. It relates to the question whether the Newtown & Flushing Gas Company took some over from the Whitestone Gas Company. He cannot know. There is not any basis for any such knowledge.

The Master: Do the books show, one way or the other, whether any receivables were taken over by the Newtown & Flushing from the Whitestone Company?

Mr. Goetz: I object to that, too, because the witness has only examined the ledger and has not examined what might be
1528 called the consumers' ledger, or anything of that kind.

Q. Do the books in evidence show it?

A. The books show no consumers' accounts receivable taken over; that is, the Flushing books, no consumers' accounts receivable taken over from other companies, which of course includes the Whitestone.

Mr. Goetz: I object to the question and move to strike out the answer, because it was not responsive to the question. He says the books do not show these accounts were taken over. The books do not purport to show the details of the consumers' accounts, and he made no examination of any ledgers or any other books which would disclose what the consumers' accounts were.

The Master: Objection overruled and motion to strike out denied.

Mr. Goetz: Exception.

Q. I direct your attention, Mr. Cohen, to Defendants' Exhibit A-8, and your attention to the footnote there under the letter "A."

Mr. Goetz: Is that the original of the exhibit which was put in?

Mr. Neumann: Yes.

Mr. Goetz: Can we not have a copy so as to follow this? Or let us have the original and let the witness use the copy.

Mr. Neumann: All right, let him have the original.

(Witness hands original exhibit to counsel.)

Q. Where did you obtain the information upon which that note is based?

A. The ledger shows that construction account, as I state here, transferred at the dates that are shown here, to the real
1529 estate and building account.

The Master: All these notes, A, B, C, D and E, are notes of statements of items appearing in the books, just as you have given them?

The Witness: Note A, yes, and note B is taken from the fact that—I will have to read the language to be able to tell just how it is done. The total of the item to December 31st has been split into so and so. In the year following, that is following December 31st, 1908, that account is split up into two accounts on their books and I note that as a fact here in order to show the comparison year by year. Note C, on their books they show an account Treasury Bonds, $1,000,000. I noted that in order to show the—I deducted from that the—on the books they show treasury bonds of $250,000, which taken from the bonds account will leave the bonds

outstanding $750,000. That is just a short cut in order to save space and make it out more clearly.

Q. In other words, if there were a million dollars' worth of bonds and you found $750,000 in one, you knew the balance must be $250,000?

A. Well, I found on the books in the bonds account a million dollars and I found the treasury bonds $250,000. Naturally the balance outstanding is $750,000. Note D, I tried to get the meaning of that account, and from what I could see it is apparently a misnomer and apparently represents the prepaid taxes.

By the Master:

Q. Taxes accrued, you mean?

1530 A. Taxes accrued.

Q. You say that is a misnomer for prepaid taxes?

A. Apparently it is——

Q. You know better than that; you know they set up a tax account, do you not?

A. But the taxes accrued is a liability.

Q. You know perfectly well what that means, do you not?

A. If I find the amount on the liability side I would state that is not a misnomer——

The Master: I will let it stand for what it means.

Mr. Vilas: We move to strike the note out as a pure conclusion.

The Master: No, I will let it stand.

Mr. Neumann: It is on the assets side.

The Witness: It is on the assets side and I do not see where the taxes accrued is a liability account on the books.

Q. I see what you mean.

A. Being on the assets side——

The Master: I see what you mean.

Mr. Neumann: How can it be taxes accrued?

The Master: I understood it, I said.

The Witness: That is my deduction.

Q. Note E you have already explained, book liability less the treasury bonds.

A. Yes.

The Master: You have prepared another schedule 2-B?

By Mr. Neumann:

Q. Yes, 2-B likewise you have prepared from the books that have just been offered in evidence?

A. That is correct.

1531 Q. And this schedule is correct, is it?

A. That schedule is correct to the best of my knowledge and belief.

Q. This Schedule 2-B is the balance sheet from December 31st, 1914, to December 31st, 1919, the one just immediately offered being for prior years?

The Master: I know what the one just offered is.

Q. Is that correct?
A. That is correct.

Mr. Neumann: No. I offer this in evidence.
Mr. Goetz: Let me see that, please. (Takes paper.)
Complainant objects to this statement on the ground that the basis for the preparation of it has not been shown, on the ground that it embraces questions with regard to property or accounts of the company prior to 1919, and not within the issues in this case as presented by the complainant, or presented by the answers of the defendants; and that the statement itself is not material, relevant or competent as proof in this case.
The Master: Objection overruled.
Mr. Goetz: Exception.

Marked Defendants' Exhibit A-9.

Mr. Neumann: May I not call the Master's attention to the fact of the understanding with Judge Ransom, that the objection that it was not within the pleadings was not a valid one, for the reason that we did not want to waste any time in setting up any affirmative defenses.

1532 The Master: The record shows the statement of Judge Ransom. I have not raised any question about it, and I was the one who raised the point. Judge Ransom waived it, practically.

Mr. Neumann: Evidently now counsel has raised that point by making it part of his objection.

The Master: No, he does not mean to raise any point that Judge Ransom has waived. Judge before you leave it, these Notes A, B, C, D and E, on Exhibit A-9 are notes stating correctly what you found in the books?

The Witness: That is correct.

Q. Mr. Cohen, have you likewise prepared a schedule which you have numbered 3?
A. I have.
Q. What does that schedule purport to show?
A. That shows the detail of the account materials and supplies, that is, the materials and supplies on the schedules 2-A and 2-B.
Q. And in the first column you have set forth the various accounts, have you?
A. That is correct.
Q. And in the next column the amount expended for that material for each year?
A. No, in the other column——

The Master: The balances at the times stated in each year.
Mr. Neumann: Yes.

The Witness: 1904 to 1918.
The Master: 1904 to 1908 on August 1st, and thereafter December 31st; is that correct?
The Witness: That is correct.
1533 Q. And this schedule is correct, is it?
A. To the best of my knowledge and belief it is.

Mr. Neumann: I offer it in evidence.
The Master: Those figures are taken from the books?
The Witness: These figures are taken from the book?
Mr. Neumann: I offer it in evidence.
Mr. Goetz: The same objection.
The Master: Same ruling. It will be received as Defendants' Exhibit A-10
Mr Goetz: Exception.

Marked Defendants' Exhibit A-10.

Q. Mr. Cohen, likewise have you prepared Schedule 4-A?
A. I have.

The Master: 4-A and 4-B are the same things, except that you have subdivided the period before and after December 31st, 1908, have you?
The Witness: That is correct.
The Master: Make your questions read as to 4-A and 4-B.
The Witness: Pardon me a minute, 4-A and 4-B are not alike in one respect, in that the accounts shown from 1905 to December 31st, 1908, differ insofar as the names in those accounts are concerned, set up from 1909 to 1919.
The Master: Yes, but otherwise you have set up the revenues and expenses of the gas business as you have taken them from the books?
The Witness: That is right.
1534 The Master: You have not adjusted any figures?
The Witness: No figures were adjusted here.
The Master: You offer 4-A?
Mr. Neumann: Did I ask the witness whether they were correct?
The Master: He told me they were correct.
Mr. Neumann: I offer in evidence 4-A and 4-B.
The Master: Offer 4-A first. Show it to the other side.

(Mr. Neumann hands counsel paper.)

Mr. Goetz: We make the same objection to the admissibility of these two statements of the revenues and expenses of the gas business from August 1, 1904, to December 31, 1919; and furthermore, upon the additional ground that the witness here, in a portion of the statements, in that way passing judgment of his own as to what are revenues and what are expenses of the gas business of this company, and that he is not qualified to pass any such judgment or upon any such opinion before this court upon the things upon which he attempts to express a judgment and opinion.

Mr. Neumann: One minute. I think I can clear that up very quickly.

Q. On the bottom of 4-B, Mr. Cohen, you have set out under the heading "Add for the following items," and then you have set forth certain items, the figures appended thereafter?

A. Yes.

1535 Q. Now, do any of these figures in any way appear in the set of figures that are shown by the totals? Take for instance the last heading, "Operating Income," are any of those figures included in there?

A. I think I can answer your question best in this way——

Mr. Goetz: I object to the witness attempting to make his own answer. The question has not been asked.

The Master: Objection overruled.

Mr. Goetz: Exception.

A. I have taken the revenues and expenses of the gas business just as I found them on the books, and at the bottom of the statement, also at the center of the statement, the first entry, I noted the items that are to be added to the operating income right above it.

Q. But you have not included them?

By the Master:

Q. In other words, let me ask this: You have here for 1919, "Excess of Revenue over Expenses above?"

A. Yes, sir.

Q. That is a deficit of $24,000, is that right?

A. That is correct.

Q. Now, in arriving at that deficit certain items that are at the bottom of the page are included?

A. Yes, sir.

Q. And as to 1919, you have set up these items that you state ought to be deducted from the deficiency shown in order to show a true deficiency?

A. That is correct.

Q. Well, that is simply your judgment, or whose judgment is it, Dr. Weber's?

A. Well, both.

1536 Mr. Neumann: They are all based on legal arguments that we will make.

The Master: I shall overrule the objections and I shall take the exhibits as they are prepared, with this statement, that the seven or eight items here following the words, "Add for the following items," and giving those figures are simply figures which, as I understand it, counsel for the Commission will claim should be eliminated in arriving at the deficiency for 1919.

Mr. Neumann: Just to illustrate, take for instance the year 1919, rate case expenditures, $15,518.73. We contend that that cannot be charged up against the year 1919.

The Master: But according to the books they have.
Mr. Neumann: According to their books they have.
The Master: I understand.
Mr. Neumann: Now, if that amount is chargeable at all we contend that it is chargeable over a number of years, and not for one particular year.
The Master: I understand. I overrule the objection.
Mr. Goetz: I take an exception, and I respectfully point out to the Court that what the Court has ruled is not in agreement with the opinion expressed by the Court, because the Court has accepted a statement from the witness with "Add the following items," with the idea that these items are taken from the books, and are to be added to the operating income.
The Master: No. This Table 4-B has on it matters not strictly in accordance with the witness' statement that this is tabulation from the books, but I will take the exhibit as it stands, with the statement that these last six items are simply claims by counsel for the Commission, and that the figures are correct figures——
Mr. Neumann: Taken from the books.
The Master: Are correct figures from the books. Now, the exhibit really ends at the line, "Excess of revenue over expenses above," showing a deficiency for 1919, according to the books of $24,660.66.
Mr. Goetz: The caption instead of reading, "Add the following items," should read, "Claimed by the defendants."
The Master: I think the record sufficiently shows it.
Mr. Goetz: Exception.
The Witness: The last two items on that page, interest on Insurance Participation Certificates and Increase in Insurance Participation Certificates, you can see from the nature of those that those two items are not anywhere included above. The first is an income account, and the second is an increase in the balance sheet account. Those two are not included anywhere in the balance sheet account. Furthermore, as the exhibit shows, they are taken from the Public Service Commission reports.
The Master: I think I will be safer by taking them out. You can put it in in some other form later on. I don't think they belong in here.
Mr. Neumann: That simply puts to the trouble of putting in another exhibit. Our position is this, that the exhibit really ends with the figures that come after the words "Operating income;" that the bottom is explanatory of certain legal propositions which we will make later, and it will put us to the inconvenience of offering another exhibit we will only have to put it in as a separate exhibit.
The Master: I am wondering whether that is not the better way to do it.
Mr. Neumann: There is no harm that can come from it to the complainant. It only puts us to the trouble of putting in other exhibits.
Mr. Goetz: The statement of the witness only tends to show that

they are included and to emphasize our objection.

The Master: I will let it stand.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-11.

Paper received in evidence and marked Defendants' Exhibit A-12.

Mr. Chambers: Mr. Van Steenburgh has asked me to mention the fact that he is absent, and the reason for his absence is that he has a very important engagement himself that he must attend to, and that the District Attorney of Queens County has no assistant or assistants who are available today to appear here.

Mr. Goetz: We should like to have the District Attorney himself appear then.

1539 The Master: I don't care whether he appears or does not appear. The interests of the public are being well protected here.

Mr. Chambers: I do not appear for him in any way.

By Mr. Neumann:

Q. Mr. Cohen, have you likewise prepared a schedule which you have numbered 5?

A. It was prepared under my direction.

Q. What does that schedule purport to show?

A. It shows practically the same—it shows the unit costs for the items in the two schedules previous, from the year 1909 to the year 1919.

By the Master:

Q. With the deductions that you have made or without them or just as the books show?

A. Just as the books show. The items below were not taken into account at all.

Q. In other words Schedule 5 is taken from the books, without adjustment of any kind, or attempted readjustment?

A. The computations are made on the basis of the former two schedules without any deduction being made for those items at all.

Q. Then I am correct that it must necessarily be precisely as the books show the accounts?

A. Yes, sir, with this exception, that the production costs as is shown in the schedule itself, are classified——

Mr. Neumann: One moment.

By Mr. Neumann:

Q. When you say, "The schedule itself" you mean what?

A. Schedule 5.

Mr. Neumann: All right.

1540 A. (continued). The accounts which go to the pr account are classified not in accordance with the classification

on the books, but in accordance with the classifications of the Public Service Commission, but the figures for production are the same as on the books.

The Master: Is the result the same, that the company shows a deficiency of 7.33 cents per thousand cubic feet of gas sold?
The Witness: The result is the same.
Mr. Goetz: The same objection as noted to this statement on behalf of the complainants as to the others, with the additional objection that the witness has already indicated that he has attempted to readjust the books of account of the company in particulars not shown, upon bases not shown, and that he is not qualified to make any such adjustment.
The Master: Objection overruled.
Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-13.

The Master: Is it conceded, Mr. Neumann, that this company did in fact lose 7.33 cents per thousand cubic feet on the operations for 1919?
Mr. Neumann: It is not.
The Master: Then why do you give me a schedule showing that?
Mr. Neumann: We are giving you a schedule showing what the books show.
The Master: In what respect are the books wrong?
Mr. Neumann: That will appear later in a later schedule, or by other data which we have subpœnaed from the company.
1541 Mr. Goetz: These statements are at least binding upon the defendant.
Mr. Neumann: What statements?
Mr. Goetz: That you have offered in evidence.
Mr. Neumann: I know my rights, Mr. Goetz.

By Mr. Neumann:

Q. Likewise, Mr. Cohen, have you prepared a schedule which you have called Schedule 6-A?
A. I have.
Q. And what does that purport to show?
A. That shows the operating expense, detail of the operating expense for the years 1909 to 1913.

The Master: And Schedule 6-B shows it from 1913 to 1919.
The Witness: That is correct.
The Master: Offer them together.

Q. Now, these schedules are correct, are they?
A. They are correct to the best of my knowledge and belief.
Q. They are all taken from the books of the company?
A. Taken from the books of the company.

Q. And the notes are self-explanatory at the bottom of Schedule 6-B?

A. The notes explain entries which are found on the books the best way I could explain them.

Mr. Neumann: I offer these two schedules in evidence.

The Master: Show them to the other side. Those are exactly book figures, are they?

The Witness: Yes, sir.

Mr. Goetz: We make the same objection.

The Master: Objections overruled.

Mr. Goetz: Exception.

1542 Schedule 6-A received in evidence and marked Defendants' Exhibit A-14

Schedule 6-B received in evidence and marked Defendants' Exhibit A-15.

Q. Likewise, Mr. Cohen, have you prepared Schedule 7?

A. I have.

Q. And what does this schedule purport to show?

A. This schedule shows the company's maintenance and contingency account; that is, it shows the reserves accrued to amortization of capital, renewals and replacements, plant withdrawn from service, and contingency.

Q. And this is all taken from the books of the company, is it?

A. It is taken from the books and records of the company. In this case there are some records outside of the books, such as monthly statistical reports, and others, that we had to go to.

Q. And the notes that you have made here are self-explanatory?

A. The notes explain in the shortest way possible that I could think of what I found on the books.

Q. This statement is correct, is it?

A. I believe it to be correct.

Mr. Neumann: I offer this in evidence.

Mr. Goetz: This statement is objected to upon the grounds previously stated as to the other exhibits, and the additional ground that the statement is in part based upon information derived by the witness from what he calls statistical reports of the company which are not before this court. There is no showing here as to

1543 what information he has taken from those statistical reports; and that those statistical reports are in fact no record of the company by which this company regulates the conduct of its business. They are studies similar to those of which your Honor was advised in the Consolidated Gas case, made for the purposes of analysis and observation by employees of the company, leading to no particular finality in the records of the company.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-16.

Mr. Neumann: I call upon the complainant to produce the Monthly Operating Reports or statistical reports of the New York & Queens Gas Company for the years ending December, 1909, to 1919, both dates inclusive.

(Books produced.)

Mr. Neumann: The complainant does not produce the papers that we have asked them to produce in our notice to produce which is marked Defendants' Exhibit M, for Id.

Mr. Goetz: Which papers?

Mr. Neumann: Monthly Operating Reports or statistical statements.

Mr. Goetz: I have here a number of volumes endorsed, "New York & Queens Gas Company, Monthly Reports," for each of the years.

The Master: Let me ask the witness. Here is a book marked "New York & Queens Gas Company, Monthly Reports 1910." Is that what you mean?

1544 The Witness: I did not take the information that I refer to here from these books. I used those books in checking the information that I got.

The Master: Where did the information come from?

The Witness: They have what they call a Monthly Statistical Report—there is no name on it, so it is hard to tell what to call it. Those apparently are the basis of some of the Journal entries they make. I don't know what you call them, there is no name on them.

Mr. Goetz: I may recall this to your Honor's mind: I suppose these are statements similar to those which we used in the Consolidated Gas case, which were the working papers used in the Accounting Department by some of the Accounting Department employees, and not a part of the permanent records of the company at all.

The Master: These are not the books that you want?

Mr. Neumann: No.

The Master: All right, take them away. Next question.

Mr. Neumann: I want to know whether they intend to produce what we have called for.

Mr. Vilas: They have had all these. They called for them in the notice.

Mr. Neumann: Not these books.

The Master: Counsel for the complainant are directed to bring down the monthly office reports, as I understand they are called.

Mr. Vilas: Look at No. 7 there.

1545 Mr. Neumann: Look at No. 8, I am talking about No. 8, not No. 7. The Monthly Office Reports are under No. 7. Those we have called for under No. 7 of our Notice to Produce.

The Master: When Mr. Cohen gets through here he will go up to Mr. Davison and identify what he wants, and Mr. Davison will bring them down.

Mr. Neumann: I will clear that up in a minute. I offer in evidence letter from Mr. H. C. Davison, dated May 8, 1920, to Mr. Cohen.

The Master: Mr. Davison speaks of them as the Monthly Statistical Statements. Are they here?

Mr. Vilas: That is what we have produced.

Mr. Neumann: No, they are not, and Mr. Davison knows they are not the papers we want.

Mr. Davison: Those are the papers produced from that letter.

The Master: I won't take that letter in evidence.

Mr. Neumann: May I have it marked for Identification?

The Master: Yes.

Letter marked Defendants' Exhibit A-17 for Identification.

Mr. Goetz: Before we proceed, a little while ago a row was raised about the non-production of papers called for by a notice to produce served by Mr. Neumann. I would like to know what papers were called for to which Mr. Neumann referred that have not
1546 been produced and what he wants so that we can go and get them right away.

The Master: Get the papers that Mr. Teele thinks he wants.

Mr. Goetz: They are here.

The Master: Produce them; from 1909 to 1919.

Mr. Neumann: First of all, I want to offer in evidence the office reports or monthly reports underlying the Journal entries for the period August, 1904, to December 31, 1908, both dates inclusive, which the complainant now produces.

The Master: Is that the batch?

Mr. Neumann: Yes.

The Master: They will be received.

Mr. Goetz: We object to them as incompetent, immaterial and irrelevant to any issue before this Court.

The Master: Objection overruled.

Mr. Goetz: They are not records of account of this company.

The Master: Mark them as one exhibit.

Marked Defendants' Exhibit A-18.

Mr. Neumann: I might say for the record that Schedule 8 is not quite ready so in order not to waste any time I will go to the next schedule.

The Master: Go ahead.

By Mr. Neumann:

Q. Mr. Cohen, have you likewise prepared a schedule which you have numbered 9?

A. I have.

Q. And what do you purport to set forth in that statement?

A. That is a summary of the account they call "Profit and
1547 Loss Account" from August 1, 1904, to December 31, 1908, the corporate surplus and deficit accounts from 1909 to 1913, and the General Profit and Loss Account from 1914 to 1919.

By the Master:

Q. Is that the way the complainants kept their books during those periods?

A. You refer to the names of the accounts?

Q. Yes.

A. The names of the accounts changed in those three periods.

By Mr. Neumann:

Q. You have shown the changes on this schedule?

A. I have shown the accounts just as they called them on their books.

Q. This is taken from the books of the complainant company?

A. It is.

By the Master:

Q. And the items are just as they are shown on the books?

A. I have made combinations here to save space; they are very small and relatively unimportant items.

By Mr. Neumann:

Q. The notes on the bottom are self-explanatory, are they?

Mr. Goetz: I object to that; that is the witness's own inference. The Court may not agree.

By the Master:

Q. Are the statements made, statements of the things found in the books, of the items found in the books?

A. If you take up each one?

1548 By Mr. Neumann:

Q. Take up Note A. What do you intend to set forth therein?

A. On Note A I show some items which they show as credits on their books, that I have in the former schedule included as a deduction from a debit, the effect being the same, and in order to have this schedule and Schedule 4-A fit into one another, I have made an explanation to show just what I have done there. The same applies to Note B, Note C, D and E.

Now, Note F shows the name of the account just as it is on the books; that is, the account on their books from 1905 to 1908 reads "Interest on Bonds" instead of "Interest on Funded Debt," and Note G shows the name that they call "Interest on Unfunded Debt" to have been "Interest" from 1905 to 1908.

Mr. Goetz: That is a deduction of the witness.

The Witness: That is a fact just as I found it on the books.

Note H shows what is included in that account in the year 1910 and explains some of the items which are included in other years on that line.

Mr. Neumann: I offer that schedule in evidence.

Mr. Goetz: The same objection is made to this statement as was made to the others, with the further objection which the testimony of the witness disclosed that he has here made adjustments simply to save paper space; that he has made adjustments that do not appear upon the books of account, and that this entire statement rep-
1549 resents the financial, or purports to represent the financial condition of the corporation as a corporation and is not limited to the gas business of this company which was involved in the issues before this court. What the corporate profits or losses, or what the outside investments may have been in years gone by particularly are not matters before this Court at issue.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-19

Mr. Goetz: How is the Court concerned with the operation of this company outside of the gas business?

The Master: I do not believe I am.

Mr. Goetz: This statement is based purely upon that and nothing else.

The Master: We will find out about it.

By Mr. Neumann:

Q. Likewise, Mr. Cohen, have you prepared a schedule which you call No. 10?

A. I have.

Q. And this is taken from the books of the New York & Queens Gas Company?

A. That is right.

Q. Prepared by you?

A. Correct.

Q. And it is correct?

A. I believe it to be correct.

Q. You have made no deductions or adjustments of any kind?

A. I have made no adjustments on the account; took them just as I found them.

Q. What does this statement purport to show?

A. It shows the operating revenues and operating expenses
1550 from the gas business for the first three months of the year 1919, and the first three months of the year 1920, a comparison of the two.

Mr. Neumann: I offer that statement in evidence.

Mr. Goetz: That is objected to upon the grounds already urged to the other statements, and upon the further ground that this is a partial statement which can form no basis for any inference or conclusion by this Court. It relates to the first three months and, as has already been shown, the first three months of this year has involved a very large consumption of gas on account of the weather, and while there may have been a substantial revenue for that reason, the opera-

ting expenses at the high rates in effect for these three months will continue for the portions of the year when the gas consumption will be upon an entirely different basis. It is absolutely inconclusive and an unreliable statement for any finding or opinion by this court.

The Master: I will receive it.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-20.

Q. Likewise, Mr. Cohen, have you prepared a schedule which you have numbered 11?

A. I have.

Q. And where was that taken from?

A. This was taken from various sources. The first part of it, an analysis of the account "Franchises, Good Will, &c.," is a compilation from the former schedules in order to show at a glance the accounts "Franchise, Good Will, &c." from the year 1900 down to the year 1919.

The second part of it, the entries of "Newtown & Flushing Gas Company, Journal 1, page 45," is a copy of that entry from the Journal as I have mentioned here.

The third part of it, the account, "Franchises, Good Will, &c." from 1904 to 1919, shows the changes in that account—that is, this shows in detail the composition of the $1,073,036.37 in the first part.

Note A is a copy of the journal entry from folio 397 of Journal No. 2 of the New York & Queens Gas Company at the bottom of which I made a notation, "No charge of $4,676 appears in the account, Franchises, Good Will, &c., for the cost of the purifying boxes purchased in 1905.

Q. This statement is correct, is it?

A. I believe it to be correct.

Q. And taken from the books of the company, as you just testified?

A. Taken from the sources as just testified to.

Mr. Neumann: I offer that statement in evidence.

Mr. Goetz: This is objected to upon the grounds previously urged to the other statements.

There is a particular vice in this statement here that I desire to call to the attention of the Court. It purports to be a statement of intangible values, whereas the witness knows, as was shown by very brief examination by the Court itself this morning, that included in this account "Franchises, Good Will, &c.," were various items of tangible property, the item of one hundred and eighty-one thousand and some odd making up one of the entries in that account which the Court itself saw this morning in going over the journal entry, and this witness has made no attempt, and if he did make an attempt he would not be qualified to produce the results, to show what is included in tangible property, what is included as intangible property in this account of Franchises, Good Will, &c."

Mr. Neumann: The witness does not attempt to do anything more than to set up what you have got in your books.

Mr. Goetz: He is not doing anything of the kind.

The Master: What item are you referring to?

Mr. Nathan: He is referring to the open journal entry, "Newtown & Flushing Gas Company, College Point Merger, $183,254.67." That is the opening entry in the journal of the Newtown & Flushing Gas Company.

The Master: Is that the item you are complaining about?

Mr. Goetz: That is one of the items.

The Master: That does not contain anything except franchises, good will, etc., that $183,000.

Mr. Goetz: The Court will see that this item of $183,254.67 referred to on page 45 of the journal gives details.

The Master: No, it does not do anything of the sort. That is a separate item.

Mr. Goetz: The $183,000.

The Master: Is not a total of those.

Mr. Goetz: I am incorrect about the particular figures, $183,254.67.

The Master: There is an item set opposite "Franchises, Good Will, &c." Objection overruled.

1553 Mr. Goetz: Exception.

Marked Defendants' Exhibit A-21.

Mr. Goetz: I was in error about the particular item of $183,254.67, but the principle which I urged upon the Court as being involved that there are a number of structural items that are included in these accounts and which our examination very clearly demonstrates, is correct, and I still urge it upon the Court.

The Master: I will allow you to bring it out on cross-examination.

By Mr. Neumann:

Q. Likewise, Mr. Cohen, have you prepared the Schedule No. 12?

A. I have.

Q. And what do you purport to show in Schedule No. 12?

A. This shows a comparison between the balance sheets as of August 1, 1904, of the New York & Queens Gas Company and its predecessor, the Newtown & Flushing Gas Company, and July 31, 1904, showing the increase and decrease of accounts, and at the bottom of the page an analysis to summarize those increases and decreases.

Q. And this statement is prepared from the sources of which you just testified?

A. The statement is prepared from the New York & Queens Gas Company Ledger and from the journal and so on, and the Newtown & Flushing Gas Company's ledger and journal.

Q. And it is correct, is it not?

A. I believe it to be correct.

Mr. Neumann: I offer that schedule in evidence.

1554 Mr. Goetz: The same objection is now made to this statement, and I would like the Court's permission to urge as an objection to the previous exhibit and also to this one, the contention made by the complainant that the cost to the Newtown & Flushing Gas Company of the tangible or intangible items of property is not cost to this complainant, and is not relevant or material or competent to the issues in this case.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-22.

Mr. Neumann: If the Court please, I have four more tables to submit in evidence, Tables No. 8, 13, 14 and 15, which are not quite ready for the reason that our accountants were unable to get the vouchers in order to check them up in time, and we could not submit them until we were satisfied that they had been properly checked and were complete and correct. And I will say that if the complainant so wishes, I will wait until these tables are ready and then produce the witness again, or they may proceed and cross-examine him now on the tables as already submitted.

Mr. Goetz: With respect to the tables which were put in evidence this morning, the first inkling the complainant got of their contents was after each table was introduced in evidence. They are all based upon books and records which the witness claims were correctly transcribed, and which we from previous experience have reason to believe were not correctly transcribed, and the least that we may expect under such circumstances is an opportunity to check up those exhibits with the books so that we may proceed with
1555 the cross-examination and point out to the Court the errors or fallacies in these statements. We do not feel that for any other reason should there be a postponement of the taking of the testimony of this witness.

The Master: The cross-examination is suspended to give the complainant an opportunity to look at these exhibits. Let me know when you are ready to cross-examine the witness.

Maynard H. Spear, recalled in behalf of the defendants, testifies as follows:

Direct examination.

By Mr. Neumann:

Q. Mr. Spear, I now show you Public Service Commission report of the New York & Queens Gas Company for the year 1909 and direct your particular attention to page 30. Have you looked at that, Mr. Spear?

A. Yes.

Q. You recognize that as a report filed by your company to the Public Service Commission?

A. Yes.

Q. And directing your attention to page 30, what is the amount of the par value of actual issued bonds?

A. A total of $810,000.

Q. I said bonds?

A. $750,000.

Q. Now, then, I call your attention to the report of your company to the Public Service Commission for the year 1910. By the
1556 way, calling your attention again to the one of 1909, does your signature appear on the last page of that report?

A. Yes; in the form of an affidavit as manager of the company.

Q. And the other signature there is whose?

A. H. L. Snyder.

Q. Who is he?

A. He was treasurer of the company at that time.

Q. Is he still with your company?

A. He is not.

Q. Do you recognize that as his signature?

A. Yes.

Mr. Neumann: I offer in evidence page 30 of the Public Service Commission Report of the New York & Queens Gas Company for the year 1909.

Mr. Goetz: That is objected to on the ground that the information upon that sheet is not relevant to the issues in this case.

The Master: Objection overruled; that will be considered in evidence as Defendants' Exhibit A-23.

Considered as Defendant's Exhibit A-23.

Q. I now call your attention to the report of your company to the Public Service Commission of the First District for the year 1910. Do you recognize that as a report made by your company to the Commission?

A. Yes.

Q. I direct your attention to the last page, to the signature there of Mr. H. L. Snyder?

A. Yes.

Q. Do you recognize that?

A. I do.

1557 Q. You prepared part of this report, did you, Mr. Spear?

A. Yes.

Q. I direct your attention to page 30. What is the amount there of bonds?

A. $816,000.

Mr. Neumann: I offer in evidence page 30 of the report of this company to the Public Service Commission for the year 1910.

Mr. Goetz: That is objected to upon the grounds stated.

The Master: Objection overruled; that will be considered as Defendants' Exhibit A-24.

Considered as marked Defendants' Exhibit A-24.

Q. You were with the company at that time, were you not?
A. Yes.
Q. You were in their employ?
A. Yes.
Q. In the year 1909, what was your position?
A. Manager.
Q. In the year 1910 what was your position?
A. I think it was manager.
Q. Now, having looked at those reports, will you say whether or not your company issued any bonds between the year 1909 and the year 1910?
A. No, I do not think they did.
Q. Then these reports to the Commission are incorrect?
A. No. My recollection is that we had some notes with the Lincoln Trust Company and some bonds up as collateral and which had previously been authorized by them.
Q. Previously been authorized by whom?
A. The trustees, the Lincoln Trust Company.
1558 Q. When?
A. I do not know what year they authorized it.
Q. Do you know of your own knowledge, Mr. Spear, and I am going to ask a direct question, whether or not your company ever received any authorization from the Public Service Commission of the First District of the State of New York during the year 1909 or 1910 to issue $66,000 worth of bonds?

Mr. Goetz: That is objected to upon the ground that it is incompetent, immaterial and irrelevant.
Mr. Neumann: You pleaded your securities were duly issued.
Mr. Goetz: Yes. This witness cannot pass upon the legal question involved, and Mr. Neumann himself knows that the point of difference is as to whether bonds issued before 1907, before the Public Service Commission was created, required any formal act of the Commission, where they were formally delivered after the Commission was created.
The Master: Objection overruled. I will let the witness state whether there was any order made in 1909 or 1910.
The Witness: I do not know.

Q. Who of your company would know; would Mr. Carter, who is now present in court, know?
A. No, he was not connected with the company at that time.
Q. Who would know?

Mr. Goetz: The Public Service Commission itself would know. I will concede any fact that the record of the Commission shows.
Mr. Neumann: Will you concede that these bonds were
1559 issued without an order of the Public Service Commission in either the year 1909 or 1910?
Mr. Goetz: I will concede that the Commission made no order 1909 and 1910 directing or authorizing the issuance of bonds this company. That is all I concede.
Mr. Neumann: That is not enough.

Cross-examination.

By Mr. Vilas

Q. I call your attention to page 30 of the report for 1909, which has been offered in evidence, particularly the item "Demand Notes $60,000." Do you know to whom those notes had been issued?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant. The witness has evidently testified that he knows nothing about this bond issue.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Those were notes——

Mr. Neumann: Notes have nothing to do with bonds. What I questioned him about was on the bond issue, and that is all his direct testimony went to.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: You have offered in evidence that page.

Mr. Neumann: That is right.

The Master: And that appears on that page.

Mr. Neumann: That is right.

A. (Continued:) Those notes were given to the Lincoln Trust Company for money borrowed.

1560 Q. What was the total bond issue of the authorized issue of the New York and Queens Gas Company?

Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant. The witness has already testified he does not know anything about this bond issue of $66,000.

The Master: Authorized by the company?

Mr. Vilas: Yes.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. $810,000, it says here.

Mr. Neumann: No; I call the Master's attention to the fact that the entry reads "$750,000 bonds, note $60,000," and not $810,000.

The Master: That makes a total of $810,000.

Mr. Neumann: Let the Master look at it.

The Master: The question is, what on that page is indicated as the authorized issue of bonds?

The Witness: $1,000,000.

Q. And when was that issue authorized by the company?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. 1904.
Q. August 1, 1904?
A. Yes.
Q. And what was done with the bonds under that issue, issued under that authority?
1561 A. Held by the trustees, the Lincoln Trust Company.
Q. Do you know whether any bonds were withdrawn from the Lincoln Trust Company under the mortgage between 1909 and 1910?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant. The witness has already shown that he has no knowledge of those bonds.
The Master: Objection overruled.
Mr. Nathan: Exception.

A. Yes. At various times reports were made to the Lincoln Trust Company as to expenditures for construction work. They would issue bonds for it.

Mr. Neumann: I move to strike the witness' answer out upon the ground that it is not responsive to the question.
The Master: Motion denied.
Mr. Neumann: Exception.

Q. And you then withdrew the bonds from the Trust Company?
A. Yes.
Q. What would you do with them?

Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Sell them.
Q. Was that done in the year between 1909 and 1910 when these two reports were made?

Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Yes.
Q. Do you know for what the bonds withdrawn in that year were used?

1562 Mr. Neumann: Same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. To pay the demand notes of the Lincoln Trust Company.
Q. The proceeds of those bonds were used for that purpose?
A. Yes.
Q. Were they used for any other purpose?
A. The notes were for construction work we had done.

Q. So that ultimately the proceeds of those bonds went into construction?
A. Yes.
Q. How many bonds were originally deposited with the Lincoln Trust Company under this mortgage—in what amount?

Mr. Neumann: Same objection.

A. $1,000,000.
Q. The entire issue?
A. Yes.
Q. That was when?
A. August 1st, 1904.

The Master: Is that all, Mr. Vilas?
Mr. Neumann: Are you through, Mr. Vilas?
Mr Vilas: Yes.

Redirect examination.

By Mr. Neumann:

Q. Are you familiar with Section 69 of the Public Service Commission Act, Mr. Spear?
A. No.

Mr. Neumann: I offer in evidence Section 69 of the Public Service Commission Act, as contained in the Consolidated Laws of the State of New York, Volume 6, Section 2.

1563 The Master: It will be considered in evidence.

Mr. Goetz: Before that is marked, may we ask that the Court consider the entire act in evidence, rather than part of it.

The Master: If the Master finds it necessary to look at the act, he will look at all of it.

Mr. Goetz: It is a general law and does not need to be proved at all.

The Master: Why, of course not. But I am taking it.

Mr. Neumann: There is this question about it, it being a state law and the case being in the United States Court, there may be some objection.

Mr. Vilas: You raised the very objection to these general laws.

Mr. Neumann: Now we are offering general laws and you are objecting. You are consistent and so are we.

The Master: It is received as A-25.

Considered as marked Defendants' Exhibit A-25.

Mr. Neumann: I am through.

Recross-examination.

By Mr. Goetz:

Q. Since 1909 has the New York & Queens Gas Company been served with any notice, by the Public Service Commission for the

First District, of any action or proceeding to require the approval of the Commission for the issuance of the bonds referred to by Mr. Neumann?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial; the witness has already testified that
1564 he had no knowledge on that subject at all.
The Master: Overruled.
Mr. Neumann: Exception.

A. No, it has not.

Mr. Goetz: We offer in evidence the balance of the Public Service Commissions Law of the State of New York.
Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: The balance is received and will be given the same exhibit number.
Mr. Goetz: Shall we let those books go up again—that you had here for Mr. Cohen?
Mr. Neumann: I will tell you better after recess. So far as I am concerned, Mr. Tobin wants to go on now.
The Master: Yes, he must go right on.
Mr. Tobin: We offer in evidence the provisions of the Greater New York Charter, more particularly Chapter 17, which is entitled "Taxes and Assessments."
Mr. Vilas: That is objected to as irrelevant and immaterial.
The Master: If he asks me to take notice of it, I will take notice of it.
Mr. Vilas: I thought he offered it in evidence.
Mr. Tobin: I will offer it in evidence.
Mr. Vilas: Objected to as improper, a general law.
The Master: I will take it as A-26.

Considered marked Defendants' Exhibit A-26.

Mr. Vilas: What part of it did you offer?
1565 The Master: Chapter 17 of the Greater New York Charter relating to taxes and assessments.
Counsel in this case from now on must not assume that time is going to be occupied. They must have the witnesses here. My time is getting too valuable and too short, I cannot afford to do it. Every minute counts with me now.
Mr. Tobin: We will proceed to offer in evidence the record of assessed valuation of real estate owned by the New York & Queens Gas Company, Blocks Nos. 170 and 171, Lots Nos. 30, 31 and 47, as appears under the certificate of C. Rockland Tyng, Secretary of the Department of Taxes and Assessments.
Mr. Vilas: What was there said about that?
The Master: The Judge said he was going to think it over.
Mr. Vilas: I was not certain whether he reached a final conclusion, and he left me no instructions about it.
The Master: I do not think he did. He had in mind that he

might want to cross-examine some of these deputy tax commissioners, and I think he also had in mind the proposition of saving time. I do not think he decided what he wanted to do about it.

Mr. Vilas: Is this offered in evidence? We object to that. In the first place it is not competent proof, there is no opportunity to cross-examine the witnesses; in the second place, it contains the assessments on improvements, which is utterly incompetent.

Mr. Neumann: No.

Mr. Vilas: It does; it contains the totals.

1566 The Master: I will not be able to take it unless they consent. Objection sustained.

Mr. Neumann: I thought the complainant wanted to save time in this case.

Mr. Vilas: We would not save time by admitting incompetent evidence.

Mr. Neumann: The situation here is this with reference to these records, that these are public records, certified copies of public records. Why are they not admissible in evidence as a public record, if for no other reason?

The Master: I do not believe that proof of assessed value is competent.

Mr. Cummings: Are those admitted in evidence?

Mr. Vilas: No.

Mr. Cummings: What is the reason you gave, your Honor?

The Master: The main reason is that I do not believe that this is the way to prove assessed values, in the first place. In the second place, I do not think proof of assessed values is competent in this case.

Mr. Cummings: That goes to the weight of the evidence.

Mr. Chambers: It is some evidence.

Mr. Tobin: Yes, it is some evidence.

The Master: When Judge Ransom undertook in the Consolidated case to prove by oral testimony of witnesses what in their judgment was the value of the property which they placed on it for assessment purposes, I looked into the question considerably and I reached the conclusion that the complainant in that case was entitled to prove

by a witness held out by the public to be competent for that

1567 purpose, and who had taken a civil service examination, and so on and so forth——

Mr. Cummings: You swore them as real estate experts—not as public records. We are offering them here as public records, an entirely different theory.

The Master: I am coming to that. I reached the conclusion that as real estate experts they could testify.

Mr. Cummings: Certainly.

The Master: But my judgment at that time was that the mere fact that the assessment was laid as a real estate assessment, as you stated, was not competent proof.

Mr. Cummings: You take the position, then, that a certified copy of a public record is not entitled to be received in evidence?

The Master: No, I do not say anything about the certified copy

Mr. Cummings: We have produced it here.

The Master: I say the record itself, the original record, would not be competent proof.

Mr. Cummings: The public record would not be?

The Master: No.

Mr. Cummings: An original public record would not be competent?

The Master: No.

Mr. Cummings: You have no objection to the certified copy?

The Master: No, I am not raising the point of the certified copy.

Mr. Neumann: No, I understand that was not the point the complainant was raising, that it is a certified copy. But here is something that should be considered in connection with this matter, and that is in connection with these amounts of assessments of this company. This company from time to time has made reports to the State Tax Board, which is a different taxing official, wherein it has set forth the figures that were assessed against it. So that, taking the certified copy of the record, plus their admission against interest, as to what amount was assessed against it, you have a complete check.

Mr. Vilas: That statement is not correct.

Mr. Chambers: Any public record is admissible anyway.

Mr. Neumann: So there you would have it from two sources, from the record itself and from the admissions of the company made in other tax reports.

The Master: If you are arguing thus to keep me going until one o'clock, you need not waste any more time with it.

Mr. Neumann: No, I am not.

The Master: Because I can go out and talk some business for a few minutes, if that is what you are driving at. But there is no sense in keeping up the discussion.

Mr. Cummings: You rule it out and we except. A public record is always admissible in evidence.

Mr. Neumann: We will have it marked for identification.

Mr. Cummings: I am talking about courts generally.

The Master: Mr. Cummings, I will say this, that it has always been my theory that a public record or the act of a public official made in due course of duty is competent evidence. That was my impression when I looked into this question in the Consolidated case, and I, rather against my own judgment of the situation, reached the conclusion that there was an exception in this kind of a situation. If counsel for the complainant press their objection I will sustain it, because I think that is what the cases hold, though personally I should have preferred to have reached a different conclusion. I have always felt the rule to be that a public record showing the result of a public officer's work done in accordance with law, or any other act done in accordance with law, is a proper piece of evidence; but somehow or other I had not reached that conclusion.

Mr. Cummings: Exception. I have not any doubt about it, not a bit.

The Master: I have reached the conclusion that this kind of evidence is not receivable in this case.

Mr. Cummings: This is the valuation they have found. We can call these men, have them swear it is that valuation. How much stronger would that be?

Mr. Chambers: I was going to ask if we called these Deputy Tax Commissioners one by one, will you take their testimony?

The Master: Yes, then I will take it by qualifying them as real estate experts, just as Judge Ransom did.

Mr. Goetz: I hope your Honor is not making rulings in advance, before we have a chance to object to the testimony.

The Master: What, the real estate experts?

Mr. Goetz: Oh, if they qualify as experts.

The Master: These Deputy Commissioners?

Mr. Goetz: If they qualify, all right.

1570 The Master: Who are in the same class as the men you produced?

Mr. Goetz: Why, here they are for the assessment on the improvements.

The Master: I am not saying anything about that, I am talking about the qualification of the man to testify.

Mr. Cummings: If he qualifies like anybody else qualifies, then his testimony is admissible.

Mr. Neumann: If what Mr. Goetz says is so, this statement contains the land separate from the personalty.

Mr. Chambers: We are entitled to show there are gas holders on the land, and so forth.

Mr. Goetz: Certainly.

Mr. Chambers: They are competent as to that.

Mr. Neumann: They are certainly competent as to the land, because that is all they are called to testify to.

Mr. Chambers: No, they are competent as to the buildings, stables, and so forth.

Mr. Cummings: It is competent because it is a public record, that is the reason it is competent; and it has always been competent.

Mr. Neumann: Their oath of office shows what they have to do, and it is all contained in a statement offered in evidence.

The Master: I cannot argue it in detail with you, Mr. Cummings. All I can say about it is this—and it is what I have said before: I have always believed the rule to be as you have advanced it, and yet I reached the conclusion in the Consolidated case that that was not the rule in the case of tax or assessment records, where

1571 the value of property was concerned.

Mr. Cummings: Did you reach that conclusion after looking up the case?

The Master: Yes.

Mr. Cummings: What case?

The Master: Why, in the brief that they submitted to me and what the other counsel did. Their argument was that the Deputy Tax Commissioner could testify. I approached it from the standpoint that I did not see the necessity of having a Deputy Tax Com-

missioner, that I thought the assessed records themselves could be introduced. Counsel for the State at the time indicated that they would not consent to that, and I was looking to see why they would not consent to it. I rather reached the conclusion that counsel for the State was right, that they could not use the assessment records that way. It has passed from my mind, the precise reason for——

Mr. Chambers: Let me set you right on that. I have argued hundreds of cases, I might say, for the State, in which the question involved was the value of property taken for Barge Canal purposes. I remember three cases—maybe you were in the court room when I argued them at Saratoga—involving three farmers out near Pendleton or some other place, in Orleans County or some other county way out in the western part of the State. They, of course, had the best part of their farms taken for Barge Canal purposes, where they had fruit trees and all that, and on the part not taken they were not worth a continental. The question up was what was the
1572 value of pieces taken, and it appeared in that case that the State put in evidence the assessed valuation of those pieces of property, and the assessed valuation, as I remember it, in one piece, was about $1,200., and this honest farmer was claiming $18,000.

The Master: He was modest.

Mr. Chambers: That $1,200. was on the whole property. He was claiming $18,000. and all the farmers stood with him. So I argued in the Appellate Division the question as to the admissibility of the assessment rolls, and the Judges up there——

The Master: In the Third Department?

Mr. Chambers: In the Third Department, argued it back and forth, and the question came up firmly, when they sustained the respondent.

The Master: You mean yourself?

Mr. Chambers: Yes.

The Master: The trouble with that authority is this, that that very court at that very time affirmed a decision I had gotten and the Court of Appeals reversed them.

Mr. Chambers: Since then in all those barge canal cases the Court has held uniformly that assessed values as shown by the judgment roll is some evidence of the value of property.

Mr. Goetz: Your Honor will recall that one of the points we urged in the Consolidated Gas case in support of our offer of the evidence given by the Deputy Tax Commissioners, who were qualified, was that the acts of those officers were admissions against interest and, while we could avail ourselves of them, it would
1573 not lie in the mouths of those who made the admissions to urge them in their own interests.

The Master: I remember the situation pretty well, and I was clear hen of the particular reasons underlying my conclusion, though not t present in my mind. But generally speaking it seemed to be the ule that the record of assessed values was not record of value where he question of value was at issue in a separate action.

Mr. Neumann: It is some evidence.

Mr. Cummings: It is some evidence of value.

Mr. Neumann: And especially so when it is backed up by the statements of this complainant company in their reports to other taxing authorities, as to the amount they have been taxed with in this particular jurisdiction and for that particular property.

Recess.

Afternoon Session.

Mr. Neumann: I offer in evidence from book produced by the complainant, marked "Monthly Report for the Year 1919 of the New York & Queens Gas Company," the page marked "Comparative Balance Sheet," for the year 1917, as compared with the year 1918.

The Master: Is there any objection to that offer?

Mr. Goetz: There is. The method of keeping this statement has not been shown. To describe it as a report is a misnomer. It has already been shown in connection with other testimony, not in this case, that these so-called reports are nothing but statis-
1574 tical studies made by employees of the company; that they are not a report, nor representation as to any final result with regard to the operations of the company upon which anybody may rely except for purposes of information; that they contain no evidence of the operation or the finances of the company.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-27.

Mr. Neumann: I offer in evidence from the same volume the page, headed, "New York & Queens Gas Company, Investment in Land, Plant and Equipment for the twelve months of 1919."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-28.

Mr. Neumann: I now offer in evidence from the same volume the page headed as follows: "New York & Queens Gas Company. Station Cost of Material and Labor in gas made, exclusive of General Expense, Taxes, Insurance, Renewals, etc., for the twelve months ending December, 1919"; and underneath that in large letters and brackets the words, "Water Gas."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-29.

The Master: What is the purpose of offering, for instance, Defendants' Exhibit A-29, Station Cost of Material and Labor.

1575 What do you want to do, prove up Mr. Teele's exhibits?

Mr. Neumann: No, I don't, but we are putting in the whole series of them for the different years and then we will draw up a table for you to show the difference between 1919 and other years.

The Master: How will that disprove 1919?

Mr. Neumann: It will prove 1919 as being an unusual year.

The Master: In the cost of making things?

Mr. Neumann: Yes, and everything.

The Master: That is admitted, I think, isn't it?

Mr. Neumann: No, it is not.

The Master: That it is higher than ever before?

Mr. Neumann: You see, for instance, certain items that run along uniformly at $3,300, and all of a sudden in 1919 they jump up to $12,000, and items of that kind.

The Master: Go ahead. It looks to me as if you were proving up Teele's exhibit. It is the same precisely as on this statistical sheet.

Mr. Neumann: Now I offer in evidence from the book produced by the complainant entitled, "New York & Queens Gas Company, monthly report for the year 1918, the page entitled "New York & Queens Gas Company, Comparative Balance Sheet, assets, comparing the year December, 1918, with 1917."

Mr. Goetz: I make the same objection. I wish to emphasize to the Court the objection already made, and that is the method of proof by documents which are not the books of record of the company, but by documents which are not identified here, and for whose correctness we do not vouch.

1576 Mr. Neumann: Do you mean to say, Mr. Goetz, that you have not produced this book?

Mr. Goetz: We have produced that book, and it is a statistical study made by employees of the company, and for no purposes of record.

Mr. Neumann: And your company keeps them year after year, and you have them bound up, and they are marked here, "New York & Queens Gas Company, Monthly Reports for the year 1918," or whatever year they apply to?

The Master: Don't answer that.

Mr. Goetz: They make no representation of their correctness.

The Master: Objection overruled. Mark that as an exhibit.

Paper received in evidence and marked Defendants' Exhibit A-30.

Mr. Neumann: I now offer in evidence from the same volume the page entitled "New York & Queens Gas Company, investment in land, plant and equipment, twelve months, for the year 1918."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-31.

Mr. Neumann: I now offer in evidence from the same volume the page marked "New York & Queens Gas Company, station cost of material and labor in gas made, excluding general expenses, taxes, insurance, renewals, etc., for the twelve months ending December, 1918."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

1577 Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-32.

Mr. Goetz: I want to save the time of the Court in making objections to the admissibility of the books for the prior years which Mr. Neumann is about to offer, but I would like to direct the Court's attention to the further objection that the earlier years are not matters which are properly in issue in this case, and that the admission of these books would only compel the complainant to offer further proof with regard to those other years, and so perhaps unduly lengthen the trial of this case.

Mr. Neumann: Are you getting an alibi ready?

The Master: Objection overruled.

Mr. Goetz: Exception.

Mr. Neumann: I now offer in evidence from the book produced by the complainant marked, "New York & Queens Gas Company Monthly Report for the year 1917," and particularly the page marked, "New York & Queens Gas Company, Comparative Balance Sheet," comparing the years 1916 and 1917.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-33.

Mr. Neumann: I offer in evidence from the same book the page entitled, "New York & Queens Gas Company, Investment in Land Plant and Equipment, twelve months of the year 1917."

Mr. Goetz: I make the same objection.

1578 The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-34.

Mr. Neumann: I offer in evidence from the book produced by the complainant marked "New York & Queens Gas Company Monthly Reports for the year 1916," the page containing the heading, "Comparative Condensed Balance Sheet," comparing the years 1916 and 1915.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-35.

Mr. Neumann: I now offer in evidence from the same volume the page marked, "Invested in Plant and Property for the Twelve Months Ending December 31, 1916."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-36.

Mr. Neumann: I now offer in evidence from the same volume the page marked, "Cost of Labor and Material in Gas Made for the Twelve Months Ending December, 1916."

Mr. Goetz: I make the same objection.

The Master: Overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-37.

Mr. Neumann: I now offer in evidence from the book produced by the Complainant company entitled, "New York & Queens Gas Company Monthly Report for the Year 1915," the page 1579 thereof headed, "Comparative Condensed Balance Sheet."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-38.

Mr. Neumann: I now offer in evidence from the same volume the page marked, "Invested in Plant and Property for the Twelve Months Ending December 31, 1915."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-39.

Mr. Neumann: I now offer in evidence from the same volume the page marked, "New York & Queens Gas Company for Twelve Months of 1915, Cost of Material and Labor in Gas Made."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-40.

Mr. Neumann: I now offer in evidence from the book produced by the Complainant marked, "New York & Queens Gas Company, Monthly Report for the year 1914," the page thereof headed, "Comparative Condensed Balance Sheet."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-41.

1580 Mr. Neumann: I offer in evidence from the same volume the page headed, "Invested in Plant and Property, Twelve months Ending December, 1914."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-42.

Mr. Neumann: I now offer in evidence from the same volume the page headed, "Cost of Material and Labor in Gas Made for Twelve Months, 1914."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-43.

Mr. Neumann: From the book produced by the complainant company marked, "New York & Queens Gas Company, General Report, Years 1912 and 1913," I offer that part thereof which is contained between the blue folder, and is marked on the outside, "General Report, New York & Queens Gas Company, Twelve Months 1912," and, on the second page thereof there are three typewritten pages inserted.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-44.

Mr. Neumann: I offer in evidence from the same volume three pages contained in the blue folder, marked at the beginning "General Report, New York & Queens Gas Company, Month of
1581 December and Twelve Months of 1913."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-45.

Mr. Goetz: I would like to call the Court's attention to the fact that on a number of these sheets I have observed pencil marks, red ink changes and other changes. These documents will have to be taken with all the imperfections in them. There is also a column which is not entitled at all, evidently sales per thousand, but it has no title at all.

Mr. Neumann: I move to strike out from the record the statement of counsel, because it evidently is not based on anything he knows, and as he now states, it is based on the claim that it has no heading.

The Master: I will pay as much attention to his statement as I will to your motion.

Mr. Neumann: Then I will make no further motion.

I offer in evidence from the book produced by the complainant company marked, "New York & Queens Gas Company, Monthly Reports, July, 1912, to December, 1913," the page headed, "Comparative Balance Sheet."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-46.

Mr. Neumann: I offer in evidence from the same volume the page marked, "Invested in Plant and Property, Twelve Months Ended December, 1913."

1582 Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-47.

Mr. Neumann: I offer in evidence from the same volume the page entitled, "New York & Queens Gas Company for the Twelve Months, December, 1913, Cost of Material and Labor in Gas Made."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-48.

Mr. Neumann: I now offer in evidence from the book produced by the complainant and marked "The New York & Queens Gas Company Monthly Reports for the year 1911" that portion thereof contained in a blue folder including two typewritten pages and which blue folder is marked at the beginning "General Report, New York & Queens Gas Company, for the 12 months 1911."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-49.

Mr. Neumann: I now offer in evidence from the book produced by the complainant marked "New York & Queens Gas Company Monthly Reports for the year 1910," that portion thereof contained in the blue cover and having one typewritten page insert marked on the outside of the blue cover "General Report, New York & Queens Gas Company for the 12 months 1910."

1583 Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-50.

Mr. Neumann: I now offer in evidence from the book produced by the complainant and marked "New York & Queens Gas Company Monthly Report for the year 1909," that portion thereof contained in

a blue folder without any typewritten inserts and marked on the outside thereof, "General Report, New York & Queens Gas Company for 12 months 1909."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendant' Exhibit A-51.

Mr. Neumann: How about copying these?

Mr. Goetz: We have got scores of pages here.

Mr. Neumann: There are three pages each year and there are ten years; that is 30 pages. Here is one with 2 pages only, so that it will probably be about 25 pages.

Mr. Goetz: There are more than two pages in some of these.

The Master: Let us get to something else, and you men can talk that over afterwards.

Mr. Neumann: I will now take the annual reports of the company.

Now, going back to the volume "New York & Queens Gas Company monthly reports for the year 1919," I offer the page marked "New York & Queens Gas Company, cubic feet of gas made, sent out and unaccounted for, for the years 1919 and 1918, a comparative table."

Mr. Goetz: I make the same objection.

1584 The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-52.

Mr. Neumann: I take it that your Honor has looked at this page. If not, it is quite interesting from that standpoint.

The Master: I looked at the page that you have been offering in evidence, and I saw some comparative results that were unaccounted for.

Mr. Neumann: Here it indicates that the unaccounted for in 1919 was 44 per cent higher than in 1918.

The Master: What do you mean. There was 11.02 per cent in 1919 and 8.07 per cent in 1918. You offered this page before, did you not?

Mr. Neumann: No.

The Master: I saw that.

Mr. Goetz: At this point, may I ask the indulgence of the Court to offer in evidence from each of the volumes from which Mr. Neumann has offered in evidence pages, the pages covering the number of cubic feet of gas made, sent out and unaccounted for, so that we have them all together.

Mr. Neumann: That is a general offer. I could have done the same thing, but I preferred to have each page offered.

The Master: Mr. Goetz means to offer each page.

Mr. Neumann: He ought to do it the same as we have.

The Master: Have you any objection?

Mr. Neumann: Yes. I want to look at each one as it goes in.

The Master: Have you any objection to his doing it at this time?

1585 Mr. Neumann: Have I any objection to his interrupting my examination?

The Master: Yes.

Mr. Neumann: Not a bit.

The Master: We have 1919 and 1918. Now you want 1917.

Mr. Goetz: I offer in evidence the page in the 1918 volume entitled "Cubic feet of gas made, sent out and unaccounted for, the month of December, 1918 and 1917, and 12 months ending December 31, 1918 and 1917."

Marked Complainant's Exhibit 100.

Mr. Goetz: I offer the same page from the volume marked 1917 entitled, "Cubic feet of gas made, sent out and unaccounted for, for the month of December, 1917 and 1916, and 12 months ended December 31, 1917 and 1916."

Marked Complainant's Exhibit 101.

Mr. Goetz: I offer in evidence the page from the volume marked 1916, entitled "Operating Expenses 12 months December, 1916 and 1915", so much of that page as appears under the title "Statistics" relating to the quantity of gas made, used and unaccounted for.

Mr. Neumann: The only question that was in my mind, your Honor, was the offer of a part of a page, and since he only wants to offer such part that relates to the unaccounted for gas—is that correct, Mr. Goetz?

Mr. Goetz: As would enter into a determination of the unaccounted for gas.

Mr. Neumann: Yes; that is all. I make no objection. That is all that part of the page which is contained under the word "Statistics" three-quarters of the way down on the page.

1586 Mr. Goetz: Also the title so as to identify it "12 months December of 1916 and 1915".

Mr. Neumann: Yes.

Marked Complainant's Exhibit 102.

Mr. Goetz: I offer from the volume marked "1915" so much of the page, entitled "Operating Expenses, twelve months, December, 1915, 1914," as appears under the title or caption, "Statistics," showing the quantity of gas made, sold and unaccounted for.

Mr. Neumann: The offer here I take it is limited to that part of the page which comes after the word "Statistics."

Mr. Goetz: That is correct.

Marked Complainant's Exhibit 103.

Mr. Goetz: I offer in evidence so much of the page of the volume marked "1914," which is entitled, "Operating Expenses, twelve months, 1914-1913," as appears under the caption "Statistics," showing the quantity of gas made, sold and used with the pencil corrections of figures or changes of figures.

The Master: I do not see any sense in going any further back than that.

Mr. Goetz: There is one year I want to get in; that 18 per cent.

Mr. Neumann: This is evidence you objected to us getting in, and here you are putting them in yourself, admitting and conceding that they are all correct.

Marked Complainant's Exhibit 104.

Mr. Goetz: I offer in evidence the volume endorsed "1912 and 1913," so much of the page, entitled "General Report for Twelve Months and December, 1913"——

Mr. Neumann: I offered that whole thing.

Mr. Goetz: This entire thing.

1587 Mr. Neumann: Yes; that is all in evidence.

Mr. Goetz: Then I withdraw that offer.

Mr. Neumann: I offer in evidence the annual report of the New York & Queens Gas Company to the Public Service Commission of the State of New York for the First District for the year 1919, page 28, lines 1 to 6 inclusive, the whole of page 55, and page 59, line 19, the credit side; that is all we want.

Mr. Goetz: I object to the offer in evidence of a fragment of the report of the company without the explanatory information contained in the other pages of the report.

The Master: I will receive it as offered. You can offer the balance of the book or any part of the book that explains it.

Considered as marked Defendants' Exhibit A-53.

Mr. Neumann: I now offer in evidence from the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District, State of New York for the year 1918, page 28, lines 1 to 5 inclusive, and page 55.

Mr. Goetz: I object to the separation of statements of a particular page from the context of the page. There is a great deal of printed matter without which the statements appearing on particular lines is unintelligible. The statements which are not accompanied by the explanations which the Commission itself made would only be misleading.

The Master: Objection overruled.

Mr. Goetz: This shows exactly what I contend for. If you will read those lines without reading the captions and the rest of that page, it is absolutely unintelligible.

1588 The Master: You offer the rest of it that will make it intelligible; objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-54.

Mr. Neumann: I now offer in evidence the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December, 1917, page 28, lines 1 to 4, inclusive, and page 55.

Mr. Goetz: I make the same objection and point out particularly with respect to this offer and the two previous offers, that the lines on page 28 do not relate to anything involved in the production and distribution of gas. They relate to outside investments made by this company. This criticism applies only to page 28.

Mr. Neumann: It does not apply to page 55?

Mr. Goetz: You offered the entire page which shows that you perceived the defect in your offer of the other page.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-55.

Mr. Neumann: I now offer in evidence from the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year 1916, from page 28 thereof, lines 1 to 3 inclusive, and the whole of page 55.

Mr. Goetz: I make the same objection.

1589 The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-56.

Mr. Neumann: I now offer in evidence from the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District, State of New York for the year ending 1915, from page 28, lines 1 and 2 and the whole of page 55.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-57.

Mr. Neumann: I now offer in evidence the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District, State of New York for the year ending December 31, 1914, page 28, line 1, and the whole of page 55.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-58.

Mr. Neumann: I now offer in evidence from the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1913, the whole of page 55.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-59.

1590 Mr. Neumann: I now offer in evidence from the report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1912, the whole of page 55.

Mr. Goetz: I make the same objection.

The Master: Objection overruled

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-60.

Mr. Neumann: I now offer in evidence from the Annual Report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1911, the whole of page 55

Mr. Goetz: Same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-61.

Mr. Neumann: I now offer in evidence from the Annual Report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1910, the whole of page 39.

Mr. Goetz: Same objection. I understand that I do not need to repeat in order to save an exception, to repeat my objection to the inadmissibility of statistics or data as to the operations, finances, revenues and expenditures for years prior to 1918, so that I may save myself the trouble of making objections.

The Master: The same objection runs all through.

1591 Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-62.

Mr. Neumann: I now offer in evidence from the Annual Report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1909, the whole of page 39.

Mr. Goetz: Same objection.

The Master: Objection overruled

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-63.

WILLIAM R. BIRDSLEY, a witness called for the defendants, was sworn and testified as follows:

Direct examination.

By Mr. Tobin:

Q. What is your position with the City Government, Mr. Birdsley?

A. I am Acting Chief Gas Inspector of the Department of Water Supply.

Q. Gas Inspector?
A. Or Examiner, whatever you want to call it.
Q. What are your duties?
A. My duties are to supervise the testing of the gas supplied by the various gas companies throughout the city.
Q. How long have you held that position?
A. I have been the Acting Chief Gas Examiner since 1913.
1592 Q. What were your duties prior to that?
A. Prior to that I was Gas Inspector from the year 1906 to 1913.
Q. Did you from 1906 to 1913 have charge of the gas inspection of the city?
A. I did not, no.
Q. Where are the gas inspection stations in the city located?

Mr. Vilas: Objected to as immaterial.
The Master: We do not want that. What we want to know is where the gas inspection station is in Flushing.

Q. Where is the gas inspection station in the city for the New York & Queens Gas Company?
A. It is located at Boerum and Madison, Flushing, a section called Murray Hill.

By the Master:

Q. Where is the holder?
A. The holder is down by the Bay.
Q. How far away from the testing station?
A. On an air line it is not less than one mile. I cannot say exactly the distance.
Q. But by pipe how far is it?
A. That I could not say.
Q. Is it considerably over a mile by pipe?
A. It may be, depending on the way the gas travels through the various mains.

By Mr. Tobin:

Q. How many mains do you test for gas at the Flushing Station?

Mr. Vilas: Just a moment, Mr. Birdsley. That is objected to, and any further examination along this line, on the ground that it is incompetent, irrelevant and immaterial, not within any issue raised by the pleadings in this case.
1593 The Master: I thought one of the defendants interposed an answer setting that up.
Mr. Vilas: One of the defendants interposed an answer which raises a very limited issue, and which in view of the proof made by the complainant does not now leave any issue in the case, and that was the Public Service Commission. I have the amended answer here and would be glad to call your Honor's attention to it. They assumed that this issue, if it is one, required a separate defense, and

proceeded to put it in. It comprises paragraph 12 of the amended answer.

The Master: They did set it up, did they not?

Mr. Vilas: They set up certain violations, and then they proceed as follows: "This defendant alleges upon information and belief that the failure of the complainant herein to furnish gas of the candlepower as provided by the said Act of 1906 was occasioned by the fact that during the year 1918 the complainant voluntarily and without compulsion of law, pursuant to a contract made by it, extracted from the gas after its manufacture and before its distribution to the consumer, much of the enriching oil contained therein, for the sole purpose of manufacturing the product known as toluol, with the result that the gas as tested, as provided by such statute, had a candlepower much less than 22."

Mr. Neumann: What about the first part of that affirmative defense?

Mr. Vilas: It alleges failure to produce candlepower of 22.

1594 Mr. Neumann: Yes, during the years 1919 and prior thereto.

Mr. Tobin: 1918 and prior thereto.

Mr. Neumann: 1918, 1919 and prior thereto.

Mr. Vilas: No.

Mr. Neumann: You better read it.

The Master: I will read it; let me see it (taking paper).

Mr. Neumann: 1918 to date and prior thereto. There is no question about that.

The Master: The answer says to date.

Mr. Vilas: But the paragraph that I read says that it was due solely to something we did not do.

Mr. Cummings: You did not read the right one.

Mr. Neumann: You did not read all of the answer, Mr. Vilas.

The Master: I have read the answer. The objection is overruled.

Mr. Vilas: Exception.

Q. You tap how many mains running into this station at Flushing?

A. The gas supplied to our testing station comes from one main.

Q. When were the mains installed and the risers run into the building?

A. 1907. I would like to correct that. The riser was installed in the building in 1907.

Q. Do you test the gas of the New York & Queens Gas Company at the Flushing station?

A. I do not personally.

Q. But you supervise the testing of the gas at the Flushing station of the New York & Queens Gas Company?

1595 A. I supervise the testing.

Q. What is the system of testing the gas at the Flushing station of the New York & Queens Gas Company?

Mr. Vilas: That is objected to as incompetent, irrelevant and immaterial, not within the issues.

The Master: If you mean what is the apparatus here, you better bring out that the witness knows what apparatus is there and has seen it.

Q. What is the procedure for the testing of the gas?

The Master: No, I will not permit that.

Q. What machine or machines do you use?

Mr. Vilas: That is objected to in form.

The Master: Let us get down to it, Mr. Tobin; I know what you want, or at least I think I do.

By the Master:

Q. Is there a testing machine over there?
A. Yes, a photometer.
Q. Do you know what it is?
A. Yes, sir.
Q. How recently have you seen them?
A. Within a few months.
Q. And over what period of time have you known that machine, and how long has it been there?
A. The photometer used at Flushing is the original photometer installed in 1907.
Q. How often have you seen it?
A. Oh, I have seen it a great number of times.
Q. Do you get over there periodically or occasionally?
A. Oh, yes, I get around.

1596 The Master: Do you want him to describe the machine there.

Mr. Cummings: Yes, he says he supervised it. I do not see why it is necessary to go into the details.

The Master: He can explain, if you want him to, the kind of machine there at that testing station.

The Witness: The instrument used for testing candle power at the Flushing photometric station is a modified form of Sugg-Letheby 60-inch bar photometer.

Q. What test do you make of the gas?

The Master: What do you mean, what test does he make of the gas?

Q. You test the gas for what, what purpose?
A. The tests are made for candle power, pressure, sulphuretted hydrogen, sulphur, ammonia and heat units.

The Master: You mean that is what they are supposed to be tested for?

The Witness: That is, the inspector makes those tests at this station.

The Master: Strike that out, that the inspector makes those tests. The inspector is supposed to make those tests.

The Witness: He is.

The Master: That is what he is sent there for?

The Witness: He is.

The Master: Now the question is whether he does it.

Mr. Neumann: It is presumed that a public official does his duty until the contrary is shown.

1597 The Master: I am not going to let Mr. Birdsley swear to it.

Mr. Neumann: All he needs is to swear to the fact that that is what the statute requires, and then the law presumes he does his duty.

The Master: I will not let him testify what the statute requires. His testimony is at this time he is the supervising inspector, or whatever he is called.

By the Master:

Q. I take it, Mr. Birdsley, the tester is under you?

A. Yes.

Q. They are supposed to go to these stations and test the gas for the various things you have described?

A. Yes, sir.

Q. For that prupose you have a testing machine over at the station?

A. Yes, sir.

Q. And these inspectors make reports to you under oath; is that the idea?

A. Yes, sir.

The Master: What else do you want to ask Mr. Birdsley?

By Mr. Tobin:

Q. How are the tests for candle power conducted, Mr. Birdsley?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

Q. Have you tested the gas yourself?

The Master: I am going to sustain that objection, too.

Mr. Vilas: That is objected to.

1598 The Master: I think I went further in the Consolidated case than I should have gone with Mr. Birdsley's testimony.

Q. Have you seen the men doing any testing at the Flushing station?

Mr. Vilas: That is objected to as immaterial.

The Master: I will let him say that.

A. I have.

Q. How frequently?

A. Practically every time that I visit the station.

Mr. Vilas: That is no answer. I move that that be stricken out.
The Master: No, I will deny that motion. There is no use wasting time on that, Mr. Tobin; unless Mr. Birdsley can tell us the days and the names of the testers whom he saw working, I am not going to let him testify to it.

Q. How often are the tests made at the Flushing station of the New York & Queens Gas Company?

The Master: To your own knowledge, now, that you yourself saw; not what somebody reports to you. Can you say?
Mr. Vilas: Objected to.

A. Why, it is rather a hard question.

The Master: Then the answer to it is you cannot say unless you are there.
The Witness: The law requires that the inspectors make tests daily, and it is in the report.
Mr. Vilas: I move to strike it out as not responsive.
The Master: Motion granted.

1599 Q. Have you seen the men do any testing?

The Master: He says he has.

Q. You have watched them do the testing?

Mr. Vilas: I object to that.
The Master: I will allow that. He has already said that.
Mr. Vilas: He said so three times.

Q. How frequently have you seen them do the testing?

Mr. Vilas: I object to it as already fully covered.
The Master: I will allow him to say that.

A. I cannot say exactly how frequently. I have watched them test nearly every time I visit the station.
Q. How often do you visit the station?
A. I have no particular time to visit.
Q. Last week how often did you visit the station?

Mr. Vilas: I object to that as leading and suggestive.
The Master: I will allow that.
Mr. Vilas: Exception.

A. I was not there last week.

By the Master:

Q. On an average how many times a year do you get over to Flushing, half a dozen times a year?
A. More than that, I guess.
Q. How many, about?
A. We will say half a dozen and be safe.

The Master: Now the witness states that he gets over to the testing station about half a dozen times a year, and he sees the men testing.

1600 By Mr. Tobin:

Q. Who does the testing at the Flushing station of the New York & Queens Gas Company?

Mr. Vilas: That is objected to, not apparently within the knowledge of the witness.

The Master: Overruled.

By the Master:

Q. Who was the inspector assigned to that station?

A. Mr. Robert A. Wacker.

Q. How long has he been assigned to that station?

A. Since about 1916.

Q. He has been there during 1916, 1917, 1918 and 1919 and up to this time in 1920?

A. He has.

Q. Is he in court?

A. He is.

The Master: Then let us have Mr. Wacker and he will tell us what it is.

Mr. Tobin: We would like to finish with this witness, your Honor.

The Master: I think you have finished. However, you may put some more questions.

Q. How often are these tests made at the stations?

The Master: Objection sustained. I thought I saw Mr. Wacker in court and recognized him, that is why I am limiting Mr. Birdsley's testimony.

Q. From your experience is the test made at this station the proper way of testing candle power?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

1601 Q. Is it made in accordance with the provisions of Section 522 of the Greater New York Charter, in relation to the inspection of illuminating gas?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

Q. Have you been present at the Flushing station of the New York & Queens Gas Company at any time when Mr. Wacker has tested gas?

A. I have.

Q. If you will, please describe what was done at the time you were present, when the gas was tested by Mr. Wacker at this station?

Mr. Vilas: I object to that. Mr. Wacker is in court.

The Master: The objection is sustained. Mr. Wacker is in court and can tell us better than Mr. Birdsley what he did.

Mr. Cummings: Perhaps not. He was testing.

The Master: Then he ought to know what he was doing.

Mr. Cummings: Mr. Birdsley was looking at him.

Mr. Neumann: Here is the position, if the Court please: Here is the chief of the bureau who is watching one of his subordinates do something in conformity with the statute, and he is now asked to state what he saw his subordinate do. I think that meets all the rules of evidence and is competent evidence.

The Master: Yes, it is competent evidence with reference to the particular occasion when he saw Mr. Wacker working. I am ruling it out because I do not believe it is at all useful in this case, in view of the fact that Mr. Wacker is here. You can put Mr. Wacker on and Mr. Wacker will testify to what he did, and after you are through with Mr. Wacker's testimony, if you think it is necessary to have Mr. Birdsley corroborate what Mr. Wacker has testified to, and have him testify to the times he was there and he saw Mr. Wacker do those things, I will let you recall him.

Mr. Neumann: Exception.

The Master: We are going to put Mr. Wacker on the stand to prove these things, not Mr. Birdsley.

Q. Does Mr. Wacker make the reports of the testing of the gas at the Flushing station of the New York & Queens Gas Company to you?

Mr. Vilas: Objected to.

The Master: The objection is overruled.

Mr. Vilas: That is indefinite and vague.

The Master: Overruled.

By the Master:

Q. Mr. Wacker makes reports, does he not?
A. He makes reports.
Q. Under oath?
A. Yes.

Mr. Tobin: Are they written reports?

The Witness: Written reports, under oath.
Q. And he sends in his sheet showing his testing figures?
A. He does.
Q. His original figures, as you understand them?
A. They are.

By Mr. Tobin:

Q. They are made under oath?
A. They are.
Q. You have those reports here in court?

A. I have not the reports. I have the original sheets that the tests were made on. I failed to bring the reports down, because I did not know they were wanted; but I can furnish them if desired.

Mr. Tobin: We wished to offer them in evidence, if the Court pleases.

The Master: I imagine you would. You better get them.

Mr. Cummings: They are competent right now, are they not, as public records?

The Master: But I will not take them. I am going to have Mr. Wacker testify to something before I take the reports.

Mr. Cummings: Are you going to have a public officer swear that he does or performs his duty?

The Master: Yes. I am going to have Mr. Wacker get on this stand and I am going to have him testify to what he did, and I am going to bring out from Mr. Wacker, as I did from Mr. Wacker on the Consolidated trial, that it is a matter of human judgment, subject to human error. You might as well understand it now as any other time.

Mr. Neumann: To which we respectfully except.

Q. What is the method that you have observed and that you yourself have used and that you have seen other men use, including Mr. Wacker, in the testing of gas under the statute as provided for the City of New York?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

1604 Q. What is the method that you have observed and that you yourself have used and you have seen other men use?

Mr. Vilas: Objected to .

The Master: Same ruling.

Mr. Tobin: We respectfully except.

The Master: The question here is what did Mr. Wacker do. Mr. Wacker is in court, and if you want to prove that Mr. Wacker tested this gas and found it less than 22, put him on the stand and prove it.

Mr. Tobin: But this man is a proper witness to indicate the method that was used.

The Master: Go ahead now. If you think that I or any other court will throw out this case upon testimony of Mr. Birdsley, when the man who actually did the work is in court, you are very much mistaken.

Mr. Neumann: That is not the question, if the Court pleases. The question here is that the chief of the staff is now asked to describe the general course under a statute.

The Master: But, Mr. Neumann, I do not want a general course. I want the particular thing that Mr. Wacker did.

Mr. Neumann: But you allowed in this case, for instance, the witness Alrich to go on and testify about what equipment was over there, without any knowledge on his part as to whether they owned it, or on what theory.

The Master: Do not let us argue something that is not involved in this particular question.

Mr. Neumann: Now we are putting a public official on the
1605 stand who endeavors to show what the course of conduct is in his office in accordance with the statute.

The Master: And I say I am not interested in the course of conduct.

Mr. Neumann: You can measure the standard of the witness who did the actual work by the course or standard of the office.

The Master: I have made my ruling.

Mr. Neumann: Exception.

The Master: You may as well throw that Consolidated record aside, Mr. Tobin; I am not going to let you follow it.

Mr. Cummings: You are not going to reverse yourself on the Consolidated, are you?

The Master: I may modify what I did in the Consolidated case. I learned some things in the Consolidated as it developed.

Mr. Tobin: If the Court pleases, we offer the provisions of law having to do with the inspection of illuminating gas, in evidence. It is known as Section 522 of the Greater New York Charter.

Mr. Vilas: That is objected to, not only because it is a public statute, but because the sections of law or the statutes involved in this case are already in evidence. Here is Chapter 125 of the Laws of 1906, which provides for the standard for testing of gas and the candle power to be observed.

The Master: I will overrule the objection. That chapter will be considered in evidence by the next exhibit number.

Mr. Vilas: Exception.

Considered marked Defendants' Exhibit A-64.

1606 Mr. Tobin: If we are compelled to withdraw this witness at this time, we say it is under compulsion and duress. That is, we feel this man is a proper person to testify to the testing of gas in the City of New York. He is the chief official in that branch of the service. It cannot be said that he is not complying with the statute, it cannot be said there is no test made at the Flushing station of the New York & Queens Gas Company, because there was offered in evidence here previously the work sheets of the New York & Queens Gas Company, which set forth the tests as made by the City and the reports as made by the inspector at this station are turned over to this official under oath. I think that he is properly qualified to go on and say what is the test or the method or mode of testing gas in the City of New York.

The Master: I have made my ruling, Mr. Tobin: I am not interested in the method or mode of testing gas in the City of New York.

Mr. Tobin: We take an exception.

The Master: I am interested to know what Mr. Wacker did in Flushing.

Mr. Tobin: We take an exception.

The Master. Mr. Wacker's testimony to my mind is the best testimony we can get as to what he did and as to what he observed.

Mr. Tobin: We offer this witness for cross-examination.

The Master. Any cross?

Mr. Vilas: No.

1607 ROBERT A. WACKER, a witness called by the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Tobin.

Q. What is your full name, Mr. Wacker?

A. Robert A. Wacker.

Q. What is your position with the City Government, Mr. Wacker.

A. Gas inspector.

Q. When were you appointed to this particular position?

A. Do you mean——

Q. As Gas Inspector—Gas Examiner?

A. Well, my official title is Gas Inspector.

Q. When were you appointed to that particular position?

A. I think it was in October, 1908.

Q. From a civil service list—taken from a civil service list?

A. Yes, passed the examination and appointed in due course.

Q. And you have been continuously in this particular department since the date of that appointment?

A. Yes, in the Department of Water Supply.

Q. Where are you stationed at present as Gas Inspector?

A. I cover the Flushing territory part of the day, and the Williamsburg section of Brooklyn the other part.

Q. How long have you been at Flushing?

A. I have been assigned to the Flushing station in 1916. I do not recall just when.

Q. In 1916?

A. About that time, yes.

1608 Q. What gas is tested at the Flushing station?

A. The New York & Queens Gas Company.

Q. Will you kindly explain for the benefit of the Court just how the mains and risers of the New York & Queens Gas Company come into the station?

A. They come in from the Barnes Street side, in through the cellar and up through the hall way into the station.

Q. Up to the testing room?

A. Up to the testing station—the testing room, yes.

Q. Give us a brief description of just how the testing room is——

A. I might add to that, that the gas is taken from the same riser that the Consolidated get theirs from, that the New York & Queens get theirs from.

Q. From the same riser?

A. The same riser, yes.

Q. Briefly describe the testing room, that is as to what is contained in the testing room, the apparatus and the other machinery that is there for the purpose of testing the gas at the New York & Queens Gas Company?

A. By the testing room I assume you mean the photometer room?

Q. All that is there.

A. Well, the photometer room, which is darkened, contains the Sugg-Letheby Photometer, which consists of numerous apparatus. The main part of that is the 60-inch bar, at the end of each end of the bar being a light to be tested, and the standard. The standard is candles, two candles in this case, read on a balance. They are weighted up on a balance. The other part of the apparatus
1609 consists of governors, both the dry and the balance governor, to control the rate of flow of the gas, and a meter to measure the amount of gas sent through.

Q. For what purposes do you test the gas?

A. I test the gas for candlepower and heat value, for impurities such as sulphuretted hydrogen, sulphur and ammonia.

Q. Do you test the gas for pressure?

A. I also record the daily pressures, maximum and minimum.

Q. Briefly state how the test for candlepower is conducted at the Flushing station of the New York & Queens Gas Company?

The Master: By this witness.

Mr. Tobin: By this witness, yes, sir.

The Master: How you do it day after day.

A. Well, I have the gas flushed through the photometer before I make my tests. I assure myself of that.

The Master: What do you do through the photometer?

Mr. Neumann: Flush the gas.

The Witness: It is flushed through the photometer to be sure that I get the gas through the mains. In fact I have the gas coming all the time, even during my absence, so I know I have fresh gas. Then I regulate the gas at 8 to 5 feet by means of the balance governor. I put on my candles, light them up, and see that the candles are burning properly, and then when I am ready for my test, of course, I have my room well ventilated, too.

1610 By the Master:

Q. You have your room what?

A. Ventilated.

Q. What is that for?

A. So it does not affect the results. If the ventilation is poor, why, your results would not be reliable. Poor ventilation affects the lighting, the luminosity of both the light you are testing and the standard. So I close up the room sufficiently to prevent drafts affecting the candles and the gas, and I adjust the balance on which my candles are situated so that they will fall within a minute or so, and the weight, and when the candles fall at the zero mark on the scale I start the meter going which has been previously set to zero.

This is assuming, of course, I have regulated my gas flow to 5 feet previously. Then at intervals of a minute apart I take ten readings, after throwing on two 40 grainweights or 40 grains in the pan of the balance in which the candles are located. At the end of ten minutes, or approximately ten minutes, the candles will fall if they are proper candles, and then I shut off my gas after that tenth reading when the candles have again passed the zero point. From the observation of the meter, temperature of the gas in the meter, and the readings contained, and the consumption, the time of consumption of sperm—from the data obtained from that I calculated my candlepower.

Q. Do I understand you look through something to observe the comparative luminosity of the two lights?

A. Yes, taking the readings consists in looking into a disc that is mounted on what is called a sightbox.

1611 The reflection of the disc is shown in mirrors placed at angles with the disc at the back. You look into those mirrors and by sliding the sight box on the bar you get to a point where the lights are of equal intensity.

The Master: In other words, when your judgment is, or when you believe you see the light of equal intensity you take your reading?

The Witness: Yes.

The Master: Is that correct?

The Witness: When the lights are of equal intensity I take my reading.

The Master: You can only tell when they are of equal intensity by looking at it?

The Witness: Yes, sir.

The Master: It depends upon your judgment of what you see, doesn't it?

The Witness: Yes, but in times past we have checked up the different people and they usually all agreed.

The Master: I understand that, but the point I want to get at is, and the point I want to get on the record——

The Witness: It relies on my judgment.

The Master: There is the human element in it——

Mr. Cummings: A human element, you mean?

The Master: The human element of sight?

The Witness: Yes.

The Master: It depends upon your sight?

The Witness: Yes.

The Master: And what you believe?

The Witness: Yes.

1612 By Mr. Neumann:

Q. You don't wear glasses, do you?

A. No, not as a general thing.

Q. You don't have to wear glasses?

A. No.

The Master: Do you as an exceptional thing?

The Witness: I did one time, but I found I didn't need them. In fact when I went to the oculist he said I didn't need them.

Q. When was that?

A. I guess that was along about 1917. I was not working in Flushing at the time, at that period I was working in another station.

Q. You had your eyes tested by an oculist?

A. Yes.

Q. Who said your sight was good, and you didn't need glasses?

A. Yes, I went to him twice, and he told me that both times.

Q. He prescribed no glasses for you?

A. The first time he prescribed no glasses for me, he said I didn't need them, but he could give me glasses for *your* work if I wanted them, and I said to end all argument I would take them.

By Mr. Tobin:

Q. This particular photometer method is known as what, what do you call it?

A. It is known as the Suggs-Lethby photometer.

By the Master:

Q. Do I understand Mr. Wacker, that what you have just described is what you do every day in testing gas?

A. I do that every working day.

1613 Q. You don't work Sunday?

A. No.

Q. Every day that you go there do you make any notes as you make these readings or observations?

A. Oh, yes, I have to make my data.

Q. What do you make that on?

A. I make that on the form prescribed by the Department, the prescribed form.

Q. Do you make them direct on these forms, or do you put them on other sheets first and then copy them on to the forms?

A. I usually make them direct on the forms.

Q. Do you sometimes put them on loose sheets and then carry them forward on to the forms?

A. No, I don't recall. In the beginning of my position as inspector I did that, but when I had to take over two stations I found it took more time than I could afford to give to it.

Q. So, your practice for the past two years has been to make the data directly on the form?

A. Yes.

By Mr. Tobin:

Q. The form prescribed by the Department?

A. Yes.

The Master: In lead pencil or in ink?
The Witness: I write them in pencil.

By Mr. Neumann:

Q. When you refer to the early part of your career, you mean in 1908, and around that time, when you first became connected with the Department?
A. Yes.

The Master: Did you say 1909?
The Witness: 1908 I said.

1614 Q. You don't mean that to apply from the year 1917, to date, since you have been over at the Flushing station?
A. I am pretty sure I did not.

By Mr. Tobin:

Q. How often do you make tests of the gas at the Flushing station of the New York & Queens Gas Company, as to each day?
A. Why, if the gas is very good I make one test; if there is doubt about the gas I make two tests.
Q. But you do make a test what you call every working day?
A. Yes, I make a test every working day.
Q. What time of the day do you make those tests, usually?
A. Why, I make the tests at different times, no regular time, sometimes in the morning, sometimes in the evening, sometimes in the afternoon.
Q. And that time is entered on the sheet?
A. That time is entered on the sheet.
Q. On the sheet that you send to the Department of Water Supply?
A. Yes.
Q. And that is sworn to by you?
A. Yes.
Q. From your knowledge of the testing of gas, is this Suggs-Lethby photometer the proper method to test the candle power of gas?

Mr. Vilas: I object to that as calling for a conclusion.
Mr. Tobin: I asked him from his knowledge.
Mr. Vilas: He has not shown it, one test a day for three or four years, and that one place.

1615 Mr. Tobin: That is all this man does, test gas.
Mr. Vilas: With this one machine.
Mr. Neumann: He also tests at Williamsburg, don't forget that.
The Witness: I have two companies.
Mr. Neumann: If he had more than that you might be here saying that he has too much to do, and can't do it right.
The Master: I will sustain the objection. I will let you ask Mr. Birdsley, if you want to, as an expert, whether this is the usual method of testing gas.

Mr. Neumann: That is exactly the point——

The Master: I told you I would let you recall him after you had shown by Mr. Wacker just what he does.

By Mr. Tobin:

Q. Is the Suggs-Lethby photometer a standard method of testing gas?

Mr. Vilas: I object to that.

The Master: I will not let this witness say; I don't think he has shown sufficient knowledge to say. Mr. Wacker, you use the method the department assigned to you, don't you?

The Witness: Yes, sir.

The Master: And you always have?

The Witness: Yes, sir.

The Master: You have never used any other?

The Witness: No.

By Mr. Neumann:

Q. Have you seen any other, Mr. Wacker?

A. Any other method?

1616 Q. Yes.

A. Why I have used the portable method outside. That was more for mantle light testing, it really didn't have anything to do with gas testing.

Q. How did that compare with the method you used?

Mr. Vilas: I object to that.

The Master: Objection sustained

By Mr. Tobin:

Q. What checks have you used as to the tests made by you, as to the accuracy of the tests as recorded on these sheets each day at this station?

A. Well, I usually check up with a second test.

Q. That is, if you are in doubt?

A. If I am in doubt.

Q. You check up the second time?

A. I check up with another test.

The Master: What creates the doubt?

The Witness: Well, I assume that if it is 21½ there may be a reasonable doubt of course.

The Master: Why?

The Witness: Well, a question may come up about personal error, or something like that.

The Master: What kind of a personal error?

The Witness: Well, a question of eyesight I suppose. I am not sure, I can't tell what the gas company thinks.

Q. Have you checked with other observers as to the tests made by you at this station?

1041

A. Yes, I have checked up with Mr. Birdsley and I have checked up with other inspectors.

1617 The Master: What were the occasions when you checked with Mr. Birdsley, what brought that about?

The Witness: I don't know of any particular occasion; it is simply to satisfy ourselves.

Q. What was the result of those check-ups, Mr. Wacker?

A. That is pretty hard to remember.

By the Master:

Q. Now, in making these reports, did you have to make any calculations?

A. Yes.

Q. Did you have any tables which you used in those calculations?

A. Yes, we have log tables.

Q. Where did you get them?

A. Each inspector gets his table from the official copy at the office, at least he makes a copy of them.

Q. Have you got those with you?

A. Yes.

Q. Let us have them and get them in evidence. Let us get this whole story on the record.

A. These are papers that have been copied by the previous inspector who has now left the department.

Q. Are these what you used?

A. Yes.

Q. What is the first one there, what do you call that? What table is that?

A. Well, there are the log factors for the barometer and also the temperature.

Q. The temperature and barometer logarithms?

A. The logarithms of the barometer and the temperature of the gas.

1618 The Master: Don't you think you had better offer these, Mr. Tobin?

Mr. Tobin: Yes.

Mr. Vilas: I object to the offer.

The Master: Objection overruled.

Mr. Vilas: There is no proof of the correctness of these tables, they were copied by another inspector.

The Master: I know there is not, but it is to prove what he did.

Paper received in evidence and marked Defendants' Exhibit A-6

Q. What are these?

A. This and this are all the same.

Q. Are they duplicates?

A. No.

Q. They are part of the same thing?

A. Yes.

Q. These three sheets?

A. Yes.
Q. What are they?
A. They are the log factors for the observed candle power of the gas. Not the observed—I should not say that—the log factors for the candle power. We refer to those to get the logs for the observed, and also the corrected candle power.
Q. These are the sheets that you used?
A. Yes, sir.
Q. And the figures on which you made your calculations?
A. Yes, sir.
Q. On which you based your report?
A. Yes, sir, those are the figures between 18 and 26. If the candle power is lower than 18 I would have to take the log factors from an ordinary table of logarithms, which can be found in any
1619 engineering book.
Q. Between 18 and 26 you used these particular sheets?
A. Yes, sir.

The Master: Mr. Tobin, do you offer those in evidence?
Mr. Tobin: Yes.
Mr. Vilas: I make the same objection.
The Master: Objection overruled.
Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit A-66.

Q. Now, this other paper which you have handed me is what?
A. Those are log factors for the consumption of sperm of two candles.
Q. And this is the paper you used to make your calculations for that?
A. Yes, sir.

The Master: Do you want to offer that, Mr. Tobin?
Mr. Tobin: Yes.
Mr. Vilas: I make the same objection.
The Master: Objection overruled.
Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit A-67.

Q. Do you use anything else in making calculations, any other book or paper?
A. Not for my candle power calculations.

The Master: Anything else, Mr. Tobin?

By Mr. Tobin:

Q. Are you familiar with the provisions of the Greater New York Charter having to do with the testing of gas?

1620 Mr. Vilas: That is objected to as not relevant to this issue.
The Master: I will let him say he is familiar with it.

Q. You have read the provisions of the Greater New York Charter?

The Master: He says he is familiar with them.

A. I have.

Q. You believe that you conform with the provisions of the statute in testing the gas in the tests that you make at the New York & Queens Gas Company's Flushing station?

Mr. Vilas: I object to that.
The Master: Objection sustained.

Q. Do you comply with the provisions of the Greater New York Charter in the testing of the gas in the Flushing station of the New York & Queens Gas Company?

Mr. Vilas: I object to that.
The Master: Objection sustained.
Mr. Tobin: Exception.

Q. Your oath of office compels you to comply with the provisions of the Greater New York Charter as to the testing of gas at the Flushing station of the New York & Queens Gas Company, does it not?

Mr. Vilas: I object to that.
The Master: Objection sustained.
Mr. Tobin: Exception.

Q. You make observations, do you not, in the testing—take one test of gas, how many observations do you make?

The Master: He said he took ten. It is already covered.

1621 Q. Are there any corrections made after the tests, Mr. Wacker?

A. Corrections made after the tests?

Q. Yes. That is, I mean after you have made your observations, then how do you proceed?

The Master: He is trying to bring out corrected candle power against observed candle power. Explain it.

A. Why, I make corrections for the different factors from these log tables that I put in evidence.

Q. Who made these tables that have been offered in evidence?

Mr. Vilas: Objected to.

The Master: Objection sustained. I don't care who makes these tables. He has given us the tables he works on. I don't care who prepares them.

Mr. Tobin: I thought maybe you wanted some authority on them.

The Master: No, he doesn't know anything about it. All he knows about it is that the Department gives him these tables. He doesn't know who prepares them. Do you, Mr. Wacker? You don't know who prepared these tables the man that made them up?

The Witness: I computed those at the time, the consumption of gas.

The Master: You computed these tables yourself?

The Witness: I copied the time of the consumption of sperm. The log factors I copied out of the book.

Q. Out of what book?

A. These exhibits.

1622 Q. After you put down the test on these report sheets and they are sworn to you send them where?

A. I send them by mail to the head of my division, the main office of my division, 122 Bowery.

Q. Have you got these reports here?

A. No, Mr. Birdsley has them.

Q. Do you send a card to the New York & Queens Gas Company of the tests that you make on each working day, or on the days that you make a test?

A. Yes.

Q. Just in what form is that, briefly describe it?

A. Well, it is an ordinary postal card on which the typist has typewritten certain data for me to fill in, such as candle power, maximum and minimum pressure, and the date, and time of taking tests, and the B. T. U's.

The Master: You mail them, do you?

The Witness: I mail them to the gas company.

The Master: You fill them out and mail them?

The Witness: I fill them out and mail them. I might add that when I report two tests it does not necessarily imply that I have doubt about either of those tests, because sometimes I may report where the gas is quite high, for the same reasons, such as an afternoon or night test, to see how they compare.

The Master: Anything else, Mr. Tobin?

Mr. Tobin: We have the original test sheets, if your Honor please. We can offer those in evidence, or we can offer in

1623 evidence the original report as made by the witness.

The Master: Make up your mind what you want to do.

Mr. Tobin: We will offer them both.

Q. Have you a tabulation of what these show?

Mr. Tobin: Yes, sir. We offer in evidence the original test sheets from May, 1916, to May, 1919, of gas at the Flushing station of the New York & Queens Gas Company, as made by Mr. Wacker, with the exception of such period of time as he may have been on vacation.

The Master: You are offering the Wacker report for those years, are you?

Mr. Tobin: Yes, sir.

The Master: What is the use of wasting time with this? I see that month after month the average was over 22.

Mr. Cummings: I don't think that is correct.

The Master: That is the fact. Start with March, 1918, Mr. Cummings, the average is 22.31; April, 22.71; May, 22.85; June, 22.28; July, 22.35; August 22.36; September, 23.69; October, 22.44; 21.58; 22.43. What is the use of wasting time with a defense of that kind?

Mr. Tobin: No, but the average does not show that.

The Master: Nonsense, you don't expect me to find a deliberate violation of law with a record like that?

Mr. Tobin: For the four years between 1914 and 1918 the average shows a violation of law.

1624 The Master: Oh, you won't get anywhere with me on that stuff. Make your record.

We will make this record. Counsel for the defendant Newton offers in evidence all of the original test sheets and the sworn reports made by the witness Wacker during the years 1916, 1917, 1918 and 1919.

Mr. Tobin: I want to go as far back as 1914.

The Master: I will not go back as far as that. The offer is from 1916 to date, inclusive, down to and including the month of May, 1920. That is, the original test sheets and the original sworn reports, all of them on file in the office of this Bureau of Gas & Electricity.

Mr. Goetz: We waive the identification by the witness of each of those sheets, and consent that if any of them at all are admissible under the ruling of the Master, that they be all received at the same time. We object to the offer of the evidence as not competent and not probative of any issue in this case or of any facts which under the law might become admissible in this case.

The Master: Objection overruled, and all of these sworn reports and test sheets will be considered as one exhibit.

Considered as marked Defendants' Exhibit A-68.

Mr. Goetz: As to the sheets for 1916, 1917 and 1918, we object to those particularly on the ground that they are not within the issues in this case.

The Master: Objection overruled.

Mr. Goetz: Exception.

1625 The Master: The Attorney General, as I understand it, offers the original test sheets and the sworn reports for the years 1914 and 1915.

Mr. Neumann: Yes.

The Master: You object to those.

Mr. Vilas: As far too remote.

The Master: I sustain the objection upon the ground that these years are entirely too remote, and that the question is fairly presented by proof for the years 1916, 1917, 1918, 1919, up to and including May, 1920.

Mr. Neumann: Exception. If the Court please, I now call the Court's attention to the answer of the defendant Nixon wherein is set forth a separate defense, wherein I have pleaded the words

"1918 to date and prior thereto," and under that claim the right to offer the years 1914 and 1915.

The Master: I am using my discretion in limiting the period.

Mr. Neumann: To which I respectfully except.

The Master: The Attorney General produces for the information of the Court and of counsel a series of sheets showing what he claims to be the illuminating power corrector of each day and each month of the years 1916, 1917, 1918, 1919 and 1920 down to and including May 20th. I shall receive those as one exhibit over the same objection as was interposed to the original sheets themselves and to the sworn reports, and subject to correction, so that counsel for the
1626 complainant may at any time call attention to any errors in the test sheets or in the statements.

Now, that will make the proof on the part of the defendants for the year 1916 to and including May, 1920, as to the candlepower observed by the witness Wacker.

Now, I see that these sheets are for every consecutive day. I think you will find that some of those days Wacker did not make a report.

Mr. Cummings: He was away on vacation; of course some one else acted.

The Master: You have left them out, have you?

Mr. Cummings: No. I think they are in there with the name of the inspector.

The Master: I am receiving these sheets as an exhibit in so far as they show Wacker's, but until you produce Sol Frank and Hirschewitz and others, I will exclude them. I am taking these sheets simply as indicating Wacker's.

Mr. Goetz: You are taking them subject to connection?

The Master: I am taking them subject to connection. Now, it may be that when Judge Ransom comes back and you men confer, that you may permit them to offer the balance without calling witnesses, because I am frank to say on the record as I have already said off the record, that I think this defense has blown as high as the sky almost by the proof offered, and indicates that generally speaking month after month with some very few exceptions, the average was over 22.

1627 Mr. Neumann: Has your Honor looked at it from this view; that these sheets would indicate that the complainant supplied more than was required by the statute, and therefore necessarily have increased their operating expenses for those years.

The Master: I did not discover any such defense as yet.

Mr. Cummings: In answer to the Master's statement I say that the reports will show that in 1914 there was——

Mr. Goetz: They are not in evidence.

The Master: Just wait a second; I did not get the exhibit number

Marked Defendants' Exhibits A-69
for those sheets.

Mr. Neumann: Does your Honor hold this. You have excluded 1914. I have before me the sheet of Cazzaza which shows repeated violations in the month of February, 1914. Does your Honor rule

that even though Mr. Cazzaza were here you would not permit that sheet in evidence?

The Master: I would not take Cazzaza's testimony or a sheet of so remote a date.

Mr. Neumann: As of 1914?

The Master: Yes.

Mr. Neumann: Exception.

Mr. Tobin: The reason we ask that is that he is out of the State.

The Master: I would not take any proof back of 1914, in the exercise of my discretion.

Mr. Neumann: Your Honor has looked at February, 1914.

The Master: I have excluded that.

1628 Mr. Neumann: Have you looked at it?

The Master: I do not care about it. I have excluded everything prior to 1916, because I think the matter is sufficiently presented by the proof of the period between January 1, 1916, and February, 1920.

Mr. Cummings: I want to show that the reports made for 1916 show 145 violations.

The Master: During the whole year?

Mr. Cummings: Yes; the average for the year is 21.75. For 1917, there are 132 violations; the average for the year is 21.98. For 1918, there are 130 violations and the average is 21.48.

Mr. Neumann: You take January, 1918, they get down as low as 12 candle power, and there are 26 violations in that month.

Mr. Cummings: In 1919 there were 94 violations; the average for the year was 22.54. They did very well on the average for the year at that time.

The Master: How about 1919?

Mr. Cummings: That is what I am giving you.

The Master: What was 1918?

Mr. Cummings: 130 violations, with an average of 21.48.

Mr. Vilas: My figures show 21.71.

The Master: What figures?

Mr. Vilas: The figures that were taken at the works.

The Master: What is it for the first five months in 1920?

Mr. Cummings: I do not believe we have that.

1629 By Mr. Tobin:

Q. Do you know the location of the testing station of the New York & Queens Gas Company?

A. Yes.

The Master: He said it was in the same building.

Q. And the gas tested by the city is the same gas as tested by the company?

A. Yes.

The Master: I think you better reserve cross-examination until they check up some of these things. There is no use of calling him back every few days.

Mr. Vilas: That is satisfactory.

The Master: Check up some of those sheets and be prepared to cross-examine.

By Mr. Vilas:

Q. Are these sheets in these packages that have been offered in evidence the originals?

A. Yes.

Q. They are in your handwriting in so far as you made them?

A. All that are signed by me.

Q. You made computations of them?

A. I have.

Mr. Vilas: Can we have possession of these for checking? It will take three or four days to check them up?

Mr. Neumann: All right, let them take those two packages.

The Master: I cannot take custody of them; I think you are perfectly safe in turning them over to the experts of the Consolidated Company.

Mr. Neumann: Let him pick out what he wants, 1918, 1919, or anything.

1630 Mr. Goetz: In the Consolidated case we were given possession of these.

Mr. Neumann: The only thing is they are public records and the man is responsible for them. We want to look out for them.

The Master: The record will note that with the consent of Mr. Birdsley on the suggestion of the Master, there has been handed to Mr. H. W. Terry, the expert of the complainant company, the two packages of 1918 and 1919, the test sheets produced in court by Mr. Wacker, so that Mr. Terry can check them up, and let them be returned as he receives them without any notations on them.

Do you want to ask him anything else at this time?

Mr. Vilas: Not at this time.

Mr. Goetz: How about this Exhibit A-67?

The Witness: I can get along without them tonight.

Mr. Goetz: Until the morning?

The Witness: It simply means the longer you keep them the more inconvenience I have.

Mr. Goetz: You are not going to make any tests tonight?

The Witness: I do not think I will be able to tonight.

Mr. Neumann: I can cover this by a direction from the Master that you deliver these to the complainants so that they can have them overnight.

The Master: Can you finish with them tonight?

Mr. Terry: Yes.

The Master: I will direct the witness to deliver these tables
1631 to Mr. Terry, and I will direct Mr. Terry and counsel for the complainant that they must assume responsibility for having these back here tomorrow morning at 9:30.

The Witness: I was going to say that the Consolidated men have made a copy of my copy, so why can they not use their own copy?

The Master: That is what they want to do, to see that it is a copy.

Mr. Vilas: Are these already copied?

The Witness: Your engineer made a copy of those; Mr. Morrison took them down and made copies of those, so that really I do not see why there is any necessity for taking those.

Mr. Vilas: Those are out at Flushing and we cannot get at them tonight; you will have them the first thing in the morning.

WILLIAM R. BIRDSLEY recalled.

Direct examination.

By Mr. Tobin.

Q. Is the test conducted by the City a standard test?

Mr. Vilas: That is objected to.

The Master: Objection sustained. Is the test testified to by the witness Wacker, whose testimony you have heard, the standard test?

Mr. Vilas: We object to that.

The Master: That objection will be overruled.

Mr. Vilas: Exception.

1632 The Witness: The procedure Inspector Wacker follows, as he has testified to, is the standard recognized method of testing gas on that style and type of photometer.

The Master: That is not the question. I think perhaps you better qualify Mr. Birdsley a little bit as an expert. I may perhaps have fallen into error, because I knew he has been qualified in the Consolidated case, but you better bring out what Mr. Birdsley knows about testing gas, his qualifications and experience in testing gas.

Q. Mr. Birdsley, what is your experience as a gas tester?

The Master: You know what I want on this record; let us have it.

A. I have operated various types of photometers. There are not so very many types.

By the Master.

Q. What study have you made and what experience have you had?

A. I have had experience in the testing of gas on various types of photometers, using various standards, since 1903.

Q. In what connection?

A. In connection with the testing of gas, both in the city and outside of the city.

Q. For whom?

A. Under the direction of Dr. E. G. Love, who was at that time Chief Gas Examiner for the City.

Q. For public authorities, or individuals, or private parties?

A. For public authorities and private individuals. I acted a

Dr. Love's assistant in the work until 1906, when I was appointed.

1633 Q. Have you made any study of the different kinds of apparatus that are used for gas testing, and the different methods?

A. Oh, yes, I have made that study.

Q. Where did you get that information?

A. I got that from various textbooks and from using the apparatus.

Mr. Tobin: Yourself?

The Witness: Myself.

Q. Is there more than one kind of recognized method of testing gas?

A. The method is practically the same, that is judging the intensity of light on the basis of the inverse squares. The apparatus does vary. The Sugg-Letheby Photometer, which has been described already, is a standard photometer and is used in nearly all cases for the testing of gas. There are other types of photometers, one that I know of at the present time being the Sharpe-Miller Photometer or luminometer. That has an electric standard and is used to determine the candlepower feet for the illumination in various parts of the room. I would not call that a standard apparatus for testing gas. There are also electric photometers which are used for laboratory work only, but to go back to the Sugg-Letheby, that is really the only standard photometer used in the testing of gas, both in laboratories and in the works.

Q. And the method of using it is the method described by Mr. Wacker?

A. It is.

By Mr. Tobin:

Q. You are familiar with the provisions of the——

The Master: Do not get into that. I am not going to let him testify that it complies with the statute. I will let you prove
1634 it is the standard method and this is the way to handle that machine. I cannot let you have anything else.

By the Master:

Q. The accuracy of the report made depends entirely upon the accuracy of vision of the observer, does it not, Mr. Birdsley?

A. Yes, and in addition, of course, the accuracy of the——

Q. Of the computation?

A. Of the computation and the various pieces of apparatus which are a part of the photometer itself.

Q. It likewise depends upon the candles?

A. The candles, of course, may vary. It is left to the judgment of the observer to determine whether those candles are burning properly. There are certain fixed rules pertaining to the way a candle should burn before it should be used, and the inspectors are in-

structed that they observe these precautions and observe the condition of the candle burning before they make the test, and no test should be made before those conditions have been observed.

Q. Inspectors are merely human, are they not?

Mr. Cummings: Why, surely, everybody is apt to make mistakes, if that is what the Master is trying to get at.

The Master: No, what I am trying to get at is that there is no fixed and sure and certain standard of measurement.

Mr. Cummings: There is no machine, if that is what you mean.

The Master: When you get a number of averages of months would show pretty well it does not indicate fraud.

1635 Mr. Cummings: No, we are not claiming that.

The Master: Well, that is the whole theory of your defense—fraud.

Mr. Cummings: Why, absolutely not.

The Master: It must be.

Mr. Vilas: It says wilfully and wantonly and purposely failed to comply with the standard.

The Master: It must be, naturally. Failure to show the required standard is not enough in equity to throw this company out of court.

Mr. Cummings: Not a few isolated cases would not be, perhaps, no

The Master: No, and proof that they manufactured a standard gas in their works that generally and ordinarily would show up at the testing station at 22 or better, taken in connection with the actual result, must be taken as bearing heavily against any claim of a deliberate intent or a practice of failure to comply with the statute.

Mr. Cummings: What would you say if you had 145 violations a year?

The Master: That means nothing to me.

Mr. Cummings: Is that intentional?

The Master: No.

Mr. Cummings: That is accidental?

The Master: That means nothing to me, because a great ma of those 140 odd violations may be fractions of one per cent. whic would be included, and it would likewise be so close in most i stances as perhaps to be explained by the variance in the observe vision or the accuracy of vision or by some other thing. Y

1636 will not get any court to throw this complainant compa out of court, seeking equitable relief, unless your proof ten to show a deliberate violation of the statute—practically a fra on the public.

Mr. Cummings: I think one in three, violating the statute o third of the time, shows that.

The Master: Not at all. Let me have those sheets.

Mr. Cummings: I am reading from the annual violations, number of daily violations during the year.

The Master: No, I am just turning at random to a month h Now, this is a pretty bad month in September, 1916.

Mr. Cummings: Then read it.

The Master: Take 21.68 as the first item there. That is one that is included in a large number. You had 140 in what year?

Mr. Cummings: 145 in 1916.

Mr. Neumann: How about September 2nd, 19.96. Take September 11th, 17.83.

The Master: No, this is what I want to bring out. Take, for instance, the month of November, 1916, among those that will necessarily be included as violations is the 2nd of November, 21.70, pretty close to 22. 21.78, very close to it. 21.50 and 21.48. There are some that are further away, but you have included a great number that are very close to it. 21.61 in January, 1917.

Mr. Neumann: Well, you take September, 1916, which is practically a summer month, 17.83, that shows up pretty bad. There are 21 violations on that.

1637 The Master: I have indicated my views clearly on that. I will not find fraud.

Mr. Vilas: The answer says continuously, persistently, knowingly and wilfully.

The Master: I will not find that they continuously, persistently, knowingly and wilfully did it.

Mr. Neumann: To which we respectfully except.

By Mr. Tobin:

Q. Mr. Birdsley, you found Mr. Wacker a careful man?

Mr. Vilas: I object to that.

The Master: Sustained. I will assume that Mr. Wacker was not alone careful but intelligent and conscientious, and yet I shall take notice of the fact that he is an ordinary human being.

Cross-examination.

By Mr. Vilas:

Q. Mr. Birdsley, in any of the tests of gas are corrections made for temperature?

A. Yes.

Q. Temperature of the gas?

A. Temperature of the gas, yes.

Q. Is any account taken of the temperature of the room?

A. No, we use no correction. That is, the city does not use any correction for room temperature. That is, as I understand it you mean the effect which room temperature may have on the stem of the thermometer, extending outside of the meter.

Q. No, I asked you if they took into account the temperature of the room at all?

1638 Mr. Neumann: The witness has asked you what you meant.

A. "Took into account" is very indefinite.

Mr. Neumann: The witness has asked you what you meant.

The Master: The witness Wacker did not testify to any computa-

tion, and so far as I know he was not expected to make any computation based on the temperature of the room.

The Witness: No.

Q. And you do not keep a record of the temperature of the room aside from the record of the temperature of the gas?

A. No.

Mr. Neumann: That is object-d to— all right, he has answered.

Mr Cummings: It does not matter anyway, Mr. Wacker would not work in the cold.

Mr. Vilas: I am asking Mr. Birdsley general questions now.

Q. There are many factors in connection with this photometer that you speak of that have to be taken into account in arriving at an accurate test of the candle power of the gas, are there not?

Mr. Neumann: Objected to on the ground it is vague, meaningless and indefinite.

The Master: Overruled.

Mr. Neumann: Exception.

A. If I could just hear that question?

Q. I will amplify that. For instance, what is the first portion of the instrument that the gas comes in contact with when it goes into the photometer?

A. The dry governor.

1039 Q. And from here where does it pass?

A. From the dry governor it goes to the meter.

Q. And how large a meter is it; what is the capacity of the meter?

A. It is what they call a one foot meter, as we understand it.

Q. Is it customary in your department to test those meters?

A. Oh, yes.

Q. At regular intervals?

A. Yes.

Q. How frequently?

A. I do not know exactly how long ago that meter was tested down there. It was tested by the American Meter Company, I believe, about a year ago. I am not positive as to that.

Q. If the meter does not register accurately that will affect the accuracy of the test, will it not?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on an hypothesis and a supposition.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: If the meter is out of order the result would be inaccurate?

The Witness: If the meter is out of order the result would certainly be inaccurate.

Mr. Neumann: And if the meter is in order it would be accurate would it not?

The Master: Do not answer that.

Q. The same is true of a dry governor, is it not?
A. Beg pardon?

Mr. Neumann: Same objection to that.
The Master: Objection overruled.
1640 Mr. Neumann: Exception.
The Master: Mr. Vilas is trying to bring out, in order to get an accurate result your instrument has got to be in perfect order. I suppose that is so, Mr. Birdsley?
The Witness: That is true.
Mr. Neumann: And if it is accurate, then he gets an accurate result.
The Master: And it is in accordance with his testimony when Mr. Birdsley says this machine is the proper machine and the way Wacker tested it is the proper way to test gas. Mr. Vilas is properly bringing out that not alone does the test depend on the accuracy and vision of the observer, but in addition thereto it depends very largely upon the accuracy of the machine itself. Unless the machine is examined from time to time to see that it is in proper accurate working shape the result is not dependable.
Mr. Neumann: Did not the Master bring out all those questions?
The Master: Isn't that so?
The Witness: The machine must certainly work properly in order to get accurate results.
Mr. Neumann: Why not ask him the converse of the proposition?
The Master: Because it speaks for itself. What is the use?
Mr. Vilas: What are you afraid of; the witness is right?
Mr. Neumann: I am not afraid of him at all.

1641 Q. Where do you obtain your supply of candles?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.

A. From the American Meter Company.
Q. Have you had a uniform quality of candles during the last four years, say from 1916 on?

Mr. Neumann: It is objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.

A. The candles in some cases were not satisfactory. When they were not satisfactory they were rejected.
Q. That does not answer my question.
Mr. Neumann: I submit that it does. It may not be the answer you wanted, but it answers your question.

The Master. The witness has stated that they have not always been satisfactory. What has been the trouble with them?

The Witness. The candles did not burn within the limits, the prescribed limits as recognized by the method of testing, and when the inspectors found the candles burning that way, they simply discarded them, and as many as burned that way were discarded and the tests discarded also.

Q. What is the prescribed limit; what do you mean by the prescribed limit of burning the candle?

1642 A. It is assumed that a candle would not burn between, say 91/2 minutes and 101/2 minutes.

The Master. It will burn properly.

The Witness. It would burn properly, I mean. It would not burn properly outside of those limits, I should say.

Q. That is, between 91/2 minutes and 101/2 minutes you would accept candles as correct?

A. Providing the candle was burning properly. There are also other conditions to observe.

Q. What other conditions, describe them to us?

A. The point of the wick must be bright red and have a curvature, and the cup must be fairly dry and not too much sperm floating around inside the cup. Of course, that is known to be the proper way the candle should burn, and the inspector is instructed to use such precautions.

Q. By the cup you mean the top of the candle, around the wick?

A. Around the wick, yes, sir.

Q. Right below the flame?

A. Yes, sir.

Q. Do you mean to be understood as saying there are no tests accepted where the candle burns less than 91/2 minutes or more than 101/2?

Mr. Neumann. Objected to on the ground it is incompetent, irrelevant and immaterial, fully covered, the witness' answers speak for themselves.

The Master. Overruled.

Mr. Neumann. Exception.

A. The inspector, of course, as I said before, uses his judgment. Within those limits a candle may not burn properly and they will be thrown out.

1643 Q. You mean in other respects; it may not burn properly in other particulars?

A. In other particulars.

Q. I am speaking now of the time.

A. Between 91/2 minutes and 101/2 minutes.

Q. Is that a rule of your department?

A. No, it is not a rule. I would have no compunction about re-

eiving a test, say, that burned 9.45, if I was making a test and was atisfied with the condition of burning of the candles.

The Master: How about beyond 9.45?

The Witness: I would also take a test that burned 10.55, if in my stimation the candles were burning properly. I would use my wn judgment in that case.

Q. In other words, the inspector uses his judgment as to the time, verned by the other conditions of combustion?

A. By the other conditions.

By the Master:

Q. I think you better explain on the record what you mean by $9\frac{1}{2}$ and $10\frac{1}{2}$ minutes. What do you mean by that, that it shall rn a certain amount of grains or what?

A. That is in using two candles in the test we would burn 40 grains of sperm in 10 minutes, if the candles were burning accordng to the standard prescribed.

Q. For each candle?

A. 20 grains for each candle, 40 grains for the two candles in 10 inutes.

Q. That is what I wanted to make clear on the record. When you are talking about $9\frac{1}{2}$ to $10\frac{1}{2}$ minutes what you mean 944 is that if the candles burn at the rate of 20 sperm—is that what you call them?

A. 20 grains of sperm.

Q. 20 grains of sperm, in approximately 10 minutes, you would ay the candle was burning properly?

A. Burning to standard.

By Mr. Vilas:

Q. That would be 120 grains per hour?

A. 120 grains per hour per candle.

Q. You do not use a single candle in your tests?

A. No, we use two candles.

Q. And you obtain those by cutting candles in two, do you not?

A. Yes, a long candle is cut in half.

The Master: Always?

The Witness: Always.

Q. Is that done by the inspector?

A. That is done by the inspector.

Q. Each one cuts his own candles?

A. Yes, sir.

Q. And after the candle is cut it has to be shaped, does it not?

A. Part of the sperm—the candle is burned from the centre to e ends. The candle is cut in half and the sperm pared away from e centre, which was the centre in each case, and now becomes the per end of each candle, and the bottom and the top then become th bottoms of the candles.

Mr. Neumann: That is for the purpose of exposing the wick, is it not?

1045 The Witness: That is for the purpose of exposing it, giving it a wick. It must have a wick.

Q. And the bottoms are fitted to a receptacle, are they not?

A. The top, what was the top of one part of the candle, is then pared off to make it the bottom of the candle.

Q. How long is a single pair of candles in use, ordinarily?

A. Depending on the number of tests. I should say that where several tests are made one after the other, you can get about four tests out of one candle cut in half.

Q. That is four 10 minute tests?

A. Four 10 minute tests, yes, sir, running fairly close together, say about fifteen or twenty minutes apart.

Q. The quality of the wick in the candle has a great deal to do with its efficiency as a standard, has it not?

A. Yes, of course, the condition of the flame will be dependent upon the condition of the wick and, of course, that is all left to the judgment of the inspector also.

Q. There is considerable difficulty at times in the quality of the wicks, is there not?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. There is not so much weight placed on the quality of the wick, it is the condition of the flame which is giving off the light.

1046 Of course, the wick may be one of the factors which will cause this irregularity or this unsatisfactory condition of the flame.

Q. Where did you get your supply of candles during 1919?

A. From the American Meter Company.

Q. And where do they come from?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and may not be within the province of this witness to testify.

The Master: Overruled.

Mr. Neumann: Exception.

A. I understand they come from England.

Mr. Neumann: I move to strike the answer out.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Was the supply of candles during the war of the same quality that you had before the war?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, does not show anything as to dates, the term of war may be indefinite.

The Master: Overruled.

Mr. Neumann: Exception.

A. I am not sure if my memory serves me right in this: During the year 1918 I remember we had a little difficulty in getting deliveries, but we had sufficient candles to carry on the testing, and I do not believe that the candles were any worse than we had before, or that we had any more trouble with them.

Q. Is it not a fact that you had considerable difficulty in getting candles from England during 1916 and 1917?

1647 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and already covered.

The Master: Overruled.

Mr. Neumann: Exception.

A. We did not get our candles from England, we got them from the American Meter Company, and the deliveries made by the American Meter Company were sufficient to keep us in supply, and we were able to make our tests.

Q. Do you know whether the candles were represented by the American Meter Company to be English make or American make?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. They were represented to be English make and were so stamped on the box.

Q. You said, I believe, there were other types of photometers than the one you have described. Do you say yes?

A. Yes, I understand that.

Q. Where have you seen other types?

A. Why, up in the Standard Testing Laboratory they have several types.

Q. What do you refer to when you speak of the Standard Testing Laboratory; in New York?

A. In New York, yes.

Q. A Government laboratory?

A. No, I believe it is a private concern that does the Standard testing for various concerns. They test electric lamps. I believe they call it the Standard Testing Laboratory.

1648 Q. What other types of candlepower testing apparatus do you know of that are in use?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. We sought to bring out the same proof and the Master excluded it.

The Master: Overruled.

Mr. Neumann: Exception.

A. There is what they call the Spherical Photometer. It is a large sphere and the light under observation is inside of that sphere. Then there is a photometer which the United States Bureau of Standards use, an electric photometer with an electric standard.

Q. Have you ever made tests with any of these other types of photometers?

A. I have made tests with the Sharpe-Miller Photometer.

Q. What type is that, the one you have just described, the spherical one?

A. No, that is a luminometer for getting the candlepower in various parts of the room, or taking the direct candlepower observations.

Q. It is a fact, is it not, that these other types that you have described are in use throughout the country and in various places for testing gas?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. Here is a statute that provides the method whereby the test should be made. This witness has testified he makes the tests in accordance with that statute.

The Master: I am not so sure that you comply with the statute.

1649 Mr. Neumann: What they do in other parts of the country is immaterial to this issue.

The Master: I will overrule the objection.

Mr. Neumann: Exception.

Mr. Cummings: I object to it unless it is in general use.

The Master: Overruled.

Mr. Cummings: Exception.

A. No, those types are not used for the testing of gas in a general way.

Q. Well, they are used, are they not, you do not mean to say they are never used, not used any place in this country?

A. No, I said not generally used.

Q. What is the difference between this luminometer as you call it and the photometer that you use here?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. It is quite a small affair, it is a little box with a graduated scale inside. There is a disc, which is a prism, and the Standard is a very small electric light which is controlled by means of a rheostat and small storage batteries. The photometer itself is all right for making tests, as I say, in a room to determine the candle feet at any given point, but it must be continually standardized against some other standard. So in my mind an electric standard is not suitable, because there is never any assurance that the bulb itself is not deteriorating, and also there is no correction

1650 made for aqueous vapor.

Q. Let me ask you this question, Mr. Birdsley. You have stated that the time of burning may be from 91_2 to 10^2 minutes, I believe?

A. Yes, sir.

Q. What difference in candle power reading would be brought about by that much variation in the burning of the candle, that is, the variation of a minute?

A. I do not quite understand that question.

Q. I will put it another way. If you take a test with a candle that burns $9\frac{1}{2}$ and then you take a *cast* of the very same gas that burns $10\frac{1}{2}$, will you get a different result with the candle power that burns $10\frac{1}{2}$?

Mr. Neumann: How can you? One candle is burned out.

Mr. Vilas: Do not try to confuse him; he knows what I mean.

A. There will be a different result, yes.

Q. You will get a different result?

A. If the light under observation is the same.

Q. Assuming the light under observation is the same, and made first with a candle burning $10\frac{1}{2}$ and then with a candle burning $9\frac{1}{2}$, what percentage of difference will that make?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. It must be based on hypothesis and guess.

A. I would have to figure that out. I would have to know what the standard is first, what the light under observation and the power of it must be.

[65] Mr. Neumann: There are a lot of facts you have to put in your question before the witness could answer it.

The Witness: Give me a specific candle power and I will figure it out.

Q. Suppose you had a 22 candle power gas and a $9\frac{1}{2}$ minute candle, and then tested the same gas with a candle burning $10\frac{1}{2}$?

A. It will take only a short time, but if I had those logarithmic tables I could figure it out in a second.

Q. All right, there they are (handing witness).

Mr. Neumann: Before the witness answers the question I want to add to my objection, that the question as framed is manifestly unfair, and will not bring out the facts in a fair way. Does the Master rule on that objection?

The Master: Objection overruled.

Mr. Neumann: Exception.

A. If the candle burning at the rate of 9.52 indicated a candlepower of 22, then if the candles burned at the rate of 10.50 the candlepower would be 24.15. I did not carry it out very far as to decimals.

Mr. Neumann: May I ask this, so that the record may be straight? Did counsel intend to mean the observed candlepower or the corrected candlepower? Because that makes some difference.

Q. You gave us the corrected candlepower, didn't you?
A. No. I took it just as you gave it to me.

Mr. Neumann: What was it based on? I want to ask counsel what his question was based on, the corrected or the ob-
1652 served candlepower?

Mr. Vilas: I take the witness's answer.

The Witness: I estimate that the 22-candlepower was corrected at 9.52.

Mr. Neumann: And not on the observed candlepower?

Q. Now, take the reverse of that, Mr. Birdsley, suppose that the 10.50 candle provides a corrected reading of 22 candlepower, under the same circumstances what would have been the reading if the candles had burned at 9.50?

A. That would have been higher—or at least it would have been lower.

Q. Just tell us how much lower?

A. Assuming that the 22 candlepower was corrected for everything else, and the time of consumption of sperm was 10.50, the candlepower at the rate of 9.52 at the time of burning would be 19.89.

The Master: In other words it makes a very substantial difference, doesn't it?

The Witness: Oh, yes.

Q. And if you have candles burning at the rate of 9.50, that means 114 grains of sperm per hour, does it not?

A. Yes.

Q. And 10.50 would make 126 grains per hour, is that right?

Mr. Neumann: One moment. I think that was a misstatement of the figures.

Mr. Vilas: He will correct me if my arithmetic is poor.

Mr. Neumann: Isn't 9.50 126, and 10.50 114?

1653 The Witness: Yes, it is just the reverse. It is not exactly 114. 10.50 is 114.3.

Mr. Neumann: And what is 9.50?

The Witness: It is about 126 even.

Mr. Neumann: Do you admit you were wrong?

Mr. Vilas: I just reversed it.

The Master: He doesn't have to admit it. The fact is apparent that the faster the candle burns the more sperm is burned.

Mr. Vilas: That is all.

Redirect examination.

By Mr. Tobin:

Q. If you find that the candles are burning faster than the rate of 9.50 the usual method is to take a new test, is it not?

Mr. Vilas: I object to that. He has not testified to that. I

has testified that those are the limits within which they accepted tests.

Mr. Tobin: I am asking him if it burns faster than 9.50 whether the usual practice is to make another test.

The Master: I will sustain the objection. I will ask the witness if he accepted tests which showed the candle burning faster than 9.50.

The Witness: We have accepted probably 9.45, yes. As I say, it is understood that the inspector would not turn in a test like that unless he was perfectly satisfied that the candles were burning fairly well.

Q. Do you deem the photometer method as used by the City in the testing of gas as being as accurate as the luminometer
1064 method that you testified to?

Mr. Vilas: I object to that as incompetent.

The Master: I am going to let the witness state what I understand he will say, that he thinks it is better. What is the use of wasting time? Hasn't he said that he didn't think much of the luminometer because it had an electric bulb, and that was apt to vary, and he indicated that is what he thought. Haven't I understood your statement correctly, Mr. Birdsley?

The Witness: That is so.

Mr. Tobin: That is all.

(Witness excused.)

Adjourned to Tuesday, June 8, 1920, at 9:30 a. m.

Last Complainant's Exhibit No. 104.
Last Defendants' Exhibit A-69.

1065 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 8, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neuman, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Chambers: I would like to call the Master's attention to the

situation which confronts the defendants in regard to being entirely ready to close up the case.

Mr. Hine has been working faithfully and diligently for a long time in appraising this property, and has had with him at least two engineers, I think three, so we put just as many engineers on the job as the thing would stand.

He tells me that he will not be ready to testify until the 16th day of June, and then he will be all ready. He and Mr. Maltbie will be the only two witnesses we have left after we get through here, and Mr. Maltbie will be ready at the same time. He is in the same situation as Mr. Hine, that is, he gets his information from the accountants of the Public Service Commission. They have been working constantly on the matter and there has been do delay on our part.

1656 Mr. Neumann: Your Honor knows the situation with reference to the four tables that was outlined to you yesterday on the record and by Mr. Cohen: We will not be ready with those tables until the latter part of this week, and that will complete all of our tables.

The Master: What I cannot understand is this, why your Accounting Department should spend weeks and months preparing tables that are in evidence in other forms. What earthly use was there in having your men spend the time they did to show me what they have. It is utterly ridiculous and a waste of time.

Call your witness now and let us get through with what we have here today.

Mr. Vilas: I know from having been out there before the show was off the ground that the engineers were there then.

The Master: Let us go ahead with your next witness.

FREDERICK A. DEDE, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Cummings:

Q. Where do you reside, Mr. Dede?
A. Forest Hills, Long Island.
Q. What is your business?
A. Deputy Tax Commissioner.
Q. For the City?
A. Yes, sir.

Q. How long have you been a Deputy Tax Commissioner?

1657 A. About fifteen years.

Q. What were you prior to that, what business were you engaged in?

A. For five years immediately before that I was a clerk in the same department. Before that I was in the real estate business.

Q. Do you hold your present position as Deputy Tax Commissioner as a result of some competitive examination?

A. I do.
Q. And you were appointed, were you, from an eligible list?
A. Yes, sir.
Q. After such examination was conducted?
A. Yes, sir.
Q. Were you assigned to the district in which is included the land owned by the New York & Queens Gas Company?
A. Only for the year 1916.
Q. Just that one year, 1916?
A. Yes, sir.
Q. Will you describe your duties as Deputy Tax Commissioner?
A. Appraising all real property for the purpose of taxation for the City of New York within the particular district to which we happen to be assigned for that year.
Q. For the year 1916 that was?
A. Yes, sir.
Q. After 1916, I assume that you were assigned to some other district?
A. I was sent to another district, yes sir.
The Master: You assessed it for the year 1916?
The Witness: Yes, sir.
1658 The Master: You looked at it in 1915 for 1916?
The Witness: In October, 1915.
The Master: For the year 1916?
The Witness: Yes, sir.
Mr. Neumann: That is the usual time?
The Witness: I made a mistake in saying October. The time was changed shortly before that. That particular year I think the assessing was done in the spring as of October 1st.
Q. You start your work about April?
A. Yes, sir.
Q. And make a report in October?
A. Yes, sir.
Q. And is that a sworn report?
A. Yes, sir.
Q. And in that report you make a sworn statement, do you, of all the taxable property in your district, with the values placed on such property?
A. Yes, sir.
Q. Is the sum that is set down in such report a sum which in your judgment each separate parcel of real estate under ordinary circumstances would sell for if wholly unimproved?
A. Yes, sir.
Q. Do you also set down the value for the property as improved?
A. Yes, sir.
Q. Will you state the value that you placed upon the land of this company, unimproved?

Mr. Vilas: I object to that. In the first place——
The Master: Objection sustained. I don't care what valua-
1659 tion he placed on it. I will take his testimony at to what, in his opinion it was worth.

Mr. Vilas: I object to that, first, on the ground that the witness is not qualified, and I ask an opportunity to examine him as to his qualifications.

Second, that the testimony is not binding upon this complainant, is not competent as against this complainant, and is not answering any testimony offered by the complainant. The complainant has not relied in any way upon this kind of testimony. Complainant has offered no proof of any valuation of this property as of 1916. The time fixed is too remote to have any bearing or relevancy on the issue in this case.

The Master: What bearing has that on this case, values prior to this time, 1919 and 1920?

Mr. Cummings: We are going to cover the period from 1904. We take the position that you should consider all the facts for a period of ten or fifteen years.

The Master: What has the value of property got to do with it, as to what it was valued at?

Mr. Cummings: If you can tell me this, whether appreciation in value of real property should be used as an offset against depreciation, I will answer your question.

The Master: What is that?

Mr. Cummings: If you can say that appreciation in real property should not be offset as against depreciation if you can answer that, then I can tell whether this is pertinent or not. What we want to show are the valuations from 1904 on down.

1660 Mr. Vilas: He is trying to take away the appreciated value of our real estate.

The Master: I am going to try to do it, too, if I can.

Mr. Cummings: How will you know the appreciation?

The Master: I asked Halleran about the value prior to the war. I will overrule the objection. I will take your opinion as to what this land was worth under ordinary circumstances.

Mr. Vilas: Exception.

The Master: What lot are you talking about?

Q. Describe the property?

Mr. Vilas: I still urge my objections to the witness' qualifications.

The Master: Objection overruled.

Mr. Vilas: Exception. It appears that this man was there one year and it does not appear that he had any knowledge of real estate in that locality at all.

Mr. Cummings: You can cross-examine him as to all those things.

Mr. Vilas: I am asking leave to do so.

The Master: You don't have to have leave after his testimony is in. Then you can cross-examine him to your heart's content.

What lots are you talking about, Mr. Dede?

The Witness: The property known as Block 170, Lot No. 31. The original piece, that is the piece with the bulk of the plant on it has a frontage of 332 feet on Myrtle Avenue, running through——

The Master: You are reading from the tax map?

1661 The Witness: Yes, sir. Running through on Byrd's Alley a distance of 300 feet to 31st Street. Then on 31st Street a

distance of 280 feet to Farrington Street; then south on Farrington Street, at that time——

The Master: Back to Myrtle Avenue?

The Witness: No, it did not, because some of these properties were acquired later, and it almost takes a lawyer to make out when these things happened. It ran back along Myrtle Avenue 75 feet.

The Master: Isn't this the situation, Mr. Dede, that the property that you appraised was on Myrtle Avenue, fronted Myrtle Avenue from Byrd's Alley to Farrington Street?

The Witness: Yes, sir.

The Master: And it ran up Farrington Street to this Center Drive or 31st Street, as it is now called, with the exception of a plot 50 by 135 feet, beginning 75 feet from the corner of 31st Street or Center Drive?

The Witness: Yes, sir.

The Master: Otherwise the block fronting on 31st Street to Byrd's Alley and back on Byrd's Alley to Myrtle Avenue?

The Witness: Yes, sir.

The Master: What in your opinion was that worth when you looked at it in October, 1915?

The Witness: $10,500.

The Master: Did you appraise this other lot in here, this 50 foot piece?

The Witness: Yes, sir.

The Master: What in your opinion was the value of that?

The Witness: $700.

The Master: Did you appraise some other property over here somewhere?

1662 The Witness: Yes, sir.

The Master: What lot was that?

The Witness: Block 171, Lot 40, 125 by 100.

Mr. Vilas: This is all over my objection.

The Master: Yes. What is this lot we are talking about on the other side of the street, Block 171, Lot 40?

The Witness: Yes, sir.

The Master: You said that was worth how much?

The Witness: $1,000.

The Master: You gave me 50 by 125 here as worth $700.

The Witness: That is a different condition, that runs down into the Meadows.

The Master: So Block 171, Lot 40, you figure at $1,000?

The Witness: Yes, sir.

The Master: Block 171, Lot 39, you figure at $700?

The Witness: Yes, sir.

The Master: And Block 170, Lot 31, you figure at $10,500?

The Witness: Yes, sir.

The Master: What experience have you had in Queens County, around that section?

The Witness: Experience in the Tax Department for some twenty-odd years.

The Master: Over in Queens?

The Witness: Yes, right in that same locality, subsequent to about eight years in buying and selling real estate myself.

The Master: Go on, next question.

Q. You also placed a valuation upon the property as improved, did you not?

A. Yes, sir.

1663 The Master: What do you mean, as improved, Mr. Dede, what kind of improvement?

The Witness: We have to assess whatever physical improvements may be on the land, what we consider its true value.

The Master: What was there, describe it?

The Witness: There were a number of buildings, some of them good, some of them indifferent, some of them bad, together with two tanks and a boiler house.

The Master: Did you ever build a tank?

The Witness: No, sir.

The Master: You don't know anything about the cost of tanks?

The Witness: At that time from the knowledge the Department could get——

The Master: You got some figures from the Department as to what the unit value on tanks was, is that the idea?

The Witness: Yes, sir.

The Master: You did not exercise any judgment of your own?

The Witness: I might say we all got that factor from an investigation of what tanks cost.

The Master: But the Department calculated that, didn't it?

The Witness: As a department.

Mr. Neumann: They got the best information they could.

The Master: Yes, we had that out in the Consolidated case, and I understand it perfectly. As to tanks, the Department fixed a schedule, worked out a schedule as to what gas tanks were worth?

1664 The Witness: Yes, sir.

The Master: And you men adopted that?

The Witness: Yes.

The Master: You didn't go to the tank and examine the inside of it and the outside of it; you saw a gas holder, and you took the department basis?

The Witness: We took the standard basis.

The Master: You also have a standard basis for certain characters of buildings, don't you?

The Witness: Yes, sir.

The Master: And when you went there and saw a two-story brick building, or a brick building three stories high, you took the factor for that?

The Witness: Except that we were not bound by that particular factor, we did not in all cases use it, and did not have to use it. The adaptability and location of a building decided us whether we will use the department's arbitrary factor or not.

The Master: Generally speaking, that was the basis of your calculation, was it not?

Mr. Neuman: I must object to that characterization of the Master of this witness' testimony. That is not what he has said, the record speaks for itself.

The Master: As I understand it, they have worked out factors for all characters of buildings. Mr. Dede, what you do is to go to this place and look at it and say that comes pretty close to the basis.

Mr. Cummings: He uses some judgment.

The Master: But the judgment starts with the factor. He
1665 goes there and says that the department factor generally fits this class of building, $1.25 a cubic foot, or whatever it is, that there is no reason why he should change it, and he adopts that factor.

Mr. Neumann: If he does adopt it, but if he does not he uses his own judgment.

The Master: The difficulty with this appraisal of buildings and tanks and other things by Deputy Tax Commissioners is that the Department has tried to make a uniform basis throughout the City. It is a fair basis for taxing purposes, but as I said in the Consolidated case, we have got to take an entirely different rule in appraising independent pieces of property.

Just let me ask one thing more. Was any machinery or apparatus included in your appraisal?

The Witness: Yes, sir.

The Master: Where did you get those figures from?

The Witness: Why, it is so long ago it is hard for me to say.

The Master: Well, you never manufactured or brought or sold gas-making apparatus?

The Witness: No.

The Master: You must have gotten it somewhere else?

The Witness: We gathered the information, sometimes from the officers of the Gas Company, if we could get it, sometimes from outsiders, sometimes figured it on the basis of Departmental figures.

The Master: Can you tell us now how you got any figures for apparatus?

The Witness: Mostly from the Department.

1666 The Master: And buildings the same?

The Witness: Yes.

The Master: And holders the same?

The Witness: Yes, sir.

The Master: So, as I understand your testimony, as far as buildings, apparatus and gas holders were concerned, your best recollection is you took the Department figures?

Mr. Neumann: I object to that on the ground——

The Master: That is what he said.

Mr. Cummings: He did not.

Mr. Neumann: If your Honor please——

The Master: I am not going to have Mr. Dede say something he didn't say.

Mr. Dede. I don't want you to tell me anything that is not the fact; I am trying to get the fact on the record, and in spite of counsel butting in and interrupting, I am going to get what you tell me is the fact. Don't pay any attention to either counsel on either side. Now, what is your best collection as to your figures as to improvements, that is, buildings, apparatus and holders; are they the Department factors or not?

The Witness: In this case I must say it is.

Mr. Neumann: If the Court please, this is what I wanted to say before when you interrupted me, that the situation here evidently is analogous to a situation of three or four men. In this case it is a considerably larger number of men who get together and exercise their own judgment, and then agree upon a figure based upon all of their knowledge, their combined knowledge, as to what is a fair valuation. Now, the situation there is not any different than
1667 three or four men getting together and appraising a piece of property, and each man probably arriving at a different figure, and then the four men agreeing on what is a fair figure for the entire property.

The Master: We had this all out in the Consolidated case, and there is no use arguing it any more. Have you any other questions?

By Mr. Cummings:

Q. Mr. Dede, in these figures that are submitted to you from the Department, just called to your attention by the Master, do you or do you now use your own judgment, your independent judgment in addition to that? In other words, are you entirely bound by the figures as supplied to you by the Department?

Mr. Vilas: I object to that.

The Master: I will allow it. He says he is not bound by it.

A. No, sir, we are not bound.

The Master: Now, do you want to put the question as to what he thought the value of the property was, so I can rule on it?

Q. What, in your opinion, Mr. Dode, was the valuation of the property as improved, including the land and the improvements thereon?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

Mr. Cummings: Exception.

The Master: I am not going to decide this case on expert opinion any more than I did in the Consolidated case.

Mr. Cummings: On the valuation of real property.

The Master: On any kind of valuation.

1668 Mr. Neumann: One of the grounds upon which we ask for a dismissal and for a report forthwith is on that very point.

The Master: I cannot dismiss this case. I have got to make a report. If there are facts I cannot find, why I will not find them.

Cross-examination.

By Mr. Vilas:

Q. Mr. Dede, how long were you in the real estate business?
A. About five or six years, I should say.
Q. And how old were you at that time?
A. Possibly started about 19 years of age, from 19 to 23 years.
Q. And after that did you go into the Tax Department?
A. Yes.
Q. Been in there ever since?
A. Yes.
Q. In what department of the City were you engaged in the real estate business?
A. In what department?
Q. What part, what district?
A. In Queens County.
Q. Do you live in Queens County?
A. Yes.
Q. You lived there all your life?
A. Not all my life, about 25 or 30 years.
Q. What ward do you live in; what part?
A. At that time the Second Ward.
Q. Where do you live now?
A. Still in the Second Ward, but 'way at the other end.
Q. Were you in business for yourself?
A. Yes.
Q. Buying and selling real estate?
A. Yes.
Q. What part of Queens did you operate in?
A. In the second Ward.

By the Master:

Q. Is that Flushing?
A. That was Newtown.

By Mr. Vilas:

Q. Did you ever buy or sell any real estate in Flushing?
A. I do not think I did.

The Master: How far is Newtown from Flushing?
The Witness: The distances are very great out there. You are going to get at about where I operated as compared to this. 'Way at the other end of the Second Ward.

By Mr. Vilas:

Q. And a very different character of property from Flushing property?
A. To some extent, yes.

Q. When did you first have anything to do with the assessment of property in Flushing?

A. This year, 1915, for the tax of 1916.

Q. That is the first time you were ever assigned to that district?

A. Yes.

The Master: On what do you base your judgment?

The Witness: On whatever records we had in the field books, and the general knowledge of what happened in the sales, on mortgages that were being placed, and other factors.

Q. What was the source of your information about sales, mortgages, and so forth, that you speak of?

1670 A. Newspapers mostly, and the field books that were turned over to me by the previous assessor.

Q. That is, you took the information that you found in your predecessor's field books, is that right?

A. That is one of the factors, that, and whatever new sales happened while I was there.

Q. Will you tell us, Mr. Dede, what sales you had in mind when you fixed the valuation upon this property that you have testified about?

Mr. Cummings: He cannot remember that.

A. It is impossible for me to tell you that.

Q. Have you not your field book with you?

A. I have, yes.

Q. Does it not contain the sales?

A. This book is a book of lead pencil records and has been out of my possession for six years or more.

Q. Don't you know of any sales of real estate in the neighborhood of this property?

A. I do not recall any now.

Q. Do you recall at all whether you had any sales before you when you fixed the valuation?

A. Yes, surely.

Q. What mortgages did you take into consideration?

A. Whatever I happened to have on the field books that were turned over to me, and whatever new ones were made.

Q. Can you specify any single mortgage that you took into consideration?

A. No; there may be some here, but I would not tie myself down.

Q. Are there any memoranda there in your handwriting in that field book which you have before you now?

1671 Mr. Cummings: That book is not large enough to contain all that data you are asking about.

A. It is very hard to say; probably a lot of them rubbed out and new ones put in afterwards.

Q. Are you able to mention any lease on any property in that

neighborhood that you took into consideration in fixing this valuation?

A. No.

Q. Then you cannot tell us one single sale or one mortgage or one lease that was before you at the time you made this valuation?

Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant; the record indicates that the witness has already said that the book was out of his possession for a number of years.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I possibly could if I had time to look them up, but I did not know of this until last night after 5 o'clock, and this book came into my possession about ten minutes ago.

Q. Is that the book that you used in making this valuation?

A. Yes.

Q. But by looking at it now you are unable to tell us of a single sale, mortgage or lease?

A. If you will wait long enough for me to go through this I can find you some.

Q. We will wait.

The Master: No, we will not wait.

Mr. Vilas: I do not think we should be required to sacrifice many thousands of dollars of value because of a little time for the witness to qualify himself.

1072 Mr. Cummings: It is a physical impossibility to go back as far as 1904.

Mr. Vilas: He is giving us a 1916 valuation.

By the Master:

Q. Your field notes as to the particular sections of property are right about where your property is on the field book, is it?

A. Yes.

Q. Look right there and see if there is anything?

A. On Block 171, Lot 31, property assessed at $1,700, has a mortgage of $1,500 on it. Another property, Lot 36, assessed at $1,000, has a mortgage of $900 on it.

Q. Are you reading now from the memoranda in your own handwriting?

A. I do not know whether it is or not.

Mr. Neumann: You asked him for what he had in his field book.

A. (continued). Block 169, Lot 25, assessed $1,300, mortgage $1,000. Block 167, Lot 26, assessed at $1,300, mortgage $1,750—those things happen.

Mr. Cummings: Sure, that happens out there in Queens.

A. (continued). Lot 44 on the same block, assessed at $1,900, there is a mortgage for $1,500. I can go through this book and give you any number of them.

By Mr. Vilas:

Q. Do you know of your own knowledge of the location of these properties you have just described?

A. The description I gave, yes.

1673 Q. You do know where they are in that locality?

A. Yes.

Q. Are they in the vicinity of this property?

A. They were right around this property.

Q. What consideration did you give in arriving at your valuation of this property of the Gas Company to the mortgages that you have just described? What weight did you attach to the fact that a piece of property assessed at $1,700 was mortgaged at $1,500?

A. That taken alone I probably disregarded.

Q. You disregarded that?

A. Possibly. Sometimes it is possible that the descriptions so given in the public accounts are erroneous, and in this case this may have been an erroneous description. The only way you could locate it was by this lot, and it probably does not fit.

Q. Did you assume that or did you make any investigation of it?

A. We investigate when we have time; when we have not time we do not.

Q. So you are disposed to say now that you disregarded these three mortgages that you have described?

A. No. You asked me about one, the $1,750 mortgage on the $1,500 assessment.

Q. You told of one that was $1,700 and had a $1,500 mortgage. What weight did you attach to that on arriving at a valuation?

A. Probably investigated as to who made the mortgage, whether it was the Title Company or a bank, or whether it was a private owner.

By the Master:

Q. On the basis of the percentage of value, what would the mortgage be?

1674 A. In the case of a loaning institution it is generally around 60 per cent. These were improved properties mostly. At that time it was very difficult to get any mortgages on vacant land. I guess you could not in this particular neighborhood because the land was of such a character, no improvements, unless you had some friend that was willing to stake you, you could not get a mortgage. Of course, it depends a whole lot on what proportion of the true value you get. We try to run that down.

By Mr. Vilas:

Q. Now, prior to the time that you assessed this property, had you ever inspected it; had you ever seen the property of the New York & Queens Gas Company?

A. I had seen it; I have never inspected it.
Q. How many times have you seen it?
A. That is hard to say; I used to go to Flushing quite often.
Q. Did you ever make any inspection of it in forming an opinion?
A. Not for the purpose of forming an opinion as to value.
Q. When did you visit the property after 1915——

By the Master:

Q. How many lots were there in that $10,500?
A. I think this map says twenty-three lots; I can give it to you quick.
Q. About $500 a lot?
A. About $500 a lot, yes; it did not average that. I can give you this very concisely. It was assessed at the rate of $20 a front foot on Myrtle Avenue; $16 a front foot on Center Street, and $14 a foot on Farrington Street.

1675 Q. Is that the same as it was the year before?
A. It was the same over several years; no change.

By Mr. Vilas:

Q. Did you have the valuation of your predecessor before you when you made this assessment?
A. Surely.
Q. That was one of the factors that you took into consideration?
A. Sure.
Q. Did you allow anything for plottage?
A. No; not in this particular neighborhood.
Q. Did you allow anything for plottage on any assessments in that neighborhood?
A. Not in that year, no; not at that time.
Q. That was the only year you assessed this property, was it not?
A. Yes. The property at that time was easily obtainable and plottage did not affect its value.

By the Master:

Q. Have values over there fluctuated?
A. They have had their ups and downs, yes.
Q. 1916 was pretty low?
A. 1907, I think, was the beginning—that is the year of the panic. That is the time there was a drop in real estate up to almost the present time.
Q. So that, as I understand it, property over in that section reached a peak along about 1907, and from that time on there has been a sort of a blight on values over there, and beginning to pick up again?
A. Yes.
Q. In other words, 1916 was a pretty low ebb over there?
A. Yes.

1676 Q. Of course, your value is the value at which it would sell?

A. Yes.

Q. And in arriving at that value you have in mind, of course, the demand for real estate?

A. Absolutely.

Q. The fact that there was a very little demand for real estate?

A. Yes.

Q. I take it that your opinion as to what at that time it would sell for does not necessarily mean that in your opinion if there were a demand for real estate or somebody wanted it, it would not be worth more?

Mr. Cummings: I object to that as based entirely upon an assumption.

Mr. Neumann: That would be an exceptional matter.

The Master: Here is the trouble.

Mr. Cummings: You are asking about a factor that is not present.

The Master: Here is the situation, and here is the trouble with this kind of testimony. Mr. Dede goes there for the purpose of assessing this property for taxation purposes. He must value it in accordance with the statutory rules and requirements. He is not permitted to say, Well, you could not sell that property today for more than $10,500, but if I had it I would not sell it for any such figure. I think it is worth more, but for taxation purposes I cannot give it any greater value than that.

Mr. Cummings: The sale value is the best evidence of value.

1677 ation.

The Master: I know, but here is the situation. Here is this gas company that has a piece of property over there. It is not offering it for sale, does not intend to sell it, it is using it. Now, Mr. Dede in the performance of his duty is limited to the kind of value that he puts on it.

Mr. Cummings: You mean a sale value.

Mr. Neumann: I must beg to differ with the Master on that and take issue with him.

Mr. Cummings: You mean a sale value.

Mr. Neumann: These assessors are required by statute, the statute states what they are to do.

The Master: They are required to give their opinion as to what that property at the time they are assessing it would sell for.

The Witness: Under ordinary circumstances.

The Master: At that time.

The Witness: Yes.

Mr. Neumann: Your Honor is putting in an element of an extraordinary circumstance.

The Master: At that particular time is somebody wanted to buy it, what you could sell it for.

Mr. Cummings: Suppose you could not sell it?

The Master: That is the trouble with values.

Mr. Cummings: The lots would be practically worthless then.

The Master: Yes. So far as the taxing department is concerned it would be unfair to the owner of the property, assuming that

stranger, not a gas company, owned this particular property, if you assessed it on any basis other than what it would sell for at
1678 that time under ordinary circumstances; that is the basis.

Mr. Neumann: What was Mr. Halleran's testimony based on that it was worth $55,000 in 1919; what it would sell for?

The Master: No.

Mr. Neumann: That is what he said; I brought it out from him, what other properties in the neighborhood sold for, as compared with it.

The Master: What I am getting at is this. In my judgment there is a very clear distinction between a value placed on it and the circumstances under which a deputy tax commission must work under the statute, and the value of that property where a man is not forced to sell at that particular minute. Am I right about that, Mr. Dede?

The Witness: Yes.

Mr. Neumann: He said an ordinary sale, between a willing buyer and a willing seller.

The Master: Yes.

Mr. Cumming: That is the only valuation you can place upon a piece of real property. You cannot say, Well, nobody wants to buy it this year.

The Master: But the trouble is this, that the taxing official has got a particular situation in mind. He is trying to do the fair thing as between the public and the community itself. He has got to get a fair value, fair to all of the property owners, and having in mind that the city has got to raise revenues to pay its expenses.

1679 Now, what I want to get from Mr. Dede is, whether he wants to say that the value that he fixed in accordance with his statutory obligations is in his opinion the same value that he would give to it if he were not limited, as he was under the statute, to the particular value at that particular minute for a sale under ordinary circumstances, or whether it is not the fact that for taxing purposes he was bound to have in mind the fact that there was no ready sale for it at that time, and that a man could not sell it unless he found a man willing to buy it very cheap.

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant, all fully covered, because the witness has fully testified to what factors he took into consideration in arriving at his value.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Cummings: He is not limited in the Charter at all in placing the valuation except as to sale valuation.

The Master: I will overrule the objection and ask Mr. Dede to answer, if he will.

Mr. Cummings: Exception.

The Witness: I would say that at that time the value as fixed would have been the value that could have been obtained in the open market.

Q. If you found somebody ready to buy it?

A. Of course you would have to find a buyer, but I think a buyer could have been found at those figures; that those figures were not beyond the bounds where a buyer could be found.

1680 The Master: Would you say that the property was worth no more than that to the owner who owned it and was using it?

Mr. Neumann: I object to that; there may be sentimental values attached to it.

The Master: Leaving out sentiment altogether.

Mr. Neumann: Or the fact that a man is holding it for investment, for a rise in price, and there are a number of factors of that kind.

The Master: Here is a company that is actually occupying and using a piece of property; it is not offering it for sale; it does not want to sell it; it wants to continue to use it, and it is asking the court to fix *its* fair value in connection with its use; as to what fair value was to it for the purposes for which it was being used. Now, I am not going to ask this witness to give me his opinion of value. I simply brought out that he believed, as I believe, that there is a difference between the value that he was bound to put on, having in mind that the most you could get, for a ready buyer ready to pay for it was the figure that he fixed on it, and the figure at which it would be worth to this company for its use——

Mr. Neumann: That is objected to upon the ground that the Master's question presupposes the very question that the Master will have to decide in this case, and is not the subject of opinion evidence by this witness.

Mr. Cummings: And I also object to it upon the ground that it is incompetent, immaterial and irrelevant.

1681 The Master: My mind is still as it was, that opinions are so flexible and so variable, that I prefer to find out what was actually invested, but I want this record to show how uncertain the opinion of an expert witness is as to value.

The Witness: If you want to hear what I think of this particular proposition.

The Master: Yes, I will take anything.

Mr. Neumann: That of course is all over our objection and exception.

The Master: All right; we are in a court of equity.

The Witness: In this particular case the property was being used for a particular purpose, and for that particular purpose the property may have a value to the man that is using it far in excess of that he could probably buy the next plot for.

By Mr. Vilas:

Q. You did not take into consideration then that value, of the use of the property for a gas works in fixing your value?

A. I did, because the factor per front foot on that land is less than the factor on the surrounding property.

Q. What is the factor on the surrounding property?

A. On Farrington Street, for instance, across the street, there is a $10 factor as against a $14 factor on the side of the gas company. On Center Street there is a $16 factor against the gas company as against a $8 factor across the street.

Q. Is it not your opinion that the presence of a gas works has a deteriorating influence on adjoining property?

1682 A. That depends on the character of the adjoining property. In this case the gas works I do not think affects that property.

Q. What is the character of the property you just described?

A. Very cheap old buildings; buildings that were practically obsolete.

Q. Residences or business plots?

A. Residence property.

The Master: Then do I understand Mr. Dede, that you have not figured this property on which the gas plant stands the same as you did the adjoining property?

The Witness: No.

Mr. Cummings: Higher.

By the Master:

Q. It was not worth any more if you sold it under ordinary circumstances?

A. We took into consideration the particular use to which the property was being put.

Q. You had not any right to under the statutes?

A. Yes, we can.

Q. The land?

A. It comes down to a matter of opinion of the man who is making the assessment.

Q. The land unimproved not binding yourself to what is on it, forgetting there is anything on it, is worth no more on one side of Farrington Street than on the other?

A. Not if you look at it in that way.

Q. Is not that the way the statute requires you to look at it; land wholly unimproved?

Mr. Cummings: You can take into consideration its value and use for any particular purpose.

1683 Mr. Neumann: Mr. Vilas brought out the factors that he took into consideration, and he showed quite clearly that he took into consideration the fact that this was used for a gas plant and gave it a higher value than surrounding plots.

By the Master:

Q. What is the surrounding property; is it filled in?

A. On some streets it was. On Myrtle Avenue, on Farrington Street, these are filled. This is running down into a swamp.

Q. And the property on the other side of Myrtle Avenue and Farrington Street?

A. This is on grade over here, south of Myrtle Avenue.

By Mr. Vilas:

Q. At this time was Block 170 filled or was it low?
A. It was graded because the buildings were on it.
Q. What about Block 171; I think you said that was under water?
A. Block 171 was. The plot where the tanks are of course, were on grade, and the balance of it was running down into a swamp. This was the edge of the soft meadow.
Q. Did Block 171 have a frontage on Farrington Street, Lot 40?
A. Yes; that had a frontage; Farrington Street was on grade.
Q. Did Lot 40 front on Farrington Street?
A. No, that fronted on 31st Street or Center Street.
Q. It had no frontage on Farrington Street?
A. No.
1684 Q. With the exception of the tanks, it was all low and unfilled?
A. If my recollection serves me, the tanks in the Farrington Street front had a couple of buildings near it.
Q. Was there any factor of equalization applied to this property by the State Board, if you know?
A. I do not know anything about that.
Q. You do not know that?
A. No.
Q. You did not follow that up?
A. No.

The Master: How many of these tax witnesses have you got?
Mr. Cummings: Four of them.

GEORGE W. HILLEY, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Cummings:

Q. Where do you reside, Mr. Hilley?
A. Woodhaven.
Q. What is your position with the City?
A. Deputy Tax Commissioner.
Q. How long have you been such?
A. Twelve years.
Q. And prior to that you were what?
A. I was clerk to a deputy tax commissioner for a period of three years.
Q. You hold your present position, do you, as a result of some examination, some civil service examination, and you received your appointment from some eligible list?
1685 A. I did.

By the Master:

Q. Prior to your being a clerk what was your business?
A. I was buying and selling real estate for a period of about three years.
Q. Where?
A. In and around Jamaica.

By Mr. Cummings:

Q. Were you assigned to the section in Queens, the Tax District there, in which is located the property of the New York & Queens Gas Company?
A. I was.
Q. During what years were you assigned to that?
A. Beginning with 1909 valuation; I went to work there in 1908.

The Master: How many years?
The Witness: 1909 to 1915 inclusive.

By Mr. Cummings:

Q. During those years, Mr. Hilley, did you make a personal inspection of the property of the New York & Queens Gas Company with the idea of determining its value?
A. I did.
Q. And you furnished the Tax Department, did you, with a sworn statement of the property, and of the taxable property in that district with the values placed on each property by you?
A. Yes.

The Master: Take the land unimproved. What did you believe it to be worth in the years from 1909 down?
1686 Mr. Vilas: That is objected to upon the ground fully stated with respect to the previous witness.
The Master: Objection overruled.
Mr. Vilas: Exception.
The Witness: From 1909—you see, a number of additions have been made to that parcel. It will be necessary to describe the parcel for 1909 and the following years. You see these lots were thrown in.

A. They were purchased during the summer?
A. Yes.

The Master: I have got to have a valuation during all these years of the property that is now occupied.
Mr. Cummings: Yes.
The Witness: And for 1909 and the various ones that were subsequently taken in.

By the Master:

Q. In 1909 what lots did you appraise there?
A. Lot 31 as it stood then in 1909, had a valuation of $4,000.

Lot 43 which has since been merged in it had a valuation of $200, and 44 had a $200 valuation.

Q. That means that was your opinion of its value then?

A. That was my opinion.

Mr. Cummings: What it would sell for under ordinary circumstances.

The Witness: Lot 45 had $450 valuation, Lot 34 had $900, Lot 39 had $500, and Lot 47 had a valuation of $400.

Q. That was a total of how much for that year, for all of the parcels that are now in the gas plant on that block?

A. $6,650 for the year 1909, I make it.

1687 Q. Now for 1910.

A. As to 1910, Lot 31——

Mr. Vilas: May I interrupt? Were those lots you have given now at that time all owned by the gas company?

The Master: No, they were not.

The Witness: I do not know.

Mr. Cummings: They were not.

Mr. Vilas: You are giving the property now owned by the company?

Mr. Cummings: Yes, which property is now owned by the Gas Company.

Mr. Vilas: I do not understand the materiality of that. They did not own the property or claim it in those other years.

Mr. Cummings: You purchased it; your deeds show you purchased it.

The Witness: For 1910 the land values were exactly the same in every case.

Q. Now 1911.

A. In 1911 there were some increases. Lot 31 is $8,000.

Q. $8,000?

A. Lot 31 is $8,000, and Lot 43 is $350.

Q. $350?

A. Yes, sir. Lot 44, $350. Lot 45 was $850, and Lot 34 was $1,400. Lot 39 was $700, and Lot 47 was $750, making a valuation of $12,200.

Mr. Vilas: Are those the same lots that you described before?

The Witness: The same lots.

The Master: This witness is taking all the lots that are now included in the property you claim.

The Witness: Yes.

1688 The Master: And he is giving them for each year, as they then appeared on the tax map.

Mr. Vilas: Yes, that is clear.

The Witness: I make that $12,200.

Mr. Vilas: How much?

The Master: $12,200, he said.

The Witness: $12,200.

Mr. Cummings: Now for 1912.

The Witness: For 1912 there is only one change, but I will read them all off. Lot 31 was $8,000; Lot 43 was $350; Lot 44 was $350; Lot 45 was $950; Lot 34 was $1,400; Lot 39 was $700; Lot 47 was $850, making a total valuation of $12,600, I make it.

Mr. Vilas: That was for 1912?

The Witness: Yes.

Q. Now, 1913.

Mr. Cummings: It is increasing, you see, Mr. Vilas—all of which helps you.

A. 1913 they were identically the same.

Q. How about 1914?

A. From 1914 a number of them were merged into Lot 31, and they were a total of $10,500, and 34 and 39, which were merged in later. Lot 31 is $10,500; Lot 34 was $1,400; Lot 39 was $700. That included the Lot 47 also for 1914.

Q. That made a total of how much?

A. $12,600. That may be the same valuation as 1913.

Mr. Vilas: That is 1914?

The Witness: 1914.

Mr. Vilas: And the total is $12,600?

The Witness: Yes.

Mr. Cummings: Now for 1915.

1689 The Witness: 1915, Lot 31, $10,500; Lot 34, $1,400; and Lot 39, $700. That I guess is the same, $12,600.

Q. Did you hear the testimony of Mr. Dede about improvements?

A. I did.

Q. And is your testimony the same as his?

A. Identically the same.

By Mr. Cummings:

Q. Mr. Hilley, you also placed a valuation upon the land as improved, did you?

A. I did.

Q. During those years?

A. Yes.

Q. What improvements did you find upon the land?

The Master: Do not let us waste time about it.

Mr. Cummings: You do not want that, then?

The Master: Mr. Hilley, as I understand it—well, you can ask that question.

By the Master:

Q. You did find these gas works on the property, did you?

A. I did.

Q. The buildings and machinery and apparatus and gas holders?

A. Yes.

Q. And, as I understand it, you fixed your values there in the same way that Mr. Dede did?
A. I did.

The Master: Do you want to ask him the figure?
Mr. Cummings: Yes.
1690 The Master: Do *you* answer this question, Mr. Hilley; it is just being asked for the record so I can rule on it.

By Mr. Cummings:

Q. Will you state the valuations you placed upon the land as improved?

Mr. Vilas: Objected to on the same grounds.
The Master: During these years?
Mr. Cummings: Yes, during these years.
The Master: The objection is sustained.
Mr. Cummings: Exception.
The Master: The Master does not believe the witness' testimony should be received on that point.
Mr. Cummings: That is all.
The Witness: By the way, that Block 171, Lot 40, do you wish to——
The Master: *Didn't* give us that?
The Witness: No.
The Master: Give us Block 171 during the years, too.
The Witness: There have been lots merged in there.
The Master: Give it to us in the same way; do you see what I mean?
Mr. Cummings: Just the same as you did the other properties.
The Witness: I want to know whether Lot 45—whether they own that or not. I do not know whether they own that or not. Will you tell me whether Lot 45 belongs to them also.
The Master: No, it does not.
Mr. Neumann: Well, they have their map here. May not the witness have the map?
1691 The Master: No, he has got it; it is 125 feet.
Mr. Neumann: We show the witness Complainant's Exhibit 47.
The Witness: In that case all the lots that are included in the present lot 40, of 125 feet frontage, for 1909 the land was valued at—do you want each parcel separately?
The Master: No, give me the total.
The Witness: $1,350 for 1909. For 1910, $1,350. For 1911, $2,300.
Mr. Vilas: Unimproved?
The Witness: Unimproved. 1912, $3,400. That includes the lots that came in later; that takes in the entire 125 feet. $3,400 for 1912. I think there must be some mistake in that.
The Master: What was it in 1913; what is your figure on lot 40 in 1913?

The Witness: It left only $1,000 on this part here (indicating).
The Master: In 1913?
The Witness: Yes.
Mr. Vilas: What does that include?
The Witness: Why, that includes the 125 feet. Up to 1913 the present lot 45 was included in that valuation there. After that lot 45 was cut out of it.

By Mr. Cummings:

Q. And it left $1,000?
A. It left $1,000.
Q. For this particular piece?
A. It left $1,000 in 1913 for this 125 feet.

By the Master:

Q. The answer to it is that you cannot tell us, you cannot give us the figures prior to 1913?
1692 A. That is it.
Q. For 1913, 1914 and 1915 it was a thousand dollars?
A. Yes, a thousand dollars.
Q. For lot 40?
A. Yes.
Q. Before 1913 on account of the way the lots are laid out you could not tell us the valuation?
A. No.

Mr. Cummings: You could apportion it.
The Witness: It could be done. It would be just the same as it is today.

Q. Right back, $1,000 through the years?
A. Yes. In fact it was not increased.

By Mr. Cummings:

Q. That is your opinion, is it, Mr. Hilley, that this valuation of that particular parcel there to which your attention has been called is $1,000?
A. Since 1911.
Q. Since 1909?
A. Since 1911.
Q. Was that valuation continued during 1914 and 1915?
A. It continues during those years, 1913, 1914 and 1915.

Cross-examination.

By Mr. Vilas:

Q. What frontage, Mr. Hilley, do you show on Myrtle Avenue in 1909?
A. We have shown 232 feet for 1909.
Q. Did that extend clear to Farrington Street?
A. No, only within a hundred feet of it.

Q. There were four lots, then, that were not then acquired?
A. That is it.

1693 The Master: But he has given us the figures for those four lots.

Q. You have given us the figures for all these years of those four lots?
A. Yes.
Q. Bird's Alley, what is the frontage?
A. A frontage of 300 feet.
Q. Did you assess thus the property within the confines of what appears to be block 170?

Mr. Cummings: He assessed it all around there.

A. I do not quite understand your question.
Q. We will change the form of that. I show you Complainant's Exhibit 47. Did you assess any property which lies apparently west of Center Street and in the line of Center Street produced?

Mr. Cummings: Do you mean in the bed of Center Street?
Mr. Vilas: No, I mean the line of Center Street extended.

A. Do you mean this land in here, in this street (indicating)?
Q. Yes.
A. No.
Q. You did not place any value on that land at all?
A. I did not place any value on it at all, because our map showed it to be open, you see.
Q. Did you inspect the property?
A. I did.
Q. Did you examine that particular part to see whether it was actually and physically open?
A. It was physically open.
Q. There was no occupancy by the Gas Company?

1694 A. Not to my knowledge, and it was always possible to pass through that street there, and we consequently passed through that street there on our way to and from the various parcels.
Q. Do you recall whether there was any actual occupancy by the Gas Company, or didn't you observe?
A. No, I do not recall now?
Q. You do not remember now?
A. I remember we passed through the street.

The Master: But the point is, you did not assess it, did not include any value for that in the value of this property?
The Witness: Not for the land in the street.

The Master: I am not going to try the question of title here just now.
Mr. Vilas: I am not going to try it, either; I want to see what he assessed.
Mr. Cummings: It would not be worth anything. We are trying to show that they grabbed off a piece of property.

Q. When you were in the real estate business you were in the town of Jamaica?
A. Yes.
Q. Is that the Second Ward?
A. Fourth Ward.
Q. The Fourth Ward of the Borough of Queens now?
A. Of the Borough of Queens.
Q. During what years were you in the real estate business?
A. Why, from 1903 to 1905.
Q. Were you in business for yourself or working for somebody else?
A. I was buying and selling for myself.
1695 Q. Did you have an office?
A. I had no office, just doing a real estate business. I had no regular office.
Q. Just buying and selling?
A. Yes.
Q. And selling for others?
A. Yes, in some cases.
Q. As a broker?
A. As broker.
Q. Did you operate in the Third Ward at all during that period?
A. I did not.
Q. You were not familiar with properties there?
A. What?
Q. You were not familiar with the property there?
A. I was not.

Mr. Neumann: One moment. That is objected to on the ground it is incompetent, irrelevant and immaterial, the Fourth Ward is the one they are talking about in this case, not the Third.
The Master: Overruled.
Mr. Neumann: Exception.

Q. The character of property in the Fourth Ward is considerably different from the character of this property of the New York & Queens and the Flushing, is it not?
A. No.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.
Mr. Cummings: You do not want to try the character of the property all over the city of Flushing there.
1696 The Master: The objection is overruled.
The Witness: Shall I answer that?
The Master: Yes.
The Witness: There are places in the Fourth Ward of similar character to the location of this gas plant. I can find plenty of places in the Fourth Ward that are exactly similar.

Q. Is there any waterfront property in the Fourth Ward?
A. Is there any waterfront?
Q. Yes.
A. Well, there is on Jamaica Bay, yes.
Q. On Jamaica Bay?
A. Jamaica Bay.
Q. That is on the ocean side of the property?
A. Yes.
Q. When you appraised this property for taxation during the years that you have testified to, did you have before you any sales, leases or mortgages?
A. I had some sales on those streets. I am not sure; I have not the data now, but I will swear that on Center and on the street on the north of it, on the bay side, there were sales of lots there from $150 to $200.
Q. Per lot?
A. From $150 to $200 per lot, because it is practically meadow land.
Q. Can you specify any lot or any property in the vicinity of this property that you have testified about on which you had any sales or data?
A. No, I cannot point out any particular lots, but there were sales there at $150 and $200.
Q. Are you testifying now from memory or from some memoranda?
A. From memory, because I have not the memoranda at hand now any more.
1697 Q. And you cannot give us specifically any lot on which you had a sale during those years?
A. I cannot.

Mr. Cummings: I object to it as incompetent.
The Master: Overruled.

Q. Or during any one of those years?

Mr. Cummings: I object to it as incompetent, irrelevant and immaterial and not within the man's memory now.
The Master: Overruled.
Mr. Cummings: He cannot carry all that data in his mind. Exception.

A. I do not care to refer to this book now, because it has been out of my hands for five years, and I would not want to be governed by the notes in this book. It might be my handwriting and might not.
Q. Have you made any effort to determine by inspection of the books whether there are any notes in there in your handwriting?
A. No, the time was too limited. I was only notified of this yesterday afternoon and I had not the time to go through it.

Mr. Cummings: All right, you were not supposed to.

Q. When you testify about the values that you put on these lots, you refresh your recollection from the record of the assessments that you turned in: that is true, is it not?

A. Yes.

Q. You could not have come here and testified to the values you put on these various lots from memory, could you?

A. Oh, no; decidedly not.

1698 Mr. Cummings: Any more than he could remember these mortgages and deeds that you are asking him about.

Q. And you do not believe that you had under consideration any mortgages or leases?

A. No, I do not, not mortgages. We have mortgages on dwellings in that neighborhood, but they would be practically useless to us here on this plant.

Q. Why?

A. Well, they would include dwelling houses, which would be of no use to us in arriving at a valuation of the gas plant.

Mr. Cummings: A mortgage would not be any evidence of valuation of vacant property.

Q. Had you any mortgage on unimproved lands?

A. Well, as I said, I do not know of any notes here, and if I did find any notes I would not care to use them as evidence; because, as I said, the book has been out of my hands for five years, and it might be some other person's notes.

Q. Those books are erased from time to time, are they not, or the values in them?

A. The valuations in them are never erased. Some of the notes may be, to make room for new notes.

Q. Some of them are erased to make new notes?

A. If we have to do that, occasionally, yes, because these books are used for a period of five or six years. We have to do that.

Q. Is the field book that you have before you in use now or has it been superseded.

A. It has been superseded.

Mr. Cummings: I object to it as incompetent and immaterial.

1699 Mr. Neumann: The field book is not in evidence.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: This book was used up to and included 1920 and the last year in it is 1920, the current year.

Q. That is for the valuations made for the current year?

A. Yes.

Q. Was that the book you used beginning with 1909?

A. Beginning with 1913.

Q. That you have used from 1913 to date?

A. Yes.

Q. And prior to that time after 1909 on you used another book?

A. I used another book.

Q. And that book you have not now before you?

A. No, this is the book from 1913 to 1920; the other book is not here now.

Q. So when you testify to conditions as they existed prior to 1913 you are testifying not from the field book you have, but from some other memorandum?

A. From a memorandum that I gathered yesterday from the other book, the book prior to this one.

Mr. Cummings: These books are not in evidence. He has testified as an expert, and it does not matter where he gets his figures from.

The Master: Objection overruled; it is cross-examination.

Q. The other book that you examined at the office you did not bring here?

1700 A. I examined it at the office.

Q. And it is not in court and was not before you when you were testifying?

A. No.

Mr. Cummings: That is conceded.

Mr. Neumann: It is conceded as not important.

Q. What was your frontage rate on Myrtle Avenue in 1909?

A. The map does not show that it was for 1909, but these are my figures. I think they were put in for 1911.

Q. You are referring now to the Tax Map, are you not?

A. I am referring to the Tax Map.

Q. The deputy's copy?

A. That is it. And those are my figures, and they were put in there in 1911.

Q. You cannot give us the frontage figure for 1909, can you?

A. I cannot.

Q. What is the figure for 1911 that you have there?

A. $20 on Myrtle Avenue.

Q. $20 on Myrtle Avenue, and how much on Farrington Street?

A. $14. That is not including the extra depth. Those lots had slightly extra depth of about 25 feet.

Q. You made an allowance for the extra depth, did you?

A. Yes.

Q. And your valuation is figured purely on a frontage basis?

A. It is.

1701 Q. And nothing was allowed for plottage?

A. Not in this case. The land is cheap land and we never considered that at all

Q. Do you allow nothing for plottage in the Third Ward at any point?

A. I am not in the Third Ward now; I am in the Second.

Q. Well, did you when you were there?

A. We did on the main street.

Mr. Cummings: Where they could plot it.
The Witness: On valuable ground we did, yes.

Q. But this ground you did not consider had any added value from the fact of it being in a common ownership?
A. No.
Q. Do you not consider that if the property were to be acquired it would cost more to acquire it and get it into one common ownership than the straight unit values of single lots?

Mr. Cummings: I object to that as incompetent.
The Master: I will allow it.
Mr. Cummings: Exception.

A. It is very likely that it would, but I would not consider that in arriving at the assessed valuation on it. Very likely it would have some more value.
Q. When you arrived at the assessed valuation you did not consider the cost of acquiring the property as it existed, but you did consider that it would cost more if it were to be sold at that time wholly unimproved?

Mr. Cummings: That is objected to as incompetent, irrelevant and immaterial; it is not a factor to be taken into consideration in valuing property, anyway, the purpose of consolidating it under one holding. The only evidence at all would be plottage value upon this particular piece, and, in view of the fact that it is low land, that has no plottage value, and that it is apparent the plottage only has a value to be cut up for residential purposes.
The Master: I think it is proper on cross-examination.
Mr. Cummings: Exception.

A. I treated this parcel practically the same. I will not say that I did not make a difference of possibly $2 a front foot on each side of the street, in assessing this property according to this map. It shows that the east side of Farrington Street is assessed at only $10 and this west side, which is on this property, at $14. So I did make a distinction, and that is as far as I went in assessing this higher than the adjoining property.
Q. Upon what basis did you make that distinction, Mr. Hilley?
A. Well, on the theory that the gas plant is largely responsible for the poor condition of that neighborhood. It has deteriorated the neighborhood, there is no doubt about it.
Q. The gas plant tends to deteriorate adjoining property values, does it not?
A. There is no doubt about it.
Q. And if you find poor buildings and cheap improvements in the presence of a gas plant you can assume it is partly due to the presence of the gas plant?
A. That is it. It is very true that it is a poor residential section just on account of that gas plant.
Q. And is it not a fact that the depreciated values of the adjoining residential section react upon the gas plant property?

Mr. Cummings: I object to that upon the ground it is incompetent and immaterial, the property being assessed is unimproved property, you know.

The Master: Overruled.

Mr. Cummings: Exception.

A. Yes, that is very true. The property would be more——

Mr. Cummings: He is assessing this property as unimproved property, and it does not matter whether it is a gas plant or any other kind of property.

Q. Mr. Hilley, you said you assigned on Farrington Street there is a factor of $14 a foot?

A. On the west side of the street, yes.

Q. Yes, on the west side of the street. In the earlier years to which you have testified the gas company did not own all the Farrington Street frontage, did it?

A. I do not know when they came into possession of it, but those lots on Farrington Street were thrown into Lot 31, were merged into it, in 1914. Those are lots 42, 43 and 44.

Q. Those are lots with a frontage on Farrington Street?

A. On Farrington Street.

Q. Before 1914 what front-foot unit did you use for those lots?

A. Our book here does not show the land value for those years; our book here is good for six or seven years, and yet it only shows the land value for two years and does not show the value for those years at all.

1704 Q. You gave us the value for those lots from the memorandum here?

A. Oh, yes, because I copied ahead of this.

Mr. Cummings: I object to this, your Honor. The mere fact that the book leaves out something is incompetent, irrelevant and immaterial. The book is not in evidence and he is not testifying from any book.

Mr. Vilas: We will get the point in a minute now, so do not worry.

Mr. Cummings: He is testifying from his own knowledge here of conditions. The book might all be left out for that matter.

The Master: Overruled.

Mr. Cummings: Exception.

The Witness: What years did you wish?

Q. Prior to 1914, prior to the time that they were merged into the larger plot?

A. Take it for 1911, 1912 and 1913, lot 43, which is a 25-foot lot 100 feet deep, was assessed at $350. That would make it $14. You see, I assessed it at $14.

Q. You used the same factor, then?

A. $14.

Q. Have you any idea what was on that property then?

A. No, I have not.

Q. There was a residence on it, was there not?

A. There was a valuation on the improvement of $750. Now, what it was I do not know.

Q. You remember, do you not, that there was a residence on some of this property fronting on Farrington Street, on the west side?

A. I do not recall what the building was, and the book here does not show it.

Mr. Cummings: He does not remember.

1705 The Witness: There was an improvement on it, though.

Q. You do recall, however, that during those prior years, those earlier years, it was not a part of the other property, the larger property in that block?

A. I do not recall what those improvements were used for; I could not say.

Q. But your records do tell you that it was not a part, not merged into the other plot?

A. Not merged into it.

Mr. Cummings: I object to it as incompetent, irrelevant and immaterial at this time.

Q. Have you any record of the owners at that time of this property?

A. No, we have no records of the owners. They are not shown at all

Q. But it is a fact that as to these lots that were merged in 1914, you used the same front-foot factor as you did upon the rest of the property?

A. I did.

Q. If that property was occupied by a residence in those years, would not the presence of the gas plant tend to depreciate its value?

Mr. Cummings: I object to it on the ground it is incompetent, irrelevant and immaterial. This man is testifying to the unimproved values and counsel keeps talking about gas plants and residences being on it.

The Master: Overruled.

Mr. Cummings: Exception.

A. I am not prepared to say now whether the Gas Company was using those lots, and yet having merged them into the lot 31, or why it was we used that factor.

1706 Q. Now assume that the Gas Company did not own those lots at that time, would you still assign to those lots the same front-foot factor that you would to the Gas Company's property?

Mr. Cummings: Objected to on the ground it is immaterial. It does not matter who owns the lots. Mr. Hilley did not take that into consideration, who owned them.

The Master: Overruled.

A. I should say that if I had been under the impression that it belonged to private owners, and back right up against the gas plant,

I would not have used that factor that I did, $14. I would not give a higher factor than it was across on the opposite side of the street. What the reason was I could not tell you at this time; I do not know if I was under the impression the gas company owned the buildings, I could not say.

Q. But if it is a fact that the Gas Company did not own the property and the buildings, you think that that property should not have had the full $14 valuation?

Mr. Cummings: I object to all this testimony.

The Master: Overruled.

Mr. Cummings: Exception.

A. I should say it would have been assessed higher than the property on the other side of the street which was in a better location than these were. What my object was in assessing these lots higher than the ones on the other side of the street, I do not know, unless they belonged to the Gas Company.

Q. You have no personal recollection on that point?

A. I have not, no.

1707 Mr. Cummings: He is taking into consideration the improvements and then asking him how he valued this property, in view of the fact that certain improvements are adjoining them. Mr. Hilley is testifying to the whole plot as unimproved. All of this evidence is incompetent, your Honor, and immaterial. If you want to expedite this thing, what is the use letting in all this?

Mr. Vilas: What is that?

The Master: Never mind, proceed.

Q. Have you any recollection, Mr. Hilley, that there were three or four houses near the corner of Farrington Street and Myrtle Avenue, between 1909 and 1914?

A. There were buildings there. What the buildings were I have no means of knowing at this day.

Q. You have no personal recollection on it?

A. I know there were buildings there.

Q. You know there were buildings?

A. There were buildings there.

Q. But you do not recollect whether you valued them as belonging to the Gas Company or as private dwellings?

Mr. Cummings: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Cummings: It does not matter who they belong to. They might have belonged to Mr. Spear. Exception.

A. I have no knowledge at the moment; I have not the slightest knowledge.

Q. Do you know what rate the State Board adopted for equalization of assessments during the years that you have testified about?

1708 Mr. Cummings: Objected to as incompetent, irrelevant and immaterial, nothing to do with this matter.

The Master: Objection sustained.
Mr. Vilas: Exception. That is all.

PATRICK J. CRONIN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

The Master: How many years did you have this property?
The Witness: 1917, 1918, 1919 and 1920.

Direct examination.

By Mr. Cummings:

Q. Where do you reside, Mr. Cronin?
A. 505 West 49th Street, Manhattan.
Q. What is your position with the City of New York?
A. Deputy Tax Commissioner.
Q. How long have you been such?
A. Since 1910.
Q. Prior to that time what was your business?
A. Clerk in the Department since Consolidation, 1898.
Q. You hold your position, do you, by reason of some examination?
A. I hold the position by competitive examination.
Q. What is your duty as a deputy tax commissioner?
A. To visit the property, starting April 1st of each year, and bring in a report as of October 1st of each year for the succeeding year.

1709 The Master: Report of what, Mr. Cronin?
The Witness: Of the taxation for that period, in my district.
The Master: Your opinion as to the value?
The Witness: My judgment as to value.

Q. Were you assigned to the Assessment Tax District in which is included the property of the New York & Queens Gas Company?
A. Yes, sir.
Q. During what years were you assigned to that district?
A. In 1916 for the tax of 1917, 1918, 1919 and 1920.
Q. Did you during each of those years visit the property for the purpose of determining its value, what it would ordinarily sell for?
A. Yes, sir.

The Master: If unimproved?

Q. Yes, if unimproved.
A. Unimproved.
Q. And you furnished to the Tax Department, did you, a sworn statement or report of all the taxable property in that district?
A. Yes, sir.
Q. And the values placed on such properties by you?
A. Yes.
Q. You may state, Mr. Cronin, the sum for which in your judgment each separate parcel of real estate now owned by the New York

& Queens Gas Company would sell under ordinary circumstances, if wholly unimproved?

Mr. Vilas: I object to that upon the grounds previously stated, and particularly press my objection to the qualifications of
1710 this witness. He is not qualified to state values.

The Master: Objection overruled.

Mr. Vilas: Exception.

By the Master:

Q. He means Block 170, Lot 31, Block 171, Lot 40. I think those two pieces were intact during the years you had it, were they not?

A. No, separate assessments.

Q. What do you mean?

A. They are separately assessed.

Q. The two blocks?

A. The two blocks are separate and the two lots are separate.

Q. Yes, but Block 171, Lot 40 was this entire 125 feet?

A. Yes.

Q. During all those years?

A. Yes.

Q. And Block 170, Lot 31 was the entire area during those years?

A. Yes, sir.

By Mr. Cummings:

Q. Beginning with the year 1917——

By the Master:

Q. Give us 1917, 1918, 1919 and 1920 right through, for Block 170, Lot 31.

A. Block 170, Lot 31, for the year 1917, land $12,600.
Block 170, Lot 31, for the year 1918, land $12,600.
Block 170, Lot 31, for the year 1919, $12,600.
Block 170, Lot 31, for the year 1920, $12,600.

Q. Now, Block 171, Lot 40.

A. Block 171, Lot 40, for 1917, 1918, 1919 and 1920, $1,000 each year.

1711 Q. You also appraised the improvements?

A. Yes, sir.

Q. The improvements were the gas works?

A. Yes, sir.

Q. The gas holders and apparatus, and all the rest of it?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Dede?

A. Yes, sir.

Q. Did you fix the value of those improvements in the same way that he fixed them, taking the Department factors?

A. Well, we get the Department factors each and every year, but we use our own judgment besides that.

Q. In these years did you use the Department factors?
A. I did use them.
Q. Were those the factors that you applied, the Department factors?

Mr. Cummings: I object to that. He could use his own independent judgment or any other factor.

Q. Did you ever buy, build or sell a gas holder?

Mr. Cummings: I object to that.

A. No, sir.
Q. Did you ever buy or build a gas works?
A. No, sir.
Q. Or gas apparatus?
A. No, sir.
Q. Did you ever buy or build any building?
A. I bought buildings.
Q. Did you ever build them?
A. I didn't build them, I bought them.
Q. How long ago?
A. Since 1908, twelve years ago.
1712 Q. You didn't appraise these buildings separate from the apparatus and holders, did you? The figure you put on it included everything?
A. The apparatus and the improvements.
Q. Everything together?
A. Yes, sir.
Q. You cannot tell us now what you figured the buildings to be worth separate from the apparatus and holders, can you?
A. I can, yes, sir. I have the buildings here.
Q. Separate?
A. Yes, sir.

The Master: I will take his estimate of buildings.
Mr. Neumann: There is another point. You simply asked him whether he bought any property or built it. How about if he sold any?
The Master: Let us have it perfectly clear. There isn't a deputy tax commissioner that I have met either in this case or in the Consolidated case who would undertake to say that independently of information gathered by the Department he knew anything about gas apparatus, or gas holders, or as to the cost of constructing them or building them. My recollection is that Mr. Cronin was a witness in the Consolidated Gas case. Is that so, Mr. Cronin?
The Witness: I was.
The Master: I don't think he undertook to say in that case that he had any particular knowledge or experience as to gas apparatus and holders.
The Witness: By selling or building gas apparatus, no.
1713 The Master: Or holders?
The Witness: No.

Mr. Vilas: He was called as to property that had holders on it, and he was not permitted to testify.

The Master: My recollection is perfectly clear, and I want to get this record right, that Mr. Cronin's figures as to the value of gas apparatus and holders were the figures that had been collected by the department. Isn't that so?

The Witness: Yes, sir.

The Master: Now, you say you do have some knowledge as to buildings?

The Witness: Yes, sir.

The Master: Did I take your testimony as to the value of buildings in the other case?

The Witness: No, I don't think you did. There were no buildings on the property that I assessed, except gasometers.

The Master: If Mr. Cummings wants you to give the value of the buildings as distinguished from apparatus and holders I will take it.

Mr. Cummings: It is immaterial whether Mr. Cronin has ever bought or sold or had anything to do with gas holders. The mere fact that a man buys a gas holder, or sells a gas holder, does not qualify him as to values. He might get stuck either way. Mr. Cronin might have conducted an independent investigation as to these things, and he might be better qualified to testify as to their value than a man who had bought and sold them.

The Master: I will sustain the objection.

Mr. Cummings: Exception.

1714 The Master: You are going to have the engineers for the purpose of giving values on apparatus, and I am not going to take Mr. Cronin's values.

By Mr. Cummings:

Q. Will you give us the value that you placed upon the buildings, the improvements here, exclusive of the machinery and apparatus?

Mr. Vilas: I object to that on the ground that the witness is entirely unqualified to give an opinion as to the value of buildings. Furthermore, there is no basis for such valuation. We don't know what he was valuing.

The Master: We will find that out. Objection overruled.

Mr. Vilas: Exception.

By the Master:

Q. You understand the question, buildings without any apparatus?

A. The buildings without any machinery.

Q. Yes.

A. For 1917, $21,400.

For 1918, and 1919 and 1920, $25,200.

Q. Are those the buildings on Block 170?

A. Block 170, Lot 31.

Q. Are there any buildings on Block 171, Lot 40?

Q. There are two tanks, no buildings.

Q. Don't give us the tanks?
A. I have the price for the tanks.
Q. But I don't want your price for the tanks.

The Master: I won't take the witness' value of tanks. You have engineers who are going to come here and testify as to that. That is what they are being paid for, and they have made a study of it.

1715 Mr. Neumann: You may shut them out.

The Master: If you have competent engineers who know apparatus, and who know holders, I will let them put in the figures.

Mr. Vilas: The Attorney-General does not seem to have much confidence in his witnesses.

Q. Do you know if the New York & Queens Gas Company at any time filed—I don't know just how you designate it.

The Master: Did they protest your assessment?

Mr. Vilas: I object to that as incompetent, irrelevant and immaterial, and having no bearing upon the issues.

The Master: Objection sustained. A protest as to assessed values means nothing to me, because if this property, as one of the witnesses testified to, was appraised at a price higher than adjoining property of the same character precisely, then the Gas Company, irrespective of whether this property was worth more or less than the assessed value, had a perfect right to complain that this land was not assessed on the same basis as adjoining property of the same character. Therefore, I will not take these protests, they mean nothing to me.

Mr. Neumann: In those protests they may have made certain declarations against interest.

The Master: Then get the protest.

1716 Cross-examination.

By Mr. Vilas:

Q. What buildings did you assess, Mr. Cronin?
A. The buildings I assessed, or gave the figures for?
Q. You have given us the figures. I want to know what you assessed?
A. A building 25 by 35, one story brick.
A building 20 by 30, 2½ story.
A building 30 by 25 and extension, two stories.
A building 50 by 75, one story.
A building 30 by 100, one story.
A building 25 by 35 and extension, one story.
A boiler house, one story.
A building 20 by 25, two story.
A building 18 by 26, two story.
A building 18 by 26, two story.
A building 18 by 24, two story.
Q. Those were all the buildings upon the property?
A. Those were the buildings upon the property, Lot 31.

Q. Were they brick buildings?

A. Not all brick.

Q. You started describing brick buildings, and then you did not change from brick.

A. I will give it to you again.

A building 25 by 35, one story, brick.

A building 20 by 30, 2½ stories, frame.

A building 30 by 25, and extension, brick.

A building 50 by 75, one story, brick.

A building 30 by 100, one story, frame.

A building 25 by 35 and extension, one story, frame.

A one-story boiler house, brick.

A building 20 by 25, two story, frame.

1717 A building 18 by 26, two story, frame.

A building 18 by 26, two story, frame.

A building 18 by 24, two story, frame.

Q. Now, you have given us a figure that covers all the buildings as one item, is that right?

A. Yes, sir.

Q. Does the figures which you gave us cover any more than the buildings which you have just enumerated?

A. Do the figures cover any more?

Q. Yes.

A. No, just those buildings.

Q. You haven't got the tanks in that figure?

A. No, sir.

Q. And you haven't got any machinery in that figure?

A. No, sir.

Q. Did you arrive at these figures by details, or did you take them as a lump figure?

A. By details, by figuring each and every individual parcel and using a square foot basis, not a cubic foot basis.

Q. That is square feet of floor area?

A. Square feet of floor area.

Q. What did you get that unit of value?

A. Like on the machinery, the Department furnishes a unit, but in my own judgment I go either up or down on the unit furnished, using my own judgment as conditions are at the time.

Q. The Department furnishes you with various units for various kinds of material, does it not?

A. Various kinds of buildings, not material.

Q. You have a different unit for a brick building and for a frame building?

A. When I assessed in Manhattan they gave us, for instance, $5 or $5.50 for hotels, and when I saw the hotel I might make

1718 it $6 or $6.50. The Board never ties us down to their figures, they let us use our own judgment, which we swear to.

Q. The point is that there is a different figure applied to different kinds of buildings?

A. Yes, sir.

Q. Based not only upon the material, but upon the use of the building?

A. Yes, sir.
Q. That is true, isn't it?
A. Yes, sir.
Q. And that was true in this case, you used different figures r the different buildings here?
A. Different figures for the different buildings I saw.

By the Master:

Q. What I understand is this, Mr. Cronin: The Department, we ll say, fixes a unit of $4 a square foot for a brick factory build- ng. Just take that for illustration. You go and look at the build- ng——
A. They would not give it as high as that.
Q. Well, what would it be for factories, $1.50?
A. Well, no, the cost of material to-day has gone away up. Say 2.50 or $3.00.
Q. The Department says, generally speaking, taking a brick fac- ry building this year, to figure it at $2.50, subject to what you nd. You go out and you look at the building, and you find it an ld ramshackle thing, and you say, it is not worth $2.50?
A. That is right.
Q. Then you go to another building and you find it is a fine building, with some special feature about it, and you say 719 it is worth a half a dollar more?
A. Yes.
Q. And you go to a third building, and you find that it is gen- ally the kind of building that the Department figures at $2.50. hen you take the Department's figure of $2.50?
A. Yes.
Q. What I mean is this. Take three buildings standing here in a w. You look at the three buildings, and you have in mind the epartment's figure for a brick factory building as $2.50. Now, at is the usual type of factory building?
A. Yes, sir.
Q. And you look at the center building, and you find that is the ad of a building that the Department figures at $2.50. Then you ke the Department's figure, wouldn't you?
A. I would in that case.
Q. This building to the left you found, though, is in pretty bad ape, you will scale down the Department figure?
A. Yes, sir.
Q. And the one to the right you find is in extra good shape, then u would add something to the Department figures?
A. Yes, sir.
Q. But find a building that is the kind of building that the De- rtment has in mind, the average building, you take the Depart- ent unit?
A. Yes, sir.
Q. In this case did you find these buildings to be particularly od, or particularly bad, or the average type of building to which e unit would apply?

1720 A. Well, I found them to be nothing extraordinary, ordinary stuff, poor, cheap, with here and there a good one like that boiler house which was built pretty strong. I increased the factor there a bit.

Q. What did you take for that, the Department factor?

A. I used the Department factor after my own judgment.

Q. Did you take the Department factor as the factor that ought to apply to that building?

A. Yes, as a basis.

By Mr. Vilas:

Q. Did the Department factor coincide with your judgment on those buildings?

A. Not at all times. Sometimes like the Master illustrated—with those three buildings, sometimes it would, sometimes it would not.

By the Master:

Q. Take 1919?

A. In this case I used my own factor disregarding the Department factor where I found the buildings poor.

Q. As to which buildings did you disregard the Department factor, and on which did you use the Department factor?

The Master: I think I understand the situation. If I were a Deputy Tax Commissioner and I was given a list of factors, and a factor for an average brick factory building at $2.50, and I went and looked at the factory building, and it was the ordinary average usual factory building, I would say, "This is a building that I think the Department factor of $2.50 should apply to." But, if the walls were crumbling and the building falling to pieces, I would

1721 say, "Well, this is the kind of building, but not in the condition the Department assumes." If I found a fine sprinkler system and a lot of modern appliances in a building, I should say, "This is better than the Department basis." What I want to get from Mr. Cronin as a matter of fact is whether he found these buildings in Flushing to be the kind of buildings the Department gave him the factor for.

Mr. Cummings: The mere fact that the Department furnishes him these figures shows how accurate the valuations are.

The Master: It does not show that at all. If there were no factors given to Mr. Cronin he might go out and establish an entirely different factor, higher or lower than the Department factor. He might arrange in his own mind an entirely different factor altogether. But when he goes out he has with him a factor established by the Department, and that is the basis. If I were to look at a factory building, assuming that I knew something about the value of buildings, I would not be bound or influenced by a Department factor, having in mind that the Department tries to get as nearly a uniform value throughout the whole city for the same type of building as possible, and it influences the situation.

Mr. Neumann: Then it is the Master's judgment, isn't it, that such a witness is prejudiced by reason of the fact that he is given Department figures as the basis?

The Master: No, he is not prejudiced, he is influenced by it. He has got to be influenced by it.

1722 Mr. Cummings: That is a good influence. He would be influenced by the Department's figures, and also by information from the outside.

The Witness: We always look for information outside.

The Master: I have said all along that this kind of testimony is valueless in this kind of case.

Mr. Neumann: And yet you took it from Halleran.

The Master: I took it from them as I take it from you, but I am going to find what this Company has invested in this business, and I am going to throw expert testimony out of the window.

Mr. Neumann: I want to call your attention to this fact, that Mr. Halleran was one of the men who sold a piece of property to this New York & Queens Gas Company. The title papers show that.

The Master: I expressed myself in the Consolidated case about expert opinion, and I am repeating it now.

By Mr. Vilas:

Q. What factor did you use on the brick buildings here in 1917?

A. On the brick buildings for those years I used $1.50 to $2, and on the frame buildings from $1 to $1.50.

Q. What relation do those figures bear to the Department's figures?

A. About the Department figures.

Q. Was there any increase in these unit figures between 1917 and 1920?

A. No.

1723 Q. Just take the year 1917 and tell us in what respect you deviated from the Department figures, and on what buildings?

A. Well, when I would find the bricks in good shape I would use $2, or if I found them in poor shape I would use $1.50.

The Master: What was the Department figure for a good building?

The Witness: Well, $1.50 a square foot at that time.

The Master: For a good building?

The Witness: From $1.50 to $2.

The Master: That was the range, $1.50 to $2?

The Witness: Yes, sir.

The Master: Then you applied the Department unit?

The Witness: Yes, sir.

Q. Take the frame buildings, what was the Department's figure in 1917?

Mr. Cummings: Objected to on the ground that it doesn't make any difference what it was.

A. From $1.00 to $1.50.
Q. Did those Department figures change any in 1918?
A. No.
Q. Did your figures change any in 1918?
A. No.
Q. In 1917 they were a little higher, weren't they?
A. No, the same.
Q. What about 1920?
A. Well, there was a new building put up there, a brick sort of governor house that is there for 1920, and that made it extra.
Q. What unit did you use for that?
1724 A. About $2.00 I think, it being new and in good shape.
Q. That is, you used the department figure for a new brick building?
A. Yes, sir.
Q. Did you ever make any investigation into the prices of constructing buildings of this kind?
A. A cost investigation into prices?
Q. Yes.
A. Of constructing?
Q. Did you make any study of the cost of buildings?
A. Yes, sir.
Q. Is it not a fact that the cost of buildings of the kind that are on this property had increased very much in the last four years?
A. Well, I would not say four years, I would say the last three years very perceptibly.
Q. You know that is a fact, that the cost of material and labor has increased decidedly?
A. Yes, sir.
Q. But you made no change in the unit of valuation?
A. I went to $2.00. $1.50 would be the ordinary case; there was no finish inside.
Q. You are speaking now of the boiler house?
A. Yes, sir.
Q. Didn't you appraise a frame dwelling house there?
A. Yes, sir.
Q. Did you make any change in your valuation of that during the last three years?
A. No.
Q. You made no change?
A. No, but I intend to for 1921, because they are getting great prices for those buildings.
1725 Q. During all the four years you testify to, your appraisal of the dwelling house was the same?
A. Yes, sir.
Q. Although you do know that the costs have been mounting steadily for at least the last three years on that class of building?
A. Yes, sir.
Q. Now, going for a moment to the question of unimproved land, did you tell us that you were ever in the real estate business?
A. I was.

Q. During what years?
A. Well, previous to entering into the department, and all along I *keep* in the real estate line. My father was in it and I was in it too.
Q. How long have you been in the department?
A. Since 1898, since consolidation, 22 years.
Q. How old were you then? Tell us the date of your birth and we will figure it ourselves.
A. 1863.
Q. You were born in 1863?
A. Yes, sir.
Q. And you went into the department in 1898?
A. Yes, sir.
Q. Then you were about 35 years old when you started?
A. Yes, sir.
Q. Prior to that time you were in the real estate business?
A. Yes, sir.
Q. And were you in that all your life up to the time you went into the department?
A. Up to the time I went into the department?
Q. Yes.
A. After leaving college I was with a builder, William
1726 B. Pettus, since deceased. We used to estimate on construction work, contractors for digging cellars, etc. I started in 1898 in the department.
Q. How long were you with this contractor?
A. A year and a half.
Q. Then what did you do?
A. I was in the bookbinding line for a while with Daniel Sloat & Company.
Q. When did you get into the real estate game?
A. All my life, more or less, buying and selling.
Q. You dabbled in it from the first?
A. Yes, sir.
Q. After you got out of college?
A. Yes, sir.
Q. In what part of New York?
A. I bought on 28th Street and Tenth Avenue, and up on Tenth Avenue, West Side, 51st and 52nd Street-.
Q. Your operations then were in the Borough of Manhattan?
A. Yes, sir.
Q. You were not operating in Queens?
A. No, to my sorrow. I had a right to operate in Queens, it is getting better over there in certain parts.
Q. But you didn't operate in Queens?
A. No, sir.
Q. You didn't buy or sell over there at all?
A. No, sir.
Q. When were you first assigned to any property in Queens by the Department?
A. In the Fourth Ward for the year 1916, I was assigned in 1915 for the taxes of 1916.

Q. Was that your first assignment in Queens Borough?
1727 A. Yes, sir.
Q. And then the next year you went to the Third Ward?
A. Yes, sir.
Q. And your district over there comprises the whole of the Third Ward?
A. It is divided into three sections covered by three deputies. I have a part of it that they call Main Street, Broadway, the old part of Flushing.
Q. Do you go to Whitestone?
A. I touch Whitestone, but I don't assess Whitestone.
Q. Another deputy has Whitestone?
A. Yes, sir, Douglaston and Bayside.
Q. Do you go to Douglaston and Bayside?
A. I touch on them but don't assess them.
Q. Most of your work is right in Flushing?
A. Yes, sir.
Q. Prior to the time that you went to the Third Ward you didn't have any intimate knowledge of real estate conditions in Flushing you had not made any study of that district?
A. Prior to the time I went in there?
Q. Yes, sir.
A. No, sir.
Q. When you went there were your predecessor's field books sent over to you?
A. Yes, sir.
Q. Is that the field book you have in front of you now?
A. Yes, sir.
Q. You have used the same book all these years?
A. Yes, sir.
Q. How many years back of 1917 does it go?
A. Back to 1913.
1728 Q. You had before you then the real estate values that your predecessor placed upon these properties?
A. Yes, sir.
Q. And you took that into consideration?
A. Yes, sir.
Q. Did you make any change in 1917 on the previous valuation?
A. From 1916 you mean?
Q. Yes. I am talking about real estate, unimproved, now?
A. From $10,500 to $12,600.
Q. You raised the figure that your predecessor had placed upon the property the year previous?
A. No, I did not raise it. I dropped two lots in there, 39 and 3 amounting to $2,100 which, added to the $10,500, make $12,6
Q. In other words, then, taking into account those two lots you speak of, your figure for 1917 was the same as the assessment 1916?
A. Yes, sir.
Q. Did you have before you any sales in arriving at your opinion as to the selling value of this property?

A. Well, there were sales and mortgages and general information.

Q. Can you give us some sales?

A. Block 167, Lot 31.

Q. Where is that with reference to this property?

A. It is right near this property.

Q. Was it across the street from it?

A. It is on what they call Converse Avenue, right near it.

Q. When was that sold?

A. It sold for $2,000, with a mortgage of $1,500 on it.

1729 Q. What was the size of it?

A. 25 by 125, with a two-story building on it. It is about the fairest row of houses down there.

Q. It is about two blocks from the works, isn't it?

A. Yes, sir.

Q. Are they small houses?

A. Yes, sir, 20 by 30, and an extension, two-story.

Q. Give us some more sales in the neighborhood?

A. Right in that same block, Lot 29, Block 167. That showed revenue stamps of 50 cents, which meant $500, but I didn't get the mortgage in that case. It is about the same figure.

Q. You could not give that any consideration then, if you did not know the full sale price?

A. The same block 167, lot 23, there is a purchase money mortgage of $1,300 against an assessment of $1,300. I looked that up and found out he paid somewheres near $1,800 for it, which is a very fair ratio in that poor neighborhood.

Q. What is the size of that lot?

A. 25.6 x 125.

Q. Any more sales in the neighborhood?

A. Block 167, lots 9 and 34, a consideration of $1,400, mortgage $600.

Q. What were the dimensions of that property?

A. Lot No. 9 is 25 x 125; lot 34 is 25.01 x 125.

The Master: I do not think we need any more.

Q. Just one more question on that line. The dates of these sales, were they approximately contemporaneous or were they old?

A. 1918 is what I was giving you there. That gives me a fair idea of that section.

1730 Q. Those are sales that you took into consideration in valuing this property?

A. Yes.

Q. There were also mortgages on these same pieces which you have described?

A. Yes.

Q. Did you take into consideration any leases?

Mr. Neumann: I object to that; the least is not in evidence.

The Master: It is some evidence of rental value of the property. I do not think you will find any leases over in that section.

The Witness: No; I was just trying to think.

The Master: You rarely find a lease in that particular section.

Q. What was your frontage rate on block 170; take Myrtle Avenue?

A. About $20 on Myrtle.

Q. And Farrington Street?

A. About $14.

Q. Did you allow anything for plottage?

A. No. In that case there, you would not allow for plottage if you were assessing that for the reason that plots are not hard to assemble there; land is plentiful. It is down near the dumps as we call it.

Q. You did not allow a larger frontage rate on the gas property than on property across the street?

A. I carried across the street less—you mean on Farrington Street?

Q. Yes.

A. Because it was undesirable to live opposite a gas works from the smell.

Q. The gas works depreciates the value of the neighboring property?

1731 A. Contiguous thereto.

By the Master:

Q. And the same thing applies to the other side of Myrtle Avenue?

A. Yes.

Q. In other words, if the gas works had not been there you would have increased the value of the property on the other side of Myrtle Avenue and Farrington Street?

A. Not only in Flushing——

Mr. Cummings: I object to that; he is testifying to the land unimproved.

A. (Continued.) It hurts property all over Manhattan as well as in Flushing.

Q. If there were no gas works on this property, the land unimproved would be the value that you gave it?

A. Yes.

Q. And the contiguous property would be worth as much as this property would be then?

A. The contiguous would be, yes.

Q. In other words, you do not add value to the gas property because it was used as a gas plant but you reduced the value of the contiguous property because of the gas plant?

A. Of the nuisance as I would call it.

By Mr. Cummings:

Q. You are testifying as to the value of the land unimproved?

A. Unimproved, yes.

The Master: I think we have got enough.

Mr. Vilas: If you are going to take the testimony it must be taken with full cross examination.

The Master: But you have had full enough cross-examination.

1732 Mr. Neumann: We think that Mr. Vilas ought to be allowed to cross-examine to the fullest extent. We would not want any question here that his right of cross-examination has been curtailed.

Now, we have a witness who will be here at 2 o'clock, who went to get his field book.

The Master: Not at 2 o'clock.

If I am to determine the fair value of this property, I have got plenty of it back to 1909.

Mr. Neumann: Your Honor will allow us to at least make the offer?

The Master: You will not do it at two o'clock.

Mr. Vilas: I cannot understand why the Attorney General who knew in April that he would have to go on with his case cannot be ready with it.

Mr. Neumann: Do you want to cross-examine any witnesses?

Mr. Vilas: I cannot tell now whether we will be ready to cross-examine or not. Before we adjourn I would like to have an opportunity to ascertain how we are fixed on cross-examination. We have Mr. Cohen to cross-examine.

The Master: Cohen will not take half an hour.

Mr. Vilas: I do not know whether he will or not.

The Master: Cohen's testimony was perfectly useless. It was simply a recapitulation of the books; there was no necessity for it.

Mr. Neumann: I must object to the Master's characterization of it at this time.

Mr. Vilas: I certainly must protest against any further ad-
1733 journment and postponement of this trial. We are ready to go right through with it.

Mr. Neumann: Are you ready to cross-examine the witnesses?

Mr. Vilas I will tell you that in a short time.

The Master: Next witness.

Mr. Cummings: Our witnesses are exhausted; they will be here at 2 o'clock.

The Master: The Master announces that it is now about 12 o'clock; that he will not sit around here until 2 o'clock waiting for one witness whose testimony is of no use in this case. As I understand it, it is a deputy tax commissioner who assessed the property prior to 1909.

Mr. Cummings: Yes.

Mr. Neumann: May we not do this; may we not for the purposes of having a clear-cut ruling now offer the testimony of the deputy tax commissioner for the years which we have not proved to and including the year 1904 with the same force and effect as if the witness were here presented:

The Master: No, I will not do it that way. You ought to have the witness here.

Mr. Neumann: The witness will be here at 2 o'clock.

The Master: But I will not.

Mr. Chambers: He was here but he did not have his book with him.

The Master: And I am not going to allow cross examination of Terry when I state that the testimony offered does not in the slightest degree support a claim that the gas company did not furnish the gas required to the extent of defrauding the public or even attempting to.

1734 Mr. Neumann: To which we respectfully except.

Mr. Vilas: Your Honor will strike out the testimony?

The Master: No, I will give you some reasonable cross examination.

Mr. Goetz: All we want to show is computations.

Mr. Vilas: It will be a very short examination of Mr. Wacker.

The Master: And it will be very short for Mr. Cohen; I will answer for that. What is the use of my coming back here this afternoon when I can do something more important. My office is a wreck now.

Mr. Vilas: Can we go on tomorrow?

The Master: On what?

Mr. Goetz: Cross examination of Cohen and Wacker and finish that.

The Master: How many more witnesses are you going to have?

Mr. Neumann: I have Mr. Cohen for four more tables; they will be ready Thursday or Friday.

Mr. Goetz: If your Honor please, in all fairness to the complainant, I think that in view of the fact that the defendants are asking the indulgence of the Court in adjourning this hearing when they had previous notice of the importance and the intention of the Master to proceed with these hearings, that for the sake of expediting the conclusion of the hearings and avoiding the loss of time which will ensue, that the defendants ought to give the complainant in advance of the hearings copies of the exhibits which they propose to put in so that the complainant will as nearly as possible be ready when the witnesses are on the stand to proceed with the cross

1735 examination and conclude the trial of this case.

Mr. Neumann: I will be glad to give you my exhibits if they are ready. The reason they are not ready is we have not been able to get your vouchers. I think the Master will agree and everybody that has been in this case that we have tried in every way to expedite this. We have lost no time and wasted no time.

The Master: Wait a minute. Let me get this thing clear. You are not going to offer any proof to meet Wood's testimony?

Mr. Cummings: Except the actual facts.

The Master: Except the records of the company that Mr. Neumann has put in.

Mr. Chambers: We are not going to combat Wood's hypothetical evidence by submitting a witness with hypothetical figures.

The Master: As I understand it, the record is going to stand on Woods' testimony of the actual operating results as appear from the books.

Mr. Cummings: That is right.

Mr. Chambers: On the cost of making gas.

The Master: On the cost of making gas.

Mr. Chambers: And the cross examination of Woods.

The Master: So that I will be able to give my opinion practically forthwith on that.

Mr. Chambers: Keeping in mind Woods' cross examination.

The Master: I will tell you. I am going to have a session tomorrow morning if you men can be ready to cross examine Cohen and Wacker. You can have that real estate man here tomorrow morning if you want to. I will then adjourn. You will be ready on the 16th, you say?

1736 Mr. Chambers: All ready to clean up.

The Master: Then I will adjourn it until the 16th, and as my family is away and my wife will be away by that time, I will stay here until midnight on the 16th if necessary, and we can clean up that day.

Mr. Goetz: Will your Honor make a direction about the exhibits?

The Master: In a minute. If you gentlemen will have your proposed findings ready as to what you believe the testimony has established, and hand them to me that day, I will give you my report within 48 hours, and I am going to give the other side about 24 hours to present any objections they have to it, and you will have a report by the 23rd or the 24th of June.

Mr. Neumann: I will have to except and say that I cannot make any exceptions to the findings in 24 hours.

The Master: You do not have to except to the proposed report. That is where I think you gentlemen wasted so much time. There is not any theory upon which you are to except to my findings on the ground that there is no evidence to sustain it; it is a perfectly hopeless thing. You want to say that I have made an error in computations or I have not conceived a fact correctly, or that it ought to be another fact I should find.

Mr. Neumann: I should like this. I should not like it to appear on the record that by reason of my not submitting any request to find, or by taking any exceptions to your preliminary report, that I have waived the right so far as the defendant Nixon is concerned to file any exceptions to your final report.

1737 The Master: Of course not.

Mr. Goetz: The cases distinctly hold you cannot make any exceptions to the preliminary report.

The Master: As I said in the Consolidated case, it seems to be the practice in this district or in the Federal Courts to do that. I do not believe in the practice; it is not of any real use. It does not change my views as to the ultimate fact very much one way or the other.

When will you have your four tables ready?

Mr. Neumann: By the end of this week, and I talked to Cohen later and he said on Thursday or surely by Friday.

The Master: That ought to be in the hands of counsel for the plaintiff by Friday night.

Mr. Neumann: Or Saturday morning.

Mr. Vilas: What about the Attorney General's exhibits?

The Master: Will you have any tables?

Mr. Chambers: Yes.

The Master: When will you have them ready?

Mr. Chambers: On the 16th. The Master is going to give a quick decision. I want to except to the haste in which he is deciding a very very important issue.

The Master: The stenographer might note that Mr. Chambers says that with a smile.

Mr. Chambers: He is making a grave mistake in deciding a case like this.

The Master: There is no issue as to this operating result on Woods testimony; there is no issue, you tell me.

Mr. Chambers: Yes, there is.

1738 The Master: The fact is that the records for 1918, according to your own figures that Mr. Cohen put in the other day, show a loss of five cents a thousand cubic feet, and for the first three months of 1918—I have forgotten what the figure is for the year.

Mr. Chambers: That is an extraordinary year.

Mr. Neumann: You mean 1919.

The Master: And for 1920, the most that Mr. Cohen can work out for three months is four cents a thousand cubic feet.

Mr. Neumann: Profit. It shows a difference of nine cents per thousand cubic feet between the first three months of 1919 and the first three months of 1920.

The Master: The fact remains I have not any disputed question to consider and determine. I am taking the operating results as they appear from the books about which apparently there is no question supplemented by Woods' testimony.

Mr. Neumann: I do not see how you are going to take Woods' testimony that it takes 37 pounds of generator fuel when the records indicate much less than that, and when Woods testified in the Consolidated 32½ was the fair operating result.

The Master: I am going to handle that when I come to it, and it will not take me more than forty-eight hours to get it in shape.

We will adjourn until nine-thirty tomorrow morning.

Adjourned to Wednesday, June 9, 1920, at 9.30 A. M.

1739 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 9, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.
Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

THOMAS WALSH, called as a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct examination.

By the Master:

Q. Where do you live?
A. Jamaica, Long Island.
Q. You are a deputy tax commissioner?
A. Yes, sir.
Q. And have been for how many years?
A. 20 or 22 years.
Q. You went in before the civil service?
A. No, I went in under the civil service.
Q. You were taken from the civil service list?
A. Yes, sir.
Q. You passed the examination?
A. Yes, sir.
1740 Q. What was your business before you became a deputy tax commissioner?
A. Clerk.
Q. In the Tax Department?
A. No.
Q. What line of business?
A. Wholesale dry goods.

By Mr. Cummings:

Q. Were you assigned to the district in Queens in which is located property of the New York & Queens Gas Company?
A. Block 171?
Q. Yes.
A. Yes.

The master: Block 171 and Block 170?
The Witness: Yes, sir.

Q. During what year were you assigned to that district?
A. 1904 I think.
Q. Just the one year.
A. One year.
Q. Did you visit the property that year with the idea and for the purpose of fixing its value?
A. Yes, sir.
Q. And after you fixed such value you made a sworn statement did you of all the taxable property in your district?
A. I did.
Q. Of the valuations placed on this particular property?
A. Yes.

The Master: What do you carry this property on the books at?
Mr. Vilas: $55,000.
Mr. Cummings: Halleran swore to $55,000.
1741 Mr. Neumann: $55,000. is what they have it on the Miller schedule and on the Teele schedule.
Mr. Vilas: Teele hasn't got that on his schedule at all; it is on the Miller schedule.
The Master: I don't care about that. What is the actual book cost?
Mr. Vilas: I cannot answer that offhand. I can tell you when Mr Spear gets here.
The Master: The impression in my mind is this: You are going to have Mr. Walsh, as you have had other witnesses, say that it is not worth anything to speak of.
Mr. Cummings: We are going to have him swear what in his opinion is the fair value of it.
The Master: Mr. Halleran swore that it is worth $50,000 or $55,000. In my opinion it is worth less than Halleran says it is, and it is worth more than these other witnesses say. They carry it on their books at $44,000., do I understand?
Mr. Neumann: Where is the book entry. They ought to show us the book entry.
The Master: The books are in evidence.
Mr. Neumann: They should point it out.
The Master: I have got to guess in the last analysis what it is worth. It is perfectly absurd for me to guess at anything like this.
Mr. Cummings: I don't know how you can get any more reliable information. I would testify myself if you would believe me.
Mr. Vilas: That is a situation that often arises where the value of property is in question.
1742 The Master: Some of this property has been bought and paid for in cash?
Mr. Vilas: Yes, in 1904, and that appears on the books.
The Master: How much was that?
Mr. Cummings: Of course your Honor understands that it is

ecessary for the complainant to prove the value of this property be-
ond any reasonable doubt.

The Master: Mr. Spear, let me ask you, how much of this property
as bought since 1904?

Mr. Spear: That was bought in about 1914.

The Master: How much was paid in cash for property that you
ought after 1904? Unless I can reach a conclusion on this point
ow I am going to let Mr. Walsh's testimony go in, but I may make
uling on it now as to what I shall find. If they actually paid an
mount which represents in proportion $40,000 for the entire prop-
ty, I am going to make a ruling now that that is going to be the
gure which I shall find.

Mr. Neumann: To which of course we will respectfully except.

The Master: You will have the finding to except to.

Mr. Spear: Since 1908 we paid $20,630.90.

The Master: Which lot did you buy? I am going to withdraw
r. Walsh for a minute and recall Mr. Spear.

43 MAYNARD H. SPEAR, recalled by the Master.

Mr. Cummings: We make an objection to the Master trying the
se.

By the Master:

Q. When did you buy this piece, 50 by 125, on Farrington Street?

Mr. Neumann: I object to that as incompetent, irrelevant and im-
aterial and not the proper way to prove it.

Mr. Cummings: I make an objection to all of it.

The Master: Objection overruled.

Mr. Cummings: Exception.

Mr. Neumann: Exception.

A. In 1914 or 1915?

Q. What did you pay for that?

A. This cost us a little over $5,000.

Q. That one plot, 50 by 125?

A. Yes; there was a house on it.

Q. That you tore down?

A. Yes, we moved that house over on this side (indicating). In
e case there were some minors, and we had to buy a lot——

Q. That is not the house you have on the north side of 31st Street?

A. This plot here cost about $8,000.

The Master: The witness refers to the southwest corner of Center
ve or 31st Street and Farrington Street, 150 feet on the street and
feet on Farrington Street, and running back into an L.

Mr. Neuman: I move to strike out that answer on the ground that
figures are easily ascertainable, and since we have to guess we
ht to have something substantial to guess upon, and not the wit-
ness' guess.

44 Q. What other pieces did you buy?

A. The piece just south of that.

Q. That is that piece 50 by 125?

A. Yes.

Q. For which you paid $5,000?

A. Yes. Then, the northwest corner of Myrtle Avenue and Farrington Street, the plot just west of it, 50 by 75; and the piece north of those two, 25 by 100; the piece north of that, 25 by 100, the piece north of that 25 by 100, in about 1912.

Q. For about how much?

Mr. Neumann: Do the books show it?

Q. Isn't there a journal entry that shows exactly what you bought in 1914?

A. Yes.

Mr. Vilas: These deeds, beginning with Exhibit 38, will show the property acquired since 1904.

Mr. Cummings: I object to that upon the ground that the consideration recited in the deed is prima facie evidence of the payment of that consideration, and that this evidence is in dispute of one of their own exhibits, and I take an exception if your Honor overrules me.

The Master: You can have the exception all right.

Mr. Neumann: Exhibit 38 indicates that for that plot they paid $300.

The Master: What plot is that?

Mr. Neumann: That is parts of Nos. 20 and 21——

The Master: That is a different number from the tax map. I am going to find out what this property is worth based upon what was actually paid for it.

1745 Mr. Vilas: It is all in evidence, and I will be glad to work it out for you.

The Master: Well, let us work it out right now.

Mr. Neumann: I would like to call your Honor's attention to Complainant's Exhibit 43, which is the deed from Halleran to this company.

Mr. Vilas: He is not the granter in that deed. I don't know of any deed of which Halleran was the grantor.

Mr. Neumann: He was the Secretary of the Flushing-side Realty Company, and it recites a nominal consideration.

Mr. Vilas: That was not the Halleran that testified here. What was his name?

Mr. Neumann: Thomas A. Halleran.

The Master: I think the witness Halleran said it was his brother.

Mr. Vilas: I think he did.

Mr. Neumann: Some of these deeds have the actual consideration in them. Exhibits 38 to 42 contain the actual considerations.

Mr. Cummings: Those that do not contain the actual consideration have affixed thereto the cancelled stamps showing the consideration, and I submit that that is the best evidence of actual value, the recitals in the deeds and the stamps.

Mr. Neumann: All of this testimony now tends to impeach their own exhibits.

Mr. Vilas: Nonsense.

Mr. Neumann: You may think it is nonsense now, but you may not in some other court.

Q. In Ledger No. 3, page 5, I find an account, "Land de-
1746 voted to Gas Operations," that shows a balance of $20,630.90. What does that figure represent?

A. The land purchased since 1908.

Q. The balance of it was in fixed capital? The land and plant?

A. Yes, the land and plant was in the fixed capital prior to 1908.

Mr. Vilas: That is in accordance with the uniform system of accounts.

Mr. Neumann: I move to strike out the gratuitous testimony of the witness Vilas.

Mr. Vilas: I will admit it is gratuitous, I am not getting anything for it.

Q. You get at the fixed capital account as real estate and buildings, it is all one lump sum?

A. Yes.

Q. Can you tell me this: On page 2 of this Ledger 3, fixed capital, December 31, 1908, including real estate and buildings, ninety-three thousand dollars and odd; what land did the company own at that time?

Mr. Neumann: The deeds show that, if the Court pleases. The claim of title they have put in indicates that, without any characterization by the witness. I object to it.

The Master: The witness, in answer to my question, has pointed out a line beginning on the easterly side of Byrd's Alley, running thence in a northerly direction across Center Drive or 31st Street to a point north of it, taking in a sort of gore in what was designated as Lot 43 in Block 171, running thence from the northerly point of the court in a southeasterly or southerly direction down to the south
side of Center Drive; thence east to a point 150 feet west of
1747 Farrington Street; then south 147.54 feet as shown on the tax maps, to what would seem to be the middle line of the block; thence east 25 feet; thence south 25 feet; thence east 25 feet; thence south 175 feet to the north side of Myrtle Avenue; thence easterly on Myrtle Avenue to the point of beginning.

Mr. Cummings: I object, on the ground that the description in the deeds should be taken and not the tax map.

Mr. Neumann: I move to strike that out on the ground that it is incompetent, irrelevant and immaterial, not the proper way of proving it, and impeaches their own records. The description, if any, should be obtained from the deeds already put in evidence rather than from the tax map of the City of New York.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: I am accepting Mr. Spear's testimony as an aid to the Court in defining the lines as they should appear by the exhibits in evidence.

Mr. Cummings: We except to that upon the ground that the description in the deeds clearly shows the boundaries.

The Master: I shall check up the boundaries as nearly as I can. Some of them apparently refer to filed maps that are not in evidence. I think the testimony of Mr. Spear is useful as supplementing these boundary descriptions and indicating the lines.

Mr. Cummings: I object to it and suggest that the maps referred to in the conveyances be put into evidence.

1748 The Master: Now, the record shows that since December 31, 1908, this complainant company has actually expended $20,630.90.

Mr. Neumann: I respectfully except to that and say that the record does not show that, that the Ledger, Defendants' Exhibit A-2, on page 5, would indicate that.

The Master: I understood Mr. Spear swore to that.

The Witness: That is right.

Mr. Vilas: If I may interrupt, perhaps I can shorten this by the aid of Exhibit 96, which is in evidence and spread upon the record.

Mr. Neumann: That is Reproduction Cost.

Mr. Vilas: The additions per the books since 1904. It is the same amount which the Master just read.

The Master: The record shows at this point that the land purchased since December 31, 1908, cost this company $20,630.90.

Mr. Neumann: To which we respectfully except.

The Master: The land purchased since December 31, 1908, is almost one-half of the entire tract, as I study the map. As I see it, it is somewhat less than one-half of the entire tract.

Mr. Neumann: To which we respectfully except, because there is nothing that now appears on the record from which that inference can be drawn.

The Master: As I understand it, counsel for the complainant claim that the value of the property at this time, and for

1749 some years prior to the war, was approximately $55,000.

Mr. Vilas: Yes.

The Master: Where did I get the figure of 42,000, or something like that?

Mr. Vilas: $44,000—you asked me what we were carrying the property on the books at *at* the time, and that is the amount that shows on the books.

The Master: Where does it show on the books?

The Witness: On the tax maps—we report that as the value of the land.

The Master: You report in the tax reports the value as $44,000?

The Witness: Yes.

The Master: Is that report in evidence?

Mr. Vilas: Yes, Mr. Tobin put that in.

Mr. Neumann: Do you mean the report to the State taxing authorities?

The Witness: Yes.

Mr. Vilas: It is Exhibit L.

The Master: In other words, the complainant company, as

against the testimony of the witness Halleran that the value for some years back and at this time is $55,000, has reported to the State taxing authorities that the value of this land for 1919 was $44,000.

Mr. Vilas: The complainant however does not recognize that report made to the taxing authorities of values are binding upon it, even as admissions against interest.

The Master: It is not binding, but it reflects something with reference to the judgment of the officers as to values. Now, as against these figures reported by the complainant company to the taxing authorities, and the testimony of Halleran, we have the undisputed proof at this time that the property purchased since December 31, 1908, was approximately $20,000. As I have already stated, that is somewhat less, as I read it, than one-half the property. As against this the defendants up to this point have introduced the evidence of tax officials of the City placing a value on this property for the years since 1909, unimproved——

1750

Mr. Cummings: When they bought this there were buildings on some of this land.

The Master: Yes, but they were of no value to them and they had to remove them.

In order to make the record, if Mr. Vilas interposes an objection to the testimony now being offered by Mr. Walsh, I shall sustain the objection on the ground that further testimony of this character is unnecessary in this case; that on the record as it stands, unless further evidence is introduced by one side or another, my finding will be that the fair value, fair average value of this land prior to the year 1919 was and still is $44,000.

Mr. Neumann: To which we respectfully except.

Mr. Cummings: Exception.

The Master: Suppose you come back, Mr. Walsh, and you ask the question.

1751 THOMAS WALSH resumed.

By Mr. Cummings:

Q. Mr. Walsh, will you please state the sum for which in your judgment each separate parcel of land now owned by the New York & Queens Gas Company under ordinary circumstances would sell if wholly unimproved as of the year 1904?

Mr. Vilas: I object to that on the grounds set forth at length with reference to the witness Dede yesterday, and upon the additional ground that the testimony is far too remote to have any bearing.

The Master: The objection is sustained upon the grounds already stated by me on the record. I do not think we need any more testimony of deputy tax commissions as to values in this case.

Mr. Cummings: Exception.

Mr. Neumann: Exception.

The Master: All right, Mr. Walsh, you are excused.

Mr. Cummings: I would like to ask him another question.

Q. Did you also fix a valuation upon the land as improved?
A. I fixed a valuation on the entire property, both land and with the improvements thereon.
Q. The valuation as unimproved and the valuation as improved?
A. The final assessment is fixed as improved.
Q. Will you now state to the Court the value which you fixed upon that property as improved property?

Mr. Vilas: I object to that upon the grounds already stated.
1752 The Master: Objection sustained.
Mr. Cummings: Exception.
Mr. Neumann: Exception.
The Master: That is all, Mr. Walsh.
Mr. Neumann: The witness is now offered for cross examination.
Mr. Cummings: I want to cross examine Mr. Spear.
Mr. Vilas: I object to his cross examining him.
The Master: Go ahead.
Mr. Vilas: Over my objection and exception.
The Master: Yes.

MAYNARD H. SPEAR recalled.

Cross-examination.

By Mr. Cummings:

Q. The record here shows that in 1911 the New York & Queens Gas Company purchased a parcel of land from Elizabeth J. Kirby. Do you know the actual amount of money paid for that land by your company, of your own knowledge?
A. I did know it, but I can't recall it from memory now.
Q. Is there any way in which you can refresh your memory as to that? Is there any book here or memorandum of any kind from which you can refresh your memory and state the actual consideration paid for that piece of property?
A. Yes, I think I can locate it in the books, but it may take some little time.
Q. I am going to ask you about a lot of them, each one separately.
1753 The Master: Mr. Spear can look that up.
A. Don't the deeds show that?
Q. The ones I am asking you about the deeds do not show.

The Master: I do not think that this cross examination will be helpful. Mr. Miller offered in evidence an exhibit in which reference is made to particular ledgers and pages and deeds and showing the acquisition of various lots. Now, what year was that, 1911?
Mr. Cummings: In 1911 the record shows it purchased a parcel of land from Elizabeth J. Kirby.
The Master: Exhibit 96 shows that the lots purchased in 1911 were purchased for $5,800, and there was expended for title insurance, $101.25, making a total of $5,901.25.

The Witness: That would include, I think, in that same year more than the Kirby tract.

Mr. Cummings: I am asking as to each one separately.

Mr. Neumann: That shows the utter unreliability of their exhibit, trying to match it up with the testimony.

The Witness: I would like to say, your Honor, that it will save time if at the next hearing I submit a map showing the different plots, with the name of the grantor, and the amount actually paid.

The Master: Bring in at the same time, Mr. Spear, such original records as you are able to locate, confirming your statement as to the map that you bring in.

The Witness: All right.

Mr. Cummings: That is all right.

1754 Mr. Neumann: I have a question of Mr. Spear on another matter. I will ask complainant to produce certified copy of the minutes that I asked for.

Mr. Vilas: Unfortunately each one is not certified, but they are initialed and I have his certificate that the whole bunch——

Mr. Neumann: As I understand it, you were not going to make any objection that the original minutes were not offered, or that Mr. Maynard was not called as the Secretary.

The Master: Mr. Vilas represents that that is an accurate copy of the resolution. You can assume it is certified, or anything else.

Mr. Neumann: I offer that resolution in evidence.

Mr. Vilas: I object to it is immaterial and irrelevant, having no bearing upon the issues of the case, upon any issue raised by the pleadings.

Mr. Neumann: You pleaded that that stock was duly issued and authorized.

Mr. Vilas: Yes.

Mr. Neumann: We took issue with you on that point.

The Master: What has the opinion of Krauthoff, Harmon and Matthewson got to do with it?

Mr. Neumann: That is proof that they did not get the authorization.

The Master: It is admitted that they did not get an order at that time.

Mr. Neumann: No, it is not as yet. We ought to have the facts.

Mr. Vilas: It was admitted on the record that there was no order of the Commission.

1755 The Master: Objection sustained upon the ground that this is of no value in this case, and is immaterial.

Mr. Neumann: Exception. I ask that it be marked for identification.

Paper marked Defendants' Exhibit A-70 for Identification.

Q. Mr. Spear, I show you a letter dated November 9, 1910, on the stationery of the New York & Queens Gas Company, purporting to be signed by its treasurer. Do you recognize that signature?

A. I do.

Q. Whose signature is that?

A. H. L. Snyder.

Q. Was he the Treasurer of the New York & Queens Gas Com
pany at that time?

A. He was.

Mr. Neumann: I offer that letter in evidence.

The Master: How is that material?

Mr. Neumann: That is material on a point that I am going t
develop about this $66,000 worth of bonds, in connecti on with the
reports.

Mr. Vilas: I do not see where it is material. It is objected to.

The Master: I will take it. Mr. Neumann says he is going t
connect it with something.

Paper received in evidence and marked Defendants' Exhibit A-7

Mr. Neumann. I might state for the record now that the inform
tion contained in this letter is the same information that is attache
to these slips that are part of page 30 of the reports of this compa
for the year 1909, which I have previously offered in e
1756 dence.

Mr. Goetz: And for the information of the Court I wou
say that the slip was attached by the Public Service Commissi
without any authorization from the complainant company.

The Master: I understand that the slip to which Mr. Neuma
refers, and other slips of similar character, are placed on these
ports by the Public Service Commission upon the authority of co
munications received by the Public Service Commission from t
complainant company.

Mr. Neumann: That is right. The identical information c
tained on these slips is in this letter that I have just introduced
evidence.

Q. Now, Mr. Spear, I show you the report of the New York
Queens Gas Company to the Public Service Commission of the F
District for the year 1909, and direct your attention to page
which has already been placed in evidence, and the number of wh
I do not now recall, and I particularly direct your attention to
explanation following the letter G in brackets at the head of
page which reads: "The par value of the amount of authorized is
as authorized by the Public Service Commission, the Commissi
of Gas and Electricity or other public authority of the State of
York." Do you see that?

A. That.

Q. And that refers to column G under it where it is stated
value of authorized issue," is that correct?

A. It is.

1757 Q. Now, this amount here right underneath that,
wording is, "$1,000,000", is it not?

A. It is.

Q. Do you intend the Court to believe that that $1,000,000
the authorized issue by the Public Service Commission or any
public authority?

Mr. Vilas: I object to that question as incompetent, irrelevant and immaterial. It does not appear that the witness asks the Court to believe anything.

The Master: When were these bonds authorized?
The Witness: In 1904.
The Master: Was there any public authority that had jurisdiction over the issuance of bonds in 1904?
The Witness: I don't know; that is a legal question.

Mr. Goetz: If your Honor please, the public authority was the legislature itself which prescribed under what conditions it might be done.
Mr. Neumann: This is very important.
The Master: What I want to get clear on the record is this——
Mr. Goetz: There was no commission at that time.
The Master: Is it conceded by all counsel that when these bonds were dated or authorized by the company to be issued, on August 1, 1904, there was no statute requiring the submission of the matter to a public authority?
Mr. Neumann: There is no proof here that these bonds were authorized and issued in 1904. There is no proof here who au-
1758 thorized them, the company or anybody else, or when they issued them.
The Master: Mr. Spear testified that these bonds were authorized and issued August 1, 1904, and delivered to the Trust Company at that time.
Mr. Neumann: No, that was not his testimony.
The Master: Do I recall your testimony correctly?
The Witness: Yes.
Mr. Neumann: His testimony was that in 1909 they issued $66,000 worth of bonds to take up a note of $60,000. I want to call your Honor's attention to two things in connection with that——
The Master: Just wait a minute. Don't try to confuse the record. I understand the testimony to be that the New York & Queens Gas Company on August 1, 1904, actually issued, pursuant to a resolution of the Board of Directors——
Mr. Neumann: That resolution is not in evidence.

The Master: I don't care whether it is or not. They issued a million dollars' worth of bonds and delivered them to a trust company. Is that correct?
The Witness: Yes, sir.
The Master: The bonds lay there, $750,000 of them being issued or put out by the trust company at or about that time?
The Witness: That is right.
The Master: That left $250,000 of bonds in the trust company, is that correct?
The Witness: Yes.
1759 The Master: And they were there in 1909?
The Witness: Yes.
The Master: And in 1909 the testimony is that they took these $66,000 of bonds out and sold them.

Mr. Neumann: $66,000.

The Master: $66,000 of bonds out and sold them and used the proceeds to take up the loan of the trust company, the note.

The Witness: Let me correct that. The Lincoln Trust Company were trustees under the mortgage. They had $66,000 of our bonds as collateral for loans. We didn't have any money to take up that loan, and the Lincoln Trust Company sold those $66,000 of bonds to take up that loan and paid us the difference.

The Master: That was with your consent and co-operation?

The Witness: That is right.

The Master: That was by arrangement with your company?

The Witness: Yes.

The Master: When that was done, as I understand it, no application was made to the Public Service Commission? Is that correct?

The Witness: That is right.

Mr. Neumann: Now, I call your Honor's attention to Section 69 of the Public Service Commission Act, the part that I have marked with pencil, and if your Honor wishes I will read it right into the record.

The Master: No, just call my attention to it.

1760 Mr. Goetz: I can clear that by one question.

Mr. Neumann: You are not going to take this witness out of my hands at the present time.

Mr. Goetz: I call the Court's attention to this fact. The loans to which the Court referred were all loans made by the Lincoln Trust Company to the New York & Queens Gas Company, and the deposits of collateral were all deposits made between January 22, 1906, and June 25, 1907, before the Public Service Commission Act went into effect.

Mr. Neumann: Will your Honor read that part that I have marked there with a pencil?

The Master: That is in accordance with the letter that Mr. Neumann has offered in evidence, is it?

The Witness: Yes.

Mr. Neumann: I have offered that letter. It shows that from February 1, 1908, the balance due was $60,000, and that that loan was renewed from time to time.

The Witness: Also it shows that the first loan was made January 22nd and the last loan on June 25th, 1907.

Mr. Neumann: That is right. I am not trying to confuse the facts.

The Master: Does the witness state that when these notes were delivered to the Trust Company at the time stated in his exhibit that simultaneously therewith bonds were deposited with them as collateral?

The Witness: I do not know that positively, but I do know that the bonds were up as collateral prior to 1908.

1761 Mr. Neumann: Don't you see, if the Court please, here is the situation. Any company could come here at any time and get from under the regulation of the Public Service Commission by some witness stating that according to his best recollec-

tion the bonds were issued prior to the time that the Act went into effect. That is not proof of it. On a point of that kind the Court ought to be satisfied beyond a reasonable doubt that these funds were issued. If these were authorized by a resolution of the Board of Directors it is easy enough to prove it.

The Master: The record is made: go ahead.

Mr. Neumann: I now ask leave to read that part of Section 69 right into the record at this point.

The Master: No; it is not necessary.

Mr. Neumann: Exception.

Mr. Goetz: I object on the ground that there is a misstatement made. The law to which Mr. Neumann referred was not the law which was in effect at the time this transaction took place.

The Master: Next question.

Mr. Neumann: The record is quite clear, I think, Mr. Goetz.

The Master: Anything more from Mr. Spear?

Mr. Neumann: Yes.

By Mr. Neumann:

Q. Now, then, the total of the column, "Par Value of Authorized Issue," is what amount, Mr. Spear?

A. $1,000,000.

1762 Mr. Neumann: That is all.

The Master: Who do you want to cross examine now?

Mr. Cummings: We want to introduce some records first.

The Master: Go ahead.

Mr. Cummings: I want to introduce the application for correction of assessed valuation of real estate and personal property made by the New York & Queens Gas Company, the application for the correction of the assessed valuation of 1917.

Mr. Vilas: We object to this on the ground that it is incompetent, immaterial and irrelevant, that it is an indirect method of getting in something which the Court ruled out yesterday; further, that it is not material or relevant or binding upon the complainant in a rate case.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-72.

Mr. Neumann: I now offer in evidence Defendants' Exhibit A-70 for Identification.

The Master: I will let my ruling stand and allow you an exception.

Mr. Cummings: I offer in evidence the report of the New York & Queens Gas Company of the City of New York to the State Tax Department of the State of New York for the year ending December 31, 1919, both the financial report and the report covering the tangible property outside of the streets, highways and public places.

Mr. Vilas: That is objected to upon all the grounds stated by Judge Ransom about Defendants' Exhibit L. when it was

1763 offered and received, and upon the additional ground that it is an indirect way of evading and avoiding the ruling of the Court made with respect to the assessment of improvements.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-73.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company to the State Tax Department of the State of New York for the year ending December 31, 1917, both the financial report and the report covering the tangible property outside of streets, highways and public places.

Mr. Vilas: Same objection.

The Master: Same ruling.

Mr. Vilas: Exception. I call your Honor's attention to the fact that it has been judicially decided in many cases that such evidence is not competent or relevant in a rate case, and I object to it.

The Master: Objection overruled.

Mr. Vilas: And not binding the utility.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-74.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Tax Department of the State of New York for the year ending December 31, 1917, both the financial report and the report covering the -angible property outside of streets, highways and public places.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: I call your Honor's attention particularly to Defendants' Exhibit A-74, the fact that there are attached to it

1764 carbon copies of letters and other letters which are no part of the exhibit.

The Master: Nothing is received except the report as filed.

Mr. Neumann: If the letters were there when the report was filed they are part of it.

Mr. Vilas: There is no evidence that they were.

Mr. Cummings: The letters probably will clear up any ambiguity in the report.

The Master: I will take the report excluding any letters or papers attached to them; I did not stop to look at them.

Mr. Vilas: That is so with all exhibits.

The Master: That is so with all the rulings.

Mr. Cummings: I submit that any additional data furnished annexed to the reports becomes a part of it, and the only purpose of having any additional data in connection with it is to clear up some ambiguity.

The Master: You will have to offer anything that you want to offer that is not the report as filed as a separate exhibit.

Mr. Cummings: Exception.

Marked Defendants' Exhibit A-75.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company of the City of New York to the State Tax Department of the State of New York for the year ending June 30, 1916, both the financial report and the report covering the tangible property outside of streets, highways and public places.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

1765 The Master: The report as filed is received; no correspondence following it, if any there be.

Mr. Neumann: I call the Court's attention to the fact that there is correspondence here signed by Mr. Raynor and Mr. Spear. Under those circumstances I will have to ask that both of those gentlemen be produced.

Marked Defendants' Exhibit A-76.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company to the State Tax Department of the State of New York for the year ending December 31, 1916, both the financial report and the report covering the tangible property outside of streets, highways and public places.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Objection.

Marked Defendants' Exhibit A-77.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Tax Department of the State of New York for the year ending June 30, 1915. The whole report seems to be combined in one report.

Mr. Vilas: Same objection.

The Master: Same ruling.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-78.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company, Flushing, New York, to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1914.

Mr. Vilas: Same objection.

The Master: Objection overruled.

1766 Mr. Vilas: Exception.

Marked Defendants' Exhibit A-79.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1913.

Mr. Vilas: The same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-80.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1912.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Exception. I also add the objection that it is too remote to have any bearing on the issues in this case.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-81.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1911.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-82.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1910.

1767 Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-83.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1909.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-84.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1908.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-85.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1907.

Mr. Vilas: Same objection.

The Master: Objection overruled.
Mr. Vilas: Exception.

Marked Defendants' Exhibit A-86.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1906.
Mr. Vilas: Same objection.
The Master: Objection overruled.
1768 Mr. Vilas: Exception.

Marked Defendants' Exhibit A-87.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1905.
Mr. Vilas: I make the same objection.
The Master: Objection overruled.
Mr. Vilas: Exception.

Marked Defendants' Exhibit A-88.

Mr. Cummings: I now offer in evidence report of the Newtown & Flushing Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1903.
Mr. Vilas: That is objected to upon the grounds previously stated and upon the additional ground that it is in no way binding upon the complainant company, made by another company, not a party to this record.
The Master: Objection sustained.
Mr. Neumann: Your Honor admitted the 1904?
The Master: Because it was made by the New York & Queens.
Mr. Cummings: I submit that any statements that are made in any of these reports by a predecessor are binding upon the successor.
The Master: I will not take that; I took the 1904 because the report was made by the New York & Queens for the Flushing company.
Mr. Neumann: To get the record clear, the objection is not made to this by reason of the fact that it is not properly proven so far as signature is concerned.
1769 The Master: I assume that it is an original record properly filed in the State Department, the signatures are correct, and if all those elements were proved I should still make the same ruling.
Mr. Cummings: I also desire to call the Court's attention to the fact that it is a public record, admissible in evidence upon that ground alone.
The Master: Yes; if material to the issue.
Mr. Vilas: The complainant by its silence does not mean to be taken as conceding that the signatures are correct or that it knows anything about the report.
Mr. Cummings: I ask to have it marked for identification.

Marked Defendants' Exhibit A-89, for Identification.

Mr. Cummings: I now offer in evidence report of the Newtown & Flushing Gas Company to the State Board of Tax Commissioners for the State of New York for the year ending June 30, 1902.

Mr. Vilas: Objected to upon the grounds previously stated with reference to the previous offer.

The Master: Objection sustained.

Mr. Cummings: Exception; I ask to have it marked for identification.

Marked Defendants' Exhibit A-90, for Identification.

Mr. Cummings: I now offer in evidence report of the Newtown & Flushing Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1901.

Mr. Vilas: Same objection.

The Master: Objection sustained.

1770 Mr. Cummings: Exception; I offer it for identification.

Marked Defendants' Exhibit A-91, for Identification.

The Master: I think you have got enough on that line.

Mr. Cummings: I have just one more.

The Master: But I do not want any more.

Mr. Cummings: I will make the offer.

The Master: I do not want you to.

Mr. Cummings: Then let it be noted that I am willing——

The Master: You want to offer them back how far?

Mr. Cummings: To 1900.

The Master: I decline to recognize anything further back; I think the record is complete on that line.

Mr. Cummings: Exception.

Mr. Neumann: I should like to clear up these reports with Mr. Spear if he will take the stand.

MAYNARD H. SPEAR recalled on behalf of the defendants.

Mr. Neumann: Do you want me to prove the signatures on these or do you concede that they were signed by an officer of the company?

Mr. Vilas: As to what; the reports?

Mr. Neumann: Yes.

Mr. Vilas: They were attested by a notary.

1771 Mr. Neumann: Yes.

The Master: You need not waste any time.

Direct examination.

By Mr. Neumann:

Q. I now show you Defendants' Exhibit A-74. In that exhibit on separate sheets there will be found a card——

The Master: It is not with the exhibit, attached to that exhibit?
Mr. Neumann: Attached to that exhibit.
The Master: Not part of the exhibit under the ruling of the Master.
Mr. Neumann: Until properly identified.
The Master: They are not part of the exhibit.
Mr. Neumann: Forms of report for the year ending December 31, 1918.

Q. (continued). Do you recognize the signature of Mr. Raynor there?

Mr. Vilas: I object to that as incompetent, immaterial and irrelevant.
The Master: Objection overruled.
Mr. Vilas: Exception.

A. Yes; on that card.

Mr. Neumann: I offer that card in evidence.
Mr. Vilas: That is objected to; it has no bearing on this case.
Mr. Neumann: I offer all of this correspondence; it is all connected up. The same thing is right there.
The Master: Objection sustained; it is a perfectly useless paper. It is simply an admission of the receipt of the forms from the department.
Mr. Neumann: Exception.

1772 By Mr. Neumann:

Q. I now show you a letter on the stationery of the New York & Queens Gas Company dated October 7, 1909, and will ask you to state whether you recognize the signature contained therein?
A. I do.
Q. Whose signature is it?
A. It is mine on the letter dated October 7, 1919.

Mr. Neumann: I offer that letter in evidence. It is sworn to as a matter of fact before a notary public.
Mr. Cummings: That is part of the report.
The Master: I will take it as a separate exhibit.
Mr. Cummings: All of it is supplemental to the report and becomes a part of the report. The report is not a final report until it is finally accepted by the State Tax Commission.
The Master: You have looked through the correspondence.
Mr. Vilas: All but the last letter.
Mr. Neumann: That is simply a summary.
Mr. Vilas: You are not going to offer that?
Mr. Neumann: No.
The Master: See if you cannot concede that the letters bound into the report shall not be taken under the same ruling.
Mr. Vilas: In so far as the letters written by the complainant company I raise the same objection that I did to the admission of the report itself.

The Master: Is there any objection to my ruling standing
1773 as to the correspondence between the reporting company and the department being explanatory of the report and considered part of it under the same ruling, reserving the same right?

Mr. Vilas: No.

The Master: Let the record show that wherever in these reports there is correspondence between the department and the reporting company bound into the report, that they will be taken as part of the exhibit under the same ruling and the same exception being reserved to the complainant company.

Mr. Neumann: That applies to all of them.

The Master: To all of the reports.

Mr. Vilas: But it does not apply to any memorandum sheets.

The Master: I do not think that you will have any trouble about it.

Mr. Cummings: While Mr. Wacker was away on his vacation there were one or two other gas inspectors there, and I understand that that report showed that one or two other gas inspectors made some inspections. Do I understand that you are willing to stipulate about that?

Mr. Vilas: We will not require their production.

The Master: As I understand the stipulation it is that if these inspectors were produced they would testify in substance that they did the things that Wacker said they did, and made the reports and made the tests that are offered in evidence, and that I can receive, all of the sworn reports and test sheets in evidence for the years 1916 inclusive, down to and including the month of May, 1920.

Mr. Neumann: Right.

1774 ROBERT A. WACKER recalled.

Cross-examination.

By Mr. Vilas:

Q. Mr. Wacker, you testified in the Consolidated Gas case, did you not?

A. Yes.

Q. Early this spring or the late winter?

A. Yes, I think about that time.

Q. And you testified that you had made some tests, I think, at 79th Street during 1918?

A. Yes.

Q. That was during the period——

A. I made tests there for the Consolidated; just what year I do not recall; I guess it was 1919.

Q. That was during the period that you were assigned to Flushing, was it not?

A. I could not say positively.

Q. You testified, did you not, that you had been at Flushing since 1916 continuously?

A. Practically continuously, yes, in a practical sense, but there were times when I was taken away.
Q. There were times when you made tests at other places?
A. Yes.
Q. Now, the testing station at Flushing is in the second story of the building, in the location you have described?
A. Yes; it is on Boerum Avenue and Madison Avenue.
Q. What sort of a building is it, frame or brick?
A. It is a frame building.
Q. And how many stories high is it, is it a two-story build-
1775 ing?
A. Two-story building, yes.
Q. Is the building heated?
A. Yes.
Q. How?
A. Steam heat.
Q. Do you know where the risers enter the building?

Mr. Neumann: That has already been gone over on direct examination.
The Master: Not that particular question; objection overruled.
Mr. Neumann: Exception.

A. Yes, I mentioned that; I said it came in through the cellar on the Boerum Avenue side.
Q. Is the cellar heated?
A. I do not know definitely. In so far as the boiler that heats the steam heating plant is down in the cellar, I assume it ought to be heated.
Q. The heating plant is in the basement of the building?
A. Yes, I believe it is.
Q. Are you sure of that?
A. No, I am not.
Q. It is a fact, is it not, that steam heat has been in that building only about a year?
A. It is not a fact.
Q. How long has it been there?
A. The steam heating plant has been in that building, to my knowledge, as long as I have been there.
Q. You mean to say that that building has been heated by steam all the time you have been assigned there?

Mr. Neumann: The witness said it was his recollection.

A. To the best of my knowledge and belief, yes.
1776 Q. There is a butcher shop underneath, is there not, on the ground floor of the building?
A. Yes.
Q. Any other stores?
A. No.
Q. Where do the risers from which you take the gas that you test come up through the building to the second story?

Mr. Neumann: He has already testified about that.
The Master: I will allow him to testify again.
Mr. Neumann: Exception.

A. I did; I said it came up through the hall.
Q. Through the hall of the building?
A. Yes.
Q. That hall is not heated, is it?

Mr. Neumann: He said the whole building was heated. I do not see where you draw that inference.
Mr. Vilas: Your witness knows what he is talking about.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. I believe it is but I would not say positively.
Q. Do you know whether there is a radiator in that hall at any point?
A. No, but I think there is a steam heating pipe that comes up through the hall, that heats the radiators.
Q. You think, in other words, that there is a riser for the steam heating apparatus coming up through the hall also?
A. I think there is, yes.
Q. Is that pipe covered or uncovered?

1777 Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant; no bearing on the issues, and the witness may not know it.
The Master: Objection overuled.

A. I would not say definitely.
Q. Did you ever see the pipe, or is there anything in your mind now and recollection of having seen a steam pipe in that hall?
A. No. I do not have any such recollection now.
Q. In testing your gas do you make any allowance for the fact that the gas passes up through the hallway in exposed pipes?
A. No.

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant.
The Master: The witness has answered "No."

Q. In making your tests do you take into consideration the temperature of the room in which you make your tests aside from the temperature of the gas itself?
A. No, I do not take it into the calcualtions, the temperature of the room.
Q. You stated that you ventilated the room before you commenced a test. How do you ventilate the room?
A. I open the windows, there are two windows that face on the Boerum Avenue side in that photometer room, and I open the window in the front office there and let the air fill while I am doing other work, and then when I am ready for my test I close those windows.

Q. All windows are closed when the test is made?

1778 A. Yes. I close the windows, but in the summer I may leave them open if it does not produce a draft upon the flames.

Q. Is the door of the photometer room closed?

A. The door is, yes.

Q. In the winter, then, you close both the windows and the doors?

A. Yes, but there is one factor you overlook, that in the upper part of the room the flue pipes allow a circulation of air through that room.

Q. How large a pipe?

A. The size of the ordinary stovepipe; each end of the room there is a flue pipe.

Q. Does it go into the chimney?

A. It goes up to the chimney in one flue pipe and the other comes in from the office.

Q. How do you flush the gas; you spoke of flushing; how do you do that?

A. The photometer is situated what you might call on the main line that comes from the meter, and on the other end of the line is a burner in the front of the office. I have that burner going continuously so that there is fresh gas in that pipe, and when I light up the photometer it is simply a matter of emptying the old gas out of the photometer itself which takes no time practically.

Q. You do this every time you make a test?

A. I do what?

Q. You flush the line?

A. Oh, naturally.

Q. If the temperature of the room in which you make the test is as low as 50 degrees will not the candle power shown by the test be less than if it were as high as 65 degrees?

1779 Mr. Neumann: I object to that on the ground it is incompetent, immaterial and irrelevant. I would like Mr. Vilas to say in what room any men could work where the temperature is 50 degrees.

The Master: Objection overruled.

Mr. Neumann: You mean the temperature of the room?

Mr. Vilas: Yes.

Mr. Neumann: The question is not quite clear.

A. As to the candle power it would make no difference.

Q. The temperature of the room makes no difference in the candle power of the gas?

A. It makes no difference in corrected candle power, because the gas temperature would be the same, it would be compensated for by corrections.

Q. You mean that the gas temperature would be the same as the room temperature?

A. It would, whatever the room temperature happened to be.

Q. How many times during each day is that room used, Mr. Wacker?

A. What length of time?
Q. Exactly.
A. About two and a half to three hours.
Q. And during the balance of the day is the room closed up?
A. No.
Q. Is there anybody else there besides yourself?
A. The balance of the day the room is not occupied by anybody but myself.

By the Master:

Q. It is not closed up, it is not locked and the windows closed?
A. Yes; it is locked in my absence.

1780 By Mr. Vilas:

Q. You are the only person that goes there habitually?
A. In a general sense I am the only person that uses that place.
Q. When you go there and make your tests you are there perhaps a couple of hours a day?
A. Yes.
Q. And when you go away you lock up the room and leave it to the next day?
A. I lock up the room and leave it until the next day.

By the Master:

Q. Where is the key left?
A. I have it with me.
Q. Suppose there is a substitute man sent; how does he get the key?
A. They have a duplicate at the office.

By Mr. Vilas:

Q. You mentioned having made checks of your readings from time to time. With whom do you make those checks?
A. I mentioned having made checks with other inspectors; is that what you mean?
Q. Yes.
A. Well, I only recall definitely Mr. Birdsley, because he I considered the most important person to bear in mind.
Q. How many times have you done it with him?
A. That I cannot say definitely; I could not give any definite recollection of how many times.
Q. You can give an estimate?
A. I would give a nestimate of about two or three times.
Q. In all the time you have been with the department?
1781 A. In all the time that he has been in charge of the department.
Q. Where did you do that, out in Flushing?
A. Well, the estimate I gave referred to Flushing. I have done it with him in other stations also.

Q. What was the last time that you made a check with Mr. Birdsley at Flushing?
A. I would have to give an estimate.
Q. Give us your best recollection. I do not want anything more.

Mr. Neumann: Why not let the witness answer?
The Master: He is answering; the witness is thinking.

A. I believe about a year ago I guess would be a pretty good estimate.
Q. When you made such a test, what did you do?

The Master: Let him say what he did.

Q. How do you make a check?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant and all gone over on direct examination.
The Master: Objection overruled.
Mr. Neumann: Exception.

By the Master:

Q. What do you mean by making a check with Mr. Birdsley; how do you go about it; what do you do?
A. Well, I employ different methods, and I think usually we each have our own slips and we each take readings without seeing what the other has taken, alternate readings. In a ten minute test that would involve taking about 20 readings.

1782 By Mr. Vilas:

Q. You each take 10 readings?
A. Yes, and he watches me start the apparatus and shut off the apparatus; he also watches what I do in regard to the other details of the tests.

By the Master:

Q. Then you compare your results, do you?
A. We calculate and compare our results.
Q. Do you recall whether there was any variance the last time that you checked up with Mr. Birdsley?
A. Well, I found every time that there was practically no variation.

By Mr. Vilas:

Q. Some variance?
A. Naturally there would be.

By the Master:

Q. What do you mean by naturally there would be?
A. Scientific matter never comes out to the last dot; scientific problems never check up exactly.

1137

By Mr. Vilas:

Q. Do you mean to say that if you both observed exactly the same that your calculations would not come out the same?

A. They would come out; in our case they would come within about two-tenths.

Q. Of a candle power?

A. Two-tenths of a candle power.

By the Master:

Q. Is it your recollection that your observations were practically the same?

A. It is my recollection.

Q. The observed candle power?

1783 A. Yes. It is my recollection that our observations were practically the same.

Q. But do you recall any variance at all as to any degree in your observations?

A. No; I do not recall figures if that is what you mean.

Q. I mean, or that there was any variance however slight or large between your observations and Mr. Birdsley's?

Mr. Neumann: He has testified that the variance would be about two-tenths.

A. You asked if there as any variance in the observations; is that right?

Q. As distinguished from the corrected results?

A. There always will be a variance between the observed and corrected.

Q. I mean as between your observed figures and his observed figures?

A. There would be too; the other data is always the same.

Q. In other words, your variance would be because of slight variation in observation?

A. Yes.

By Mr. Vilas:

Q. That is the only point in which there could be a variance is it not?

The Master: That is what he said.

Q. After the observations are made, it is all a question of mathematics, is it not?

A. Yes.

Q. And if you used the same factors you are bound to get the same results if your observation is the same?

A. If our observation was identically the same we would get identically the same results.

1784 Q. Your testimony is that there have been occasions when your observe was different?

A. Yes.

Mr. Neumann: To the extent of .2 of a candle power.

Q. Why is this variance; what is it due to?
A. You might call that due to the personal equation and eyesight perhaps, or it may be due to just how the candle happened to read at that time.
Q. When did you first have trouble with your eyes, Mr. Wacker?
A. I never had any trouble with my eyes.

By the Master:

Q. Let me ask Mr. Wacker. Do I understand from the answer that you gave just before the last that candles do not burn uniformly, and that is why you take ten readings, or that the gas does not burn uniformly, and that is why you take ten readings, or both?
A. We take the ten readings to get an average.
Q. Is it because the candle does not burn uniformly, and because the gas does not flow uniformly, or both?
A. Because the candles do not burn uniformly.
Q. You find the gas does——
Mr. Cummings: There may be a variance in that.
The Witness: There might be; that is pretty hard to say.

By the Master:

Q. The point is, that there must be a reason for ten readings; the taking of an average must be due to the fact that there is a variation from minute to minute in either the candle or the gas or both?
785 A. There is a variation mainly of the candle.
Q. So that results depend largely on the condition of the candle-burner?
A. Yes.
Q. As well as on the eyesight and observations?
A. Yes.

By Mr. Vilas:

Q. You have your eyesight tested from time to time, Mr. Wacker?
A. No, I do not.

Mr. Vilas: I think that is important.
The Master: I will not allow that. I think we have got enough about candlepower anyway.
Mr. Vilas: I except to the Master's ruling in preventing me from inquiring into this man's eyesight; I think it is an important element. He testified that he had glasses.
The Master: I know. Next line: I will not allow you to.
Mr. Vilas: Exception.

Q. Were your eyes ever tested for color sight?
A. No.
Q. What do you mean by corrected candlepower as distinguished from observed candlepower?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant; already gone into on direct examination, fully explained by both witnesses.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: Just describe it as simply as you can, Mr. Wacker, just how you get the corrected results from your observe?

1786 A. Well, the corrected result signifies a result that had been corrected due to various factors, the correction of the observed candlepower.

By the Master:

Q. That is perfectly meaningless. You have got to explain this so that the judges who read this record, who do not know any more about this practice of reading the candlepower than I did before I got into the Consolidated case, I do know something about it now, but I want you to explain just what you do. Now, in order to get the candlepower of the gas you have in the first place, as I understand it, these two candles burning at one end of this machine; is that right?

A. Yes.

Q. They are supposed to burn at the rate of 120 grains an hour?

A. Yes.

Q. You burn them for 10 minutes, using up 40 grains?

A. Yes.

Q. And while those 40 grains are burning you are observing the candle as compared with the gaslight; is that correct?

A. Yes.

Q. Now, the gas is coming through at a particular temperature, is it not?

A. Temperature and rate of flow.

Q. Likewise pressure has something to do with it?

A. No.

Q. Pressure does not enter into the calculation at all?

A. Pressure does not enter into the calculation at all.

1787 Q. The elements that enter into the calculation then, are

1, the time during which the candles burn up their 40 grains?

A. Yes.

Q. Two, the temperature of the gas?

A. Yes.

Q. Three, the time of the flow of the gas?

A. I do not figure that because I set my gas in the beginning.

Q. Now——

Mr. Neumann: Might I say that when you speak of the 40 for the ten minutes, that is the combined of the two candles?

The Master: Yes.

Q. The amount of grains burned by the two candles is 40 grains in the ten minutes or should be approximately that?

A. Yes.

Q. If the candles burn more or less than 40 grains in the time you use them, you have got to adjust that down to 40 grains?

A. Yes.

Q. You have got to make that calculation?

A. Adjust it to the rate of 120 grains per hour.

Q. If the observation varies in the ten readings, you add them together and divide it by ten; that gives you the average observed candlepower?

A. Yes.

Q. Then you have got to make some calculation based upon the time it took for the 40 grains to burn?

A. Yes.

Q. Also based upon the temperature?

A. The temperature of the gas, the barometoric pressure, and then I take my log for the observed candlepower.

1788 Q. In the first place, you have got to recalculate and correct the actual amount of candle burned up in the ten minutes, have you not?

A. Yes; you mentioned that.

Q. And then you have to bring your gas to what temperature?

A. 60 degrees.

Q. And that is figured on one of these tables?

A. Yes.

Q. That you have in evidence?

A. Yes.

Q. And the adjustment or correction of the amount of candle burned is corrected according to these tables?

A. Yes; the barometer pressure at 30 inches.

Q. And all of these factors are applied to the observed candlepower?

A. Yes.

Q. And adjusting that observed candlepower in the light of the adjustments made as to the time during which the candle is burned, the barometric pressure would be more or less than 30 and the temperature of the gas more or less than 60 based upon these tables, you calculate what you say is the corrected candlepower result; is that the idea?

A. Yes.

Q. So that that corrected candlepower depending upon whether the candle burns more or less than 40 grains, and depending upon whether the barometric pressure is more or less than 30 at the time of the test, and depending upon whether the temperature of the gas is more or less than 60, will either increase or decrease the observed candlepower?

A. According to those factors.

1789 Q. Based upon those tables which you have?

A. Yes.

Q. And that result which you just arrived at is what you call the corrected candlepower?

A. Yes.

Q. That is the result that you swear to on all your reports?
A. Yes.

By Mr. Vilas:

Q. On the forms which have been introduced in evidence here you have a column for the recording of the observations at intervals of one minute?
A. Yes.
Q. Those observations range in the neighborhood of $9\frac{1}{2}$ to 10 candles as you record them?
A. No; it is $9\frac{1}{2}$ minutes to $10\frac{1}{2}$ minutes.
Q. That is the observed you put down there?
A. That is what I put on the forms. The consumption of sperm ranges approximately from $9\frac{1}{2}$ to $10\frac{1}{2}$ minutes.
Q. In the column headed "Observation at Interval of One Minute" in which are ten blanks, the figures you record there are the burnings of the candles; am I right?
A. The readings on the photometer.
Q. That is what I am trying to get at; those are readings on the photometer board——

The Master: Wait a minute. Those figures do not represent the observed candlepower of the candles only; it shows the observed candlepower of the gas, does it not?
The Witness: It shows the observed candlepower of the gas.

1790 By Mr. Vilas:

Q. Those figures range, for instance, in the sheet I have before me dated 6/19/18, 9.7, 9.6, producing an average of 9.91?
A. Correct.
Q. Those are the readings on the photometer board, are they not?
A. The 9.91 is the average of the readings on the photometer board.
Q. How do you arrive at what you call your observed candlepower from that figure?
A. I multiply that 9.91 by 2, which is the observed candlepower for the two candles.
Q. And then with the aid of the logarithms which you have described, you reach what you call the corrected candlepower?
A. After considering the other factors.
Q. Considering all the factors and making the corrections,, temperature, barometer, and the like?
A. Yes.
Q. You stated you took no account of the pressure of the gas, did you not?
A. I did not, no.

The Master: The barometric pressure.

Q. But you do make a record of the pressure at base of burner pillar in inches?
A. I make a record but it does not enter into the calculation.

Q. What is the purpose of the record?

A. Simply to give me an idea of how the gas is coming. Sometimes if the pressure at the base of the burner pillar varies considerably from what it had been going usually, I investigate to see if there is not something out of the ordinary with the burner. In other words, simply to guide me as to whether the burner is satisfactory.

1791 Q. If the pressure varies considerably at the base of the burner, will that not affect the candle power?

A. Not necessarily.

Q. May it not?

A. No.

Q. How much variation in pressure would you consider material on candle power?

A. Well, there is a question comes up there in regard to the gas. If the gas is considerably higher I find that the burner pressure goes higher too.

Q. But you make no allowance whatever for variation in burner pressure?

A. No; it is not necessary.

Q. I ask you again then what is the purpose of recording that pressure, if no use is made of it?

A. Merely as a guide to the efficiency of that part of the apparatus.

Q. Now, Mr. Wacker, you have testified that on some occasions you make two tests, make second tests?

A. Yes.

Q. Just tell us under what circumstances you make a second test?

A. I have no hard and settled rule about that. I rely upon my judgment. If the gas is close to 22, I will make a second test to be sure that my first test is correct. Sometimes if I find the gas exceptionally high in the afternoon, and I figure that the gas may be poor in the evening, I wait until evening and make an evening test to check up.

Q. If you find the gas *in* exceptionally high do you ever make a second test immediately.

1792 A. No.

Q. If you find that the gas is a little below the 22 do you make a second test immediately?

A. I make it about an hour later.

Q. Do you ever make a second test immediately following the first one?

A. I would not say definitely; I may have.

By the Master:

Q. Let me ask you this, Mr. Wacker. You said that if you found the gas exceptionally high you might make a second test. Do you ever make a second test if you find it exceptionally low?

A. No.

Q. Why not?

A. Because I have enough confidence in my ability to read the gas to feel that with the difference I would not make so much error.

I know that from past experience in checking up I have never made an error of say two or three candle power.

Q. Why do you then test the second time if you find it exceptionally high?

A. Because I figure that the public is only interested in seeing that they get 22 candle power gas.

Q. What interest is it to you so long as it is over 22?

A. It is my duty to make at least a test a day.

Q. You say you make a second test if you find it exceptionally high.

A. I stated that in a case like that I would wait until evening to see if it was again high.

Q. What difference did it make to you?

A. I want to be sure that I get the average for that day, as near the average as I can.

1793 Q. Why are you not just as sure to try to get the average for that day when it is low?

A. I do; if it is exceptionally low?

Q. Yes.

A. Because I feel that the evidence shows that the law has been violated; and that is all that is necessary.

Q. You look for violations then?

A. No.

Q. Do you find at times when you make a second reading when the gas is exceptionally high that it drops back to 22?

A. I have found that, yes.

Q. Dropped back how much?

A. When you make about a thousand tests in a year you cannot remember those details.

Q. Do you find it varies as much as two candle power?

A. Yes, I have.

Q. Did you ever try to see whether it would not go up two candle power within the same time when you find it very low?

A. Well, in a case of that kind, I would simply average my results as the average for the day.

Q. Why is not the gas company entitled to the same average, when you find it low in the morning for some reason, some reason that may have brought it down low, and it would go up higher in the afternoon?

A. If I have the time I would make another test.

Q. You just told me you do not make another test once you catch them below 22.

Mr. Neumann: I think the Master misunderstood.

The Master: I did not. The witness very clearly said that

1794 once he finds them below 22 that that satisfies him, he has caught them in a violation; that is what he goes around looking for.

Mr. Cummings: He did not say that; he is so astounded when the gas is above 22 that he has doubts about his own results.

The Master: Then he should doubt his own result when it is away below 22.

The Witness: You accuse me of discrimination there which is not so.

The Master: I am not accusing you of anything. Apparently it is the practice of your department, if you men find a violation, not to get the average result during the day.

Mr. Neumann: I must respectfully except to that.

The Master: You except to the findings.

The Witness: I might also state, that I have quite often found candlepower below, and where I found it above, it was to their benefit.

By Mr. Vilas:

Q. And when you have done that you averaged the two?
A. I have averaged the two.
Q. You have found cases where the first test showed below 22, the second test above 22, and you then took the average which brought it below; is not that true?

Mr. Neumann: Whatever the figures show.
Mr. Vilas: I have got some cases here.
The Master: Go ahead with them.
The Witness: I think you will find in a majority of the cases I have found in favor of the gas company.

1795 By Mr. Vilas:

Q. Take the test of June 19, 1918, one made at 2:30 p. m. and one made at 3:30 p. m. I show you your original reports which are in evidence.

The Master: The original test sheets?
Mr. Vilas: The original test sheets.

Q. (Continued:) What does your first test show?
A. The first test shows that the corrected candle power was 21.38.
Q. What did the second test an hour later show?
A. The second test an hour later showed 22.31
Q. What did your report show?

The Master: Was it an hour later?
The Witness: It was an hour later.

Q. So that within an hour there was a very substantial difference in the quality of the gas, in the candlepower?
A. Yes.
Q. You took the average of those two figures and reported that as the candlepower for the day, did you not?
A. Yes.
Q. And that average is 21.85?
A. That average is 21.85.
Q. So that you reported a violation where your test had shown at one time a candle power of over 22?

Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant.

The Master: Objection overruled.
Mr. Neumann: Exception.

By the Master:

Q. Why did you not go back an hour after that again to see what it was?

1796 Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant. He is only required by statute to take one test a day.
The Master: I know that.

Q. At 2:30 p. m. you found the gas to be 21.38?
A. Yes.
Q. At 3:30 you found it to be 22.31?
A. Yes.
Q. Why did you not go back then at 4:30 and make sure?

Mr. Cummings: Then you want him to go back at 5:30 and 6:30.
The Master: Why, when he found so substantial a variance between 2:30 and 3:30 he did not make one more try at 4:30 and get the average of the three tests?
Mr. Neumann: I object to that. He is only required to make one test.
The Witness: Why should I make a third test?

By the Master:

Q. I do not know; you saw no reason for it?
A. There may have been a very good reason. I may have had to be in another station.
Q. Why did you not report the second test that you made rather than the first one?

Mr. Neumann: He took the average of the two.

A. I thought the average for the day was fair.
Q. How many days throughout the year do you take the average of the day?
A. Whenever the time allowed me.
Q. How many times do you think you did it in any of the four or five years?
A. That is a rather difficult question to answer.
1797 Q. Would you say fifty?
A. In the four or five years?
Q. Yes.
A. I would say more than that.
Q. More than that?
A. Well, if you want to guess at it I would say 100.
Q. It would not exceed 100?
A. I would not say that; I am simply giving you a guess.
Q. Then it is the fact that it makes a great deal of difference as

to what particular time you happen to heat the gas as to what it shows?

Mr. Neumann: If the Court please, I think that that presupposes a state of facts that have not been proven, and I object to it.

The Master: Objection overruled; is that so?

Mr. Neumann: Exception.

A. It can make a difference, yes.

Q. In other words, as it appears from these two sheets, you might test the gas at 11 o'clock and find it way high and an hour later find it considerably lower, and an hour later find it varied again?

A. You are presupposing that fact.

Q. Is there not a constant fluctuation in the quality of the gas?

Mr. Neumann: May I put this objection on the record here, that the statute requires this company to furnish 22-candlepower gas; that means very part of the day.

The Master: I think it is a perfectly stupid, silly statute.

Mr. Neumann: Whatever your Honor's preconceived notions of the statute may be, the fact is that the statute is there and
1798 compliance is required from this company.

The Master: It is quite apparent to me that no gas company, whatever its wicked make-up may be, could so operate its plant as to deliberately have a gas that runs .62 of a candlepower below standard at 2.30 and .31 of a candlepower over standard at 3.30.

Mr. Neumann: What about those tests when the variation runs down to 17?

The Master: In the variation of temperature and in the pressure and in the other things, that naturally and necessarily enter into it, that causes constant variation, I say that a test made at some particular hour in the day indicates nothing.

Mr. Cummings: They only have to make one test. We say that picking out one sheet of a mass of four or five years is not a fair way of testing the accuracy of the witness' testimony.

The Master: What has just been developed confirms the impression that I have had, that the only fair way to find out whether a gas company has atttempted to comply with the law, or has complied with it, is to take the readings for a month; take the average over a month.

Q. Now, Mr. Wacker, I call your attention to your work sheet report for Octber 29, 1918, indicating that at 4:35 p. m. you made a test resulting in a corrected illuminating power of 22.92; at 5.30 p. m. of the same day you made a second test resulting in a corrected illuminating power of 23.10; and at 8.45 p. m. of the same day you made a third test showing a corrected illuminating power of
1799 23.40. Have I correctly stated the fact?

A. Yes.

Q. Why did you make three tests on that day?

The Master: Your gas was too good. That is perfectly apparent from what the witness has already said.

A. You must bear in mind that I had other work besides testing for candle power; I have two stations to cover, and it is pretty hard for me to remember why I did certain things in a remote year.

Q. It is quite obvious to you isn't it, that you were chasing a high candle power there in the hope that it might be found to be too high?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it is a very ungentlemanly characterization.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. No, it is not obvious.

The Master: Isn't this obvious, that you were surprised to find the gas going up on the second test?

The Witness: No, it is not obvious. I may have had nothing else to do, and I may have taken it in order to get a fair average for the day.

Q. Do you work evenings; do you frequently take tests at night?

Mr. Neumann: Now, your Honor is taking exception to his taking three tests, while if he did not, you might be complaining that he did not take enough.

The Master: I am not taking exception. I am interested in the fact that he does take three tests.

1800 Q. How often do you take tests as late as 8:45 at night, Mr. Wacker?

A. Why, I take night tests usually about twice a week.

Q. Did you ever take three tests of the New York & Queens Gas Company's gas because you found it was below 22?

A. No, I don't recall.

Mr. Vilas: Now, if the Court please, I do not want to take up time here with a whole lot more of these cases. I am prepared with these work sheets here. For instance, there is February 7, 1919——

The Master: The papers are in evidence.

Mr. Neumann: I think that is manifestly unfair. Either counsel ought to go forward without characterizing anything on the record, or he ought to quit; but to leave the record in that uncertain state, that he may be able to show these things, is not the proper way. Let him go ahead and show it.

The Master: Mr. Vilas can spread on the record the particular days that he wants to call my attention to, to look at these sheets and likewise spread on the record what the sheets show.

Mr. Neumann: That is over the objection of all the defendants?

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Vilas: I call the Master's attention to the fact that the record now shows that on February 7, 1919, the witness Wacker made two tests of the New York & Queens Gas Company's gas, one

of them showing 21.77, and the other 22.41, an average of 22.09.

1801 The Witness: That is where I helped the company out.

Mr. Vilas: I call your attention to the fact that on April 10, 1919, the witness Wacker made a test of the New York & Queens Gas Company's gas which showed 21.48. He made a second test which showed 22.40, and reported the average of those two as the candle power for that day, to wit, 21.94.

Mr. Neumann: Go ahead, and you will find that what the Master thinks is not correct.

Mr. Vilas: I call attention to a test made by the witness Wacker on October 30, 1919, in which one test showed 20.59, and the second test 22.11, and that the witness reported as the candle power for that day 21.35.

The Master: Is there anything else?

By Mr. Vilas:

Q. I notice from the tabulations placed in evidence that no tests were made by you on the days from January 7th to January 13th, 1919, inclusive. Do you know why that was?

The Master: You mean no tests were made by anybody?

Mr. Vilas: No tests recorded.

A. It may have been due to some part of the apparatus being under repair, in which case we took no tests.

Q. May it not have been due to the fact that there was a blizzard on and you couldn't get there?

A. That is not likely. I usually get there. It has to be a pretty hard blizzard for me not to get there.

1802 Redirect examination.

By Mr. Cummings:

Q. If the gas is subjected to a temperature of forty degrees in the main, and a temperature of 50 degrees in the hall, would the quality of the gas be lowered by the hall temperature?

Mr. Vilas: I object to that as not within the province of this witness.

The Master: Objection overuled.

Mr. Vilas: Exception.

A. The quality of the gas—the candle power would be raised.

Q. I think Mr. Vilas brought out on cross that there was a slight variation when you compared your tests with some other observer. When two observers are taking readings considerable movement results which causes drafts and effects the candle flame, and is apt to cause a slight difference in the reading by the two observers. Is that right?

Mr. Vilas: I object to that as not proper redirect examination, and grossly leading.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. Any considerable movement will cause a fluctuation of either flame.

Q. That would be apt to occur where two observers are in the room acting together, you might get a slight variation between the observations of the two?

A. Yes, the observations would not be reliable under those circumstances.

Q. And that fact would account for a difference of .2 candle power, would it?

A. Oh, easily.

1803 Recross-examination.

By Mr. Vilas:

Q. Do you mean to say that you would take a reading or make a test when the conditions were such as to cause fluttering of the flame, or other conditions?

A. Well, it is possible we might move to that extent. We have to make a move in order for the next observer to look at the candle.

Q. You don't make allowance for that, you don't wait until the atmosphere has quieted down?

A. We avoid those disturbances to the best of our ability.

Q. You avoid it when you are making a comparative test?

A. To the best of our ability.

Q. Gas which has been exposed to a low temperature has a tendency to lose its candle power, hasn't it?

A. If the gas is properly fixed, it ought not to.

Q. Is it not a fact that gas exposed to a low temperature loses candle power?

Mr. Neumann: The witness has already testified to the contrary. That may not be the answer you want.

The Master: Let him answer it again.

A. If the gas is exposed to a low temperature, I say if it is properly fixed, and it is assumed that the Gas Company knows how to do its business, how to attend to its work, that would have no effect.

Q. Do you mean to say that a gas containing illuminants sufficient to produce 22 candle power will not lose any of its illuminant to condensation in a cold main?

1804 Mr. Cummings: If it is too cold it will, certainly.

A. In extremely cold weather it would lose by condensation.

Q. And it would lose in candle power, wouldn't it?

A. In candle power.

Q. Do you want the Master to understand that if that same gas goes through a warm pipe into a house it would recover that candle power?

Mr. Cummings: No, he said just the opposite.
Mr. Vilas: No, he didn't say that.
The Master: Let the witness say.

A. It would not recover that, no.

Q. Then you did not mean to be understood as saying that gas which had been exposed in the main to a certain temperature, and in the house to a higher temperature, would recover its candle power?

Mr. Cummings: I did not ask him that.
The Master: The inference you left was that that would be the result. Do you get the question, Mr. Wacker?

A. Yes, I understand the question. If I left that inference I did not mean to.

The Master: Once the gas has been subjected to such a temperature as to take out illuminants, the fact that it goes into a warmer temperature will not restore the illuminants—is that correct?
The Witness: It will not.
Mr. Cummings: So my point is right.

By Mr. Cummings:

Q. If the gas is 40 degrees in the main, and 50 degrees in the room, it would not matter, because it has already lost its illuminants?

1805 A. If the illuminants are condensed they cannot be still there; they are in the mains.

The Master: If the illuminants are gone, the mere fact that the temperature in the hall is higher does not make any difference.
The Witness: It would not make any difference in the candle power.
Mr. Neumann: Just one more question; I don't know whether it is covered.
The Master: Sure it is covered.

By Mr. Neumann:

Q. Do you know where the testing station of the New York station of the New York & Queens Gas Company is?

The Master: Yes, that is covered. It is in the same building, on the same riser, the same gas.
All right, Mr. Wacker; step down.

BENJAMIN COHEN recalled.

Cross-examination.

By Mr. Goetz:

Q. Mr. Cohen, will you please refer to Defendants' Exhibit A-13, your schedule No. 5. Is it a fact that that statement showing operat-

ing revenue per thousand cubic feet, and operating expenses per thousand cubic feet, is based upon Defendants' Exhibit A-12, your Schedule 4-B entitled, "Gas Operating Revenue and Revenue Deductions"?

A. Partly on that.

Q. In part upon what else is it based?

1806 A. Based upon the annual report. The part- covering production are based on the annual report.

Q. In showing on Defendants' Exhibit A-12 the operating revenues, have you not included as a part of the revenues the item of residuals and by-products?

A. I have.

Q. And in the same Exhibit A-12 you have not made any allowance in operating expenses, or what you call operating revenue deductions for the revenue derived from residuals and by-products, is that correct?

A. That is correct.

Mr. Neumann: That was about $13, wasn't it, Mr. Goetz?

Q. In calculating your figures on Defendants' Exhibit A-13, Schedule 5, how did you treat residuals and by-products in the operating expenses?

A. They are taken off the boiler fuel right along there.

The Master: What do you mean taken off, excluded from boiler fuel?

The Witness: Deducted from boiler fuel.

Q. In other words, Exhibit A-13——

Mr. Neumann: May I call the Court's attention to the fact that Note A on the Exhibit explains that?

Mr. Goetz: It does not explain it at all.

Q. In other words, on Exhibit A-13 you treated the income from residuals and by-products as an abatement of the operating expense, is that correct?

A. That is correct.

Q. In Exhibit A-12, the income from residuals and by-products is now shown as an abatement of operating expenses?

1807 A. That is correct.

Q. In Exhibit A-13 have you not included in the operating revenue the income derived from residuals and by-products?

A. I have.

The Master: What has Mr. Cohen done, put them up on one side and not on the other?

Mr. Goetz: In Exhibit A-12 they appear only on the income side, that is, the income from residuals. In calculating the figures on A-13 he has reduced the operating expenses by the income from residuals, but has failed to take from the operating revenue the income from residuals.

The Master: That is what I say.

Mr. Goetz: He has got it in on both sides.
The Master: That is what I say.

Q. If the income from residuals were deducted from your operating revenue calculations on Exhibit A-13, it would slightly modify those figures?

A. Well, it would not modify the result any, because the figures below the production are based on entirely different calculations. It would not affect the figures up to cost of gas in holder—that is, up to total production expense, rather.

Q. Your excess of revenue over expenditures is the difference between the operating revenue and the revenue deductions?

A. No, that is not correct. That is based entirely on the statement on Exhibit A-12, and the condition referred to, but does not affect the net operating income.

Q. You say that the figures on Exhibit A-13, the excess of revenue over foregoing deductions, is not the difference between the
1808 operating revenue and the operating income as shown on Exhibit A-13?

A. No.

Q. Take the items for 1909 on Exhibit A-13, the total operating revenue is there stated as 1.1234—is that correct?

A. Yes, sir.

Q. Now, the total revenue deductions, or total operating expenses, are shown as 71.81 cents?

A. That is correct.

Q. What is the difference between the two amounts I have just read?

A. The difference is 40.53, but the 40.53 is not affected by the two cents difference referred to, because the 71.81—in this 71.81 the two cents has been cleared out in the gas unaccounted for.

The Master: How do you clear it out of the gas unaccounted for?
The Witness: In this way: The total production cost as taken on Exhibit 13 comes from Exhibit 12, on which there is no question. The divisor remains the same. Therefore the net of 71.81 is not affected by anything which appears under production, because those figures are taken from a different source entirely.

Q. On Exhibit A-13 you have an item under the title "Gas unaccounted for", and you say under that item you have cleared this difference on account of the residual income?

A. It is cleared out in that item, because that item is a subtraction of 29.36 and the 35.03.

Q. Will you tell me where in the calculation on Exhibit A-13 you have taken into account the gas consumed by the company itself?

1809 A. I have not taken that into account, and have not done so for the reason that the 29.36 is the figure I derive by dividing the gas made into the cost. The 35.03 is derived by dividing the gas sold into the cost. Therefore all those items such as gas used by the company are washed out——

The Master: No, but we are talking about residuals used for fuel.

Mr. Goetz: I just pass on. The witness said he took care of that item in gas unaccounted for. Now, to show what is included in this gas unaccounted for I have asked the witness where he took into account the gas consumed by the company itself, and he said he took care of that in gas unaccounted for.

Mr. Neumann: In one case he took the production, and in the other case the gas sold.

Q. By the item "Gas unaccounted for", you do not mean to imply that that is the gas unaccounted for in the company's send-out, do you?

A. I don't know just what the practice of the company is in regard to unaccounted for gas. If they charge themselves, and credit an account which the Commission described as duplicate gas charges, in that case it is taken care of in the general expense. If they do not do that, it is washed out, as I said before, in the gas unaccounted for.

Q. Is not gas unaccounted for the difference between the gas manufactured and the gas sold, plus the gas used by the company itself, isn't that the unaccounted for?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it is counsel's own interpretation of what that phrase means.

1810 Mr. Cummings: And he is wrong about it at that.

The Master: Objection overruled. I will take the witness' answer.

Mr. Neumann: Exception.

A. When you take the gas unaccounted for here——

Q. I am not asking you that. I am asking you what ordinarily is gas unaccounted for.

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, being the uniform system of accounts if properly followed indicates and shows what that is, *now* what this witness says.

Mr. Goetz: The Witness has already testified that he has included in gas unaccounted for, diverging from the uniform system of accounts, this item of residual expense, this item of gas used by the company. I do not want to leave on this record a caption "Gas unaccounted for" with certain amounts stated opposite, and leave that as a basis for other experts to calculate gas unaccounted for. This "Gas unaccounted for" referred to by the witness is not "Gas unaccounted for" that everybody else refers to.

The Master: I think you have already got it on the record by his statement that he has included in gas unaccounted for gas used by the company.

Mr. Goetz: And also the residual income.

Mr. Neumann: He says it was washed out by that item, that that is how it was taken care of.

1811 By the Master:

Q. Is it your testimony that the true operating results of this company's business as you gather it from their books is as shown on this Exhibit A-13?

A. It is my testimony that the result their books show is as shown on this Exhibit A-13, especially the net result down below.

Q. In other words, it is your statement that in 1909, according to their books, you found that they sold their gas at a profit of 40.53 cents per 1,000 cubic feet?

A. That is correct.

Q. And that it dropped to 39.45 in 1910?

A. That is right.

Q. And to 32.57 in 1911?

A. That is right.

Q. It went up a little in 1912, dropped again in 1913, dropped some more in 1914, went up a little bit in 1915, a little more in 1916, dropped very substantially in 1917 down to 19.83 cents?

A. That is correct.

Q. And your testimony is that in 1918, according to their books, they only made 10.18 cents per 1,000 cubic feet?

A. That is right.

Q. And in 1919 they lost 7.33 cents on every thousand cubic feet of gas sold?

Mr. Neumann: According to their books.

Q. According to their books?

A. That is right.

Q. That is your analysis of their books?

A. That is right.

Q. And your statement as to their operating results as reflected in their books?

A. That is correct.

1812 By Mr. Goetz:

Q. Exhibit A-13 is based upon the figures in Exhibit A-12?

A. I have stated that it is based on Exhibit A-12 as far as the items below "Gas unaccounted for" are concerned, and as you see on the exhibit it is in the note, if you will read it. The balance is based on the Public Service Commission's annual report.

Q. Then when you stated to the Master that according to the books of the company the figures shown on Exhibit A-13 show the operating results indicated upon this Exhibit, you mean that that was shown by the books and by the annual reports?

A. I did not.

Mr. Neumann: Are the annual reports extracted from your books, Mr. Goetz? Why confuse the issue?

The Master: Don't get into that.

A. I didn't do any such thing. The figures shown here, the net figures as I explained are taken from the books. As a matter of

fact the production expenses which I have agrees exactly with the annual reports.

Q. On Exhibit A-13?

A. Exhibit A-13.

Q. For all of the years?

A. For all of the years, except in one case where the company I believe made an error in its annual report, and instead of following the annual report—in other words, we followed their books all the way through for that line there.

The Master: Just one other question, so I will get this clear. In your table 4-B, you show year ending December 31, 1919,
1813 a total sale of various classes, municipal, street lighting, buildings, prepayments, commercial meters of $336,241.4 thousand cubic feet, is that right?

The Witness: That is correct.

Q. So that your testimony is in substance that for the year 1918 their net profit was $33,600 at about 10 cents per cubic foot?

A. The net profits for 1918 were $33,350.56.

The Master: Where is that figure, where did you read that figure from?

The Witness: On Schedule 4-B.

Mr. Neumann: In that connection I would like to call the Court's attention to the fact that we contend that the item underneath that column totalling approximately $2,300, should be added to that amount, so that the total operating income of that year would be $35,000 odd.

Q. Taking for the year 1918, Exhibit A-13, the excess of revenues over deductions, the 10.18 is arrived at by dividing the amount shown on Exhibit A-12, $33,350.56, by the total quantity of gas sold. Is that correct?

A. That is correct.

Q. And the same for 1919?

A. The same for 1919.

Q. And the other years as well?

A. That is correct.

Mr. Neumann: In connection with 1919 I would like to call the Court's attention to——

Mr. Goetz: I do not like to be interrupted in this way, it is hard to follow these figures.

Mr. Neumann: In the year 1919, among the items that we claim should be included in the year 1919, but which have not been
1814 included in the computation is this amount of $15,518.73 for the rate case.

The Master: I understand those things, Mr. Neumann. Let Mr. Goetz make his record. I have this thing pretty clearly in my mind.

Q. Have you examined Complainant's Exhibits 64 and 65 which were put in evidence by Mr. Teele?

A. I have looked them over, yes.

Q. Showing the revenue and expenses for 1919 and the cost of production?

A. Yes.

Q. Now, in your revenues on Exhibit A-12 have you included the item shown in Mr. Teele's exhibit for interest on bank balances, $308.60, as a part of the revenue?

A. I have not.

Q. Have you included, as Mr. Teele has in his revenues, the item of $5.44 for interest on consumers' final bills?

A. I don't believe I have.

Q. Have you included in your revenues, as did Mr. Teele, the item of $81.10 for interest on main contract deposits?

A. I don't believe I have.

Q. Have you included in your revenues, as did Mr. Teele, an item of $257.91 for bad debts collected?

A. I have not.

Q. Have you included as a part of the operating expenses the item which Mr. Teele included in his operating expenses of $1,621.10, interest on consumers' deposits?

A. I have not.

1815 Q. Have you included in your operating expenses, as Mr. Teele did in his, an item of $156.25 for bad debts written off?

A. I have not.

Q. And in your Exhibit A-12 have you included the total taxes charged upon the books of the company, or have you, as Mr. Teele has testified and shown upon his exhibit, deducted from taxes as not applicable to the gas business an item of $443.25?

Mr. Neumann: Which item is that, Mr. Goetz?

A. I would like to see the exhibit; I don't remember it.

Mr. Goetz: I am bringing this out so that your Honor may see the differences between those two statements. I think that is what your Honor would like to know.

The Master: Yes, that is what I do want to know.

Q. Here are the taxes.

A. How much is that?

Q. $443.25.

A. I don't see it here.

Mr. Neumann: What item were you speaking of? Where is it on this exhibit that you are talking about, Exhibit 65?

Mr. Goetz: That is the difference between what Mr. Cohen included in his taxes and——

The Witness: That is included in the statement of taxes.

Mr. Neumann: It is down underneath there, in that explanatory note, that amount of $443.25.

The Master: Tax on bondholders' income, is that it?

1816 Mr. Neumann: Yes.

The Master: Taxes on bondholders' income, is that a federal deduction at the source?

Mr. Goetz: Yes. Mr. Teele did not include in his statements of revenues and expenses and cost of production the item of taxes on bondholders' income.

The Master: He did not include it?

Mr. Goetz: He did not include it.

The Master: I understand in this $24,000 figure it is not included there.

Mr. Neumann: Certainly not.

Mr. Goetz: In the $24,660 it certainly is.

The Master: Yes, it is included.

Mr. Goetz: They agree with us that it ought to be taken out.

The Master: All right, what is the use?

Mr. Goetz: All I want to do is to point out the difference between the two statements so you will have it.

Mr. Cummings: Get to something where we disagree.

Mr. Goetz: I will give you a couple of places where we disagree.

Q. Now, referring to Defendants' Exhibit A-8, Schedule 2-A, you don't understand that the item of profit and loss or corporate surplus or deficits shown upon that exhibit, and also upon Exhibit A-9, Schedule 2-B, represent profits in the particular years as of which the amounts are stated?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. That is something for the complainant to explain and not this witness. This is a tabulation from their books.

1817 The Master: Objection overruled.

Mr. Neumann: Exception.

A. The fact that it appears on the balance sheet is proof of the fact that the profit was not made in that year. The profit and loss account on the balance sheet shows the accumulation.

Q. In the preparation of your exhibits A-11 and A-12, Schedules 4-A and 4-B, purporting to set forth the revenues and expenses from 1904 to 1919, you did not attempt to allocate to the particular year revenues or expenses shown in the profit and loss statements, Defendants' Exhibit A-19, so as to show all the entries pertaining to the particular year under revenues or expenses?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The witness has stated that he made no apportionment of deductions, that he simply took the books as he found them.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I made no attempt to do that, for the reason that the books themselves do not show enough information to enable that being done.

Q. How far did you check up the items shown on Defendants' Exhibit A-19, Schedule 9, profit and loss, appearing under "Adjustments"?

A. I do not get the question.

Q. Did you make any attempt to analyse the adjustment debits and credits appearing on the profit and loss statement which you prepared?

A. I have a list of the items which compose those adjustments.

Q. Have you simply the amounts, or the details showing the purposes for which they were made?

1818 A. I have the amounts, and the accounts, that is, the debits and credits as the case may be.

Q. Do you say that you did not feel yourself able to pick those out sufficiently so as to allocate the debits or credits to the particular years to which they pertain?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it presupposes a state of facts that this witness has not testified to at all.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I will answer that in the negative.

Q. Well, now, referring to Defendants' Exhibit A-19 showing the profit and loss account from 1904 to 1919, do you find in the debits and credits an item of bad debts collected and bad debts written off?

Mr Neumann: The exhibit speaks for itself. I object to that as incompetent, irrelevant and immaterial.

A. You will find those items between the years 1909 and 1919, as you will see on the exhibit itself.

Q. In preparing Defendants' Exhibit A-21, Gas operating revenues and expenses 1909 to 1919, did you show the items of debits and credits for bad debts collected and bad debts written off which appears upon your profit and loss statements?

A. I did not.

Mr. Neumann: May I ask the Master this: Does counsel for complainant contend that debts are a part of operating expense and revenue of the gas-making business?

The Master: I don't know and I don't care at this time. Go on, let us get through with this case.

1819 Q. Is there any line in the books of account of the complainant upon which is stated any figure precisely as you have given for the operating income for each of the years on Exhibit A-12?

A. I do not get the question.

The Master: Will I find those identical figures at any particular place in the books—operating income?

The Witness: The operating income is a derivative figure, from the revenues.

Mr. Neumann: It is quite evident that those figures will be found on the books, if those accounts which the witness has set forth in Exhibit A-12 will be looked into.

The Master: I wish you would not interrupt, but let us get through with this cross-examination.

Q. In view of the statement of counsel, I ask the witness again, do these figures appear precisely in the books of account of the company, the operating income account?

Mr. Neumann: Do you mean each identical figure, or the totals? That is where your question is not clear.

Mr. Goetz: Each amount for operating income.

A. Do you refer to the end of the year, the excess of revenue over expenses?

Q. It says operating income, excess of revenue over expenses above, then there are figures given for each yar.

A. Yes.

Q. Do these figures appear precisely in the books of the company?

A. No, they do not appear in one amount on the books of the company, but there is the result of taking the revenues which
1820 appear on the company's books and deducting the expenses which appear on the company's books.

Q. As you have grouped them?

A. As we have grouped them and as the company groups them in their annual reports to the Commission in some cases.

Q. Are the forms of annual reports prescribed by the Commission?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, no foundation laid for it, and not a proper way of proving it.

The Master: Overruled.

Mr. Neumann: Exception.

A. I presume they are.

Q. So that the company making its report follows the form prescribed by the Commission?

Mr. Neumann: That is objected to on the ground it is immaterial.

A. They do not.

Q. In what respect do they not?

Mr. Cummings: Now tell him once for all.

Mr. Goetz: Yes, I want to know.

A. They include them just on bank balances in their revenues which the Commission claims are not to be included, and there are several other respects in which the Commission claims year after year the company does not follow its rules, like accrued amortization and contingency account procedure.

Q. What other items are there?

A. I do not remember all the details, but I do know that there are several letters that go out each year calling upon the company to follow the rulings of the Commission, or to follow the
1821 accounts as they are prescribed, and so on.

Q. Is it not a fact that all the correspondence that has been exchanged between this company and the Public Service Commission relates simply to the item interest on bank balances and to the item accrued amortization of capital?

Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial; the correspondence is the best proof of that.
Mr. Cummings: This is not the way to prove it.
The Master: Overruled.
Mr. Neumann: Exception.

A. I could not answer that question without having the correspondence in front of me.
Q. You do not recall any other instances, do you?

Mr. Neumann: He has already stated so.

A. I am not familiar with the correspondence, sufficient to enable me to answer that question.

Mr. Cummings: Mr. Cohen has not anything to do with that.

Q. You volunteer the information without being familiar with the correspondence, then?

Mr. Neumann: You asked the question, Mr. Goetz, and he answered you.
Mr. Goetz: But I did not volunteer anything at all.
Mr. Neumann: It was a direct answer to your question.
The Master: Mr. Cummings, I do not know whether I will have to appoint Mr. Neumann sergeant-at-arms to keep you quiet, or whether I should appoint you to keep him quiet.

Q. Referring to your Defendants' Exhibit A-15, Schedule 6-B, where in the Uniform System of Accounts do you find an
1822 account Gas Meter and Distribution?

The Master: What is that item?
Mr. Goetz: Gas Meter and Distribution.
Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial.
The Master: Does it make any difference in his results here?
Mr. Neumann: No.
The Master: Or is this a purely academic discussion you would like to have?
Mr. Goetz: It is not an academic discussion, but these are going to be used by their experts as the basis for making certain calculations of costs to this company. If there is something like Gas Meter and Distribution, it is something very new, and I want to find out where it is going to have a place in the testimony of the expert who will testify.
Mr. Neumann: Objected to as incompetent, irrelevant and immaterial.

A. It is apparently an error of the typist in mistaking the word "installation" for "distribution."

The Master: Gas Meter Installation, that ought to be?
The Witness: Gas Meter Installation.
Q. Mr. Cohen, did you receive any instructions from Dr. Weber in connection with the preparation of these papers?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. Neumann: It has no bearing on this case at all.

1823 The Master: I will allow it.

Mr. Neumann: Exception.

A. I do not recall any specific instructions that I received from Dr. Weber in regard to any particular schedule, but, as you know, I am under his supervision.

Q. Did you talk at all to Dr. Weber about preparing the three months' statement, comparing the revenues and expenses of the first three months of 1919 with those of 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. If the complainant's counsel wants to know, I will tell him that I had him do that to meet Mr. Spear's exhibit that he put in.

The Master: The objection is overruled, then.

By the Master

Q. Did Dr. Weber tell you to get up that three months' statement.

A. No, he did not.

Q. Who did?

A. When I got up to Fifteenth Street I found a statement for a few months, compared—a few months incomplete statement that Mr. Frank had made, and I remade that in a different form as shown here, and brought it down to Dr. Weber. He approved it and that is how it is here.

Mr. Cummings: It does not matter who directed him to do it anyway, does it, your Honor?

The Master: No.

Mr. Goetz: It might.

Mr. Neumann: How would it?

Q. Will you please give me the precise figures as you calculate the revenues per thousand sold for 1919 and 1920?

1824 Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial and fully covered by the exhibit.

The Master: I do not quite understand your question, Mr. Goetz.

Mr. Goetz: It does not speak for itself. I would like to know how he arrives at 1.03 for 1919 and 1.06, the figure for 1920?

Mr. Neumann: It is all stated in there.

Mr. Goetz: There is not a thing stated in there.

The Master: What schedule is that?

Mr. Goetz: Exhibit A-20, Schedule No. 10.

A. I can say that that is done by dividing the 83041.2 M cubic feet into the 85851.68 of revenues.

Q. Will you please do that, and also the other item of 1.06?

Mr. Neumann: Give him one at a time.

A. Apparently the clerk who figured that particular ratio—I did not go over the ratio myself, naturally—should have omitted the nought, and it should be 1003.

The Master: For 1919?
Mr. Neumann: 1919.
The Master: Now, figure 1920.
The Witness: I make it 1.06, the same as it is on there.

Q. In other words, you would now correct these figures so as to show an improvement in the revenues of 6 cents instead of 3 cents?
A. Just a moment, please. (Witness makes computation.) I want to correct my former statement, the figures as they are shown here are both correct.
Q. Will you please give me the fractions for those figures?

1825 Mr. Neumann: Do you mean beyond the two figures following the decimal point?
Mr. Goetz: Yes.

A. The fraction on the 1.03 is 319244, which is less than half, therefore it is dropped.
Q. What is the fraction on the 1.06; isn't it less than 1.06?
A. I can give you that. On the 1.06 the remainder after multiplying by one is 624625. The multiplication of 6 by the 108997 gives 653982. Under the same rule you drop less than half a cent. I took less than a quarter of a cent of the next one.

The Master: Yes, but the company gets it coming and going, both ways, then. You are dropping it against them in one place and you are adding it on them in another place.
Mr. Goetz: This difference of three cents according to my computation is reduced to 2¾ cents.
The Master: Yes, I can see that.
The Witness: If we went out far enough we would get——
The Master: You see, what you do there is drop a fraction and add a fraction, both being against this company.
The Witness: Well, if they were in favor of the company it would be the same thing.
The Master: That may be, but just now it is against them.

Q. With regard to that same sheet, Exhibit A-20, you have there calculated, the operating expenses per thousand cubic feet of gas sold in those three months, have you not?
A. Yes, per thousand cubic feet sold.

Q. That is arrived at by taking the total quantity sold
1826 and dividing it into the total amount of money paid for operating expenses; is that correct?

A. The figure for operating revenue deductions is based on the quantity sold divided into the operating revenue deductions.
Q. If the quantity of sales for three months was lower, then the cost per thousand would be higher; is that correct?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. That is evident.

Q. From your examination of the accounts of this company and your calculations per thousand of sales for the various periods shown upon your exhibits, have you not found that the commercial administration expenses, the transmission and distribution expenses, the promotion of business expenses, the general miscellaneous expenses and tax accruals do not vary substantially by reason of the quantity of gas sold?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. If the Master will recall, when Mr. Spear put in an exhibit for only a part of a year, I raised those very objections, and yet over them that exhibit went in, and here is one to match it.

The Master: Overruled.

Mr. Neumann: Exception.

A. I have not made any analysis of the exhibits in that way, in order to be able to give an opinion.

Q. I am not asking for an opinion, I am asking if that is not exactly what you observed?

A. All I can do is repeat my answer.

1827 The Master: You have not observed it?

The Witness: I have not observed it

Q. Take your Exhibit A-12 and the Schedule 4-B, for transmission and distribution expenses of 1917 and 1918 is it not a fact that while the sales increased 41,000,000 cubic feet, the transmission and distribution expenses decreased?

Mr. Neumann: What are you trying to prove now, that the prices are going down? Objected to on the ground it is incompetent, irrelevant and immaterial, that the exhibit speaks for itself.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Goetz: I want to answer the question of counsel. I am trying to prove that certain expenses do not vary proportionately with the output, that the taxes will be constant with the company, whether the company manufactures one foot or a million cubic feet. And yet the cost per thousand will vary accordingly.

Mr. Neumann: And that is the distribution expense, is it not, that does not vary?

A. Will you please repeat your question? I do not follow you.

Q. Taking your Exhibit A-12 and the Schedule 4-B, for transmission and distribution expenses of 1917 and 1918, is it not a fact that while the sales increased 41,000,000 cubic feet, the transmission and distribution expenses decreased?

A. While it is a fact that the sales increased by 11,000,000, the transmission and distribution expenses charged upon their books decreased by a little less than 2,000, but I do not know what
1828 was included in the particular items of those particular years; I would have to know more about the details of what is in there.

The Master: It is argument.

Q. Going back to Exhibit A-13, your Schedule No. 5 showing the gas operating revenues and revenue deductions per thousand cubic feet of sales, did Mr. Moeran go over some of these figures with you?

A. We went over them together, yes.

Q. Did you find any arithmetical errors in some of them?

A. The ones you referred to and brought out on cross examination, and there were differences in a few others.

Q. Take it for 1915, the cost of water gas oil per thousand cubic feet of gas made is shown upon your statement as 13.09 cents. Did you not find on going over the figures with Mr. Moeran that there should have been 13.13?

A. He has 13.13, but I did not have the 1915 annual report to see where the difference came in.

Q. Taking 1918 for the same item, your figures are 28.89, and did he not show you his figures of arithmetic to result in an amount of 28.93?

A. I do not remember, but probably that is the case.

Q. But, were there not several other items of that kind?

A. There were several small items, due I believe to dropping a half cent in some cases. We may have dropped it and Mr. Moeran may not have dropped it.

Q. If you make the correction on that exhibit for the income from residuals which is included in your item miscellaneous, should there not be a corresponding correction in all the figures on
1829 the line marked total operating revenue deductions?

Mr. Cummings: I object to this, your Honor. Of course they make some corrections, and they may make more.

The Master: Overruled.

A. No, they should not. I told you that very thing in the very first part of my cross examination.

Q. You said that the two cents or the differences were washed out in gas unaccounted for; is that what you said?

A. The difference disappeared, for this reason——

Q. Well, is that what you said?

Mr. Neumann: One moment, let him answer, please.

The Master: Let him answer it.

The Witness: The difference appears for this reason: The figures on the line Total Production Expense are taken or derived by dividing the expenses by the number of cubic feet of gas sold. Mr. Moeran and I agreed on those figures.

Q. What figures do you mean?
A. There is no question on anything below that line.
Q. Below which line?
A. The total operation expense. I believe we check up the figure there. The figure in the cost per holder per M cubic feet made is the figure arrived at by dividing the production cost by the make. The figure in between, as I explained, was the figure derived by subtraction, and naturally any difference in the figure of cost per holder per M made would affect the deduction.

1830 Mr. Neumann. I do not think that is quite clear on the record, what he means.
The Master. Yes, you need not worry about that.

Q. Take your item boiler fuel 2.23, have you got the income from residuals in there?
A. I told you before that I had, yes.
Q. How?
A. As a deduction against boiler fuel.
Q. And in your item right above that for miscellaneous 4.68, taking the year 1909, for example, you also have included in your operating revenue the income from residuals; is that correct?
A. That is correct.

Mr. Goetz: That is all.

(Witness excused.)

Adjourned to Wednesday, June 16, 1920, at 9:30 o'clock A. M.

Next Complainant's Exhibit 105.
Next Defendants' Exhibit A-92.

1831 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 16, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.
Mr. Newmann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

It is hereby stipulated by and on behalf of the parties to the above cause, that the signatures of witnesses appearing before the

Master, to their respective depositions, be waived; and that the filing of the original exhibits in the office of the Clerk of the Court be also waived.

Dated New York, June 7, 1920.

BENJAMIN COHEN recalled.

Direct examination.

By Mr. Neumann:

Q. Mr. Cohen, have you prepared a schedule which you have numbered 8?

A. I have.

Q. And what are the sources from which this schedule was prepared?

A. The source is the operating ledger and operating journals of the New York & Queens Gas Company, and underlying records of the company.

1832 Q. What does this schedule purport to show?

A. It shows the amount of fixed capital retired in the years 1909 to 1919, and the charges made for the credits on retirement.

Q. And the foot notes which you have there, A, B, C and D, are items that are in the books?

A. The foot notes explain items on the books in the best way I could explain them.

Q. This scheme is correct, is it?

A. I believe it to be correct.

Mr. Neumann: I offer this in evidence.

Mr. Ransom: I object to it as made up on a basis that it is very difficult to understand. I only got a copy of this exhibit very late yesterday afternoon. I am entirely frank to say that having spent——

The Master: That was supposed to have been given to you not later than Saturday morning.

Mr. Ransom: Yes.

Mr. Neumann: I didn't get it myself until yesterday, and I sent it to Judge Ransom as soon as I got it.

Mr. Ransom: I got it about 3:30 or 4 o'clock in the afternoon, and, having spent some time trying to understand it, I am perfectly frank to say that I do not.

Mr. Neumann: That may not be our fault.

Mr. Ransom: It is not necessarily a reflection on the exhibit.

Mr. Neumann: It may be due to causes within yourself.

Mr. Ransom: Yes.

The Master: What is this supposed to be, Mr. Cohen?

1833 The Witness: It shows the retirement of fixed capital year by year, and also by accounts down below it shows what accounts they charge for retirement. It shows the amount charged

to accrued amortization of capital, renewals and replacements, surplus, materials and supplies, recoveries and reductions in cost, consumers, and operating accounts.

Mr. Ransom: In some wonderful way they have endeavored to whittle away the company's capital account. Usually I can understand their methods, but for once I cannot even understand what they are trying to do.

The Master: I will take it because I do not understand it. Perhaps I may after cross examination.

Mr. Ransom: I may understand it eventually.

Mr. Neumann: What was that comment that the Master made?

The Master: I say I cannot understand it until somebody cross-examined Mr. Cohen.

Mr. Ransom: Will you take it subject to a motion to strike out?

The Master: Yes. I probably won't strike it out; I will probably let it stand.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-92.

Q. Have you prepared a schedule which you have numbered 13?

A. I have.

Q. What does that schedule purport to show?

A. It shows the analysis——

The Master: No, it purports to show.

1814 A. (Continued.) The analysis of the account "Interest during Construction."

Q. Where is this information taken from?

A. It is taken from the books of the company.

Q. And it is correct, is it?

A. I believe it to be correct.

Mr. Neumann: I offer this schedule in evidence.

Mr. Ransom: I object to it on the grounds already indicated. I have not had time to analyze it, having received it late yesterday afternoon.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-93.

Q. Mr. Cohen, have you likewise prepared a schedule which you have numbered 14?

A. I have.

Q. And what does that schedule purport to show?

A. Analysis of the account, "Engineering and Superintendence," on the books of the New York & Queens Gas Company.

Q. And all of these items and entries are taken from the books as indicated by you on the first column, is that correct?

A. They are taken from the books. I indicated the journal folio numbers in the first column, and wherever the books refer to underlying records we used such records.

Q. This schedule is correct, is it?

A. I believe it to be correct.
Q. It was prepared by you or under your direction?
A. That is right.

1835 Mr. Neumann: I offer this schedule in evidence.
Mr. Ransom: I make the same objection.
The Master: Objection overruled.
Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-94.

Q. Mr. Cohen, have you prepared a schedule which you have numbered 15?
A. I have.
Q. And what does this schedule purport to show?
A. Analysis of the account, "Office Development, Douglaston Extension."
Q. And this data was all taken from the books of the company, was it?
A. It was taken from the books of the company and records underlying the books.
Q. The statement is correct, is it?
A. I believe it to be correct.
Q. And it was prepared by you or under your direction?
A. Yes, sir.

Mr. Neumann: I offer this schedule in evidence.
Mr. Ransom: May I just ask one question?

By Mr. Ransom:

Q. Where did you get this title, "Office Development, Douglaston Extension," which you have seen fit to put on this statement?
A. From the books of the New York & Queens Gas Company.
Q. You are willing to swear here that that is the title of the account on the books?
A. That is the title of the account on the books.
Q. What book?
1836 A. The New York & Queens Gas Company ledger; I don't remember the number.

Mr. Neumann: Have you the book in court, Mr. Ransom?
Mr. Ransom: I don't know.
The Master: You offer that paper?
Mr. Neumann: I offer it in evidence.
Mr. Ransom: I make the same objection, and I object to it on the particular ground that it appears from the books which are in evidence that the witness has seen fit to take out of the air or some worse place a title "Office Development, Douglaston Extension," which is not the account in the books or anything like it, and it works an intentional misrepresentation of the books of this company.
Mr. Neumann: He told you where he got it from.
The Master: He swears it is taken from the books.
Mr. Neumann: If we had the book here we would point it out to you.

Mr. Ransom: If some of your men were not working on it it would be here.

The Master: Did you see this title on the books yourself?

A. I think I did. I believe the way it is copied on the statement is taken from the books.

The Master: The paper is offered, objection noted, objection overruled and exception allowed.

Paper received in evidence and marked Defendants' Exhibit A-95.

Mr. Neumann: Your witness, Mr. Ransom.

The Master: You may cross examine.

1837 Mr. Ransom: I cannot cross examine this witness on these things now.

The Master: Cross examination suspended. Anything else?

Mr. Neumann: That is all of my schedules.

WILLARD F. HINE, recalled as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination

By Mr. Chambers:

Mr. Chambers: Now, as to Mr. Hine's qualifications, I would like to submit and the stenographer can write it out, if there is no objection, pages 7, 8, 9, 10, and to the end of folio 32 on page 11 of Mr. Hine's affidavit in the Central Union Gas Company case.

Mr. Ransom: I think in the case of a witness so slightly qualified or less, that that is not the proper method of procedure.

Mr. Chambers: Slightly?

Mr. Ransom: Slightly or less.

Mr. Chambers: That is your usual characterization of witnesses?

Mr. Ransom: With so slight relation to any important activities in the gas business.

Mr. Chambers: Well, I will be glad to use up the time then.

Mr. Ransom: All right.

Q. How old are you, Mr. Hine?

A. Thirty-four.

Mr. Ransom: I will concede that this witness is of the grade of cadet engineer, as testified to in the Consolidated case.

1838 Mr. Chambers: The concession is not accepted.

Q. What is your business, Mr. Hine?

A. Utility engineer.

Q. And what has your work in the last few years been devoted to principally?

A. To the gas business, gas engineering work.

Q. What position did you hold with the Public Service Commission of the First District?

A. From 1911 until the early part of 1919 I was chief gas engi-

neer of the Public Service Commission for the First District, State of New York.

Q. That makes eight years in the position of chief gas engineer?

A. Yes, sir.

Q. Was Mr. Ransom there as counsel to the Commission while you were there as Chief Gas Engineer, some of the time?

A. He was.

Q. That is, Mr. Ransom, who is counsel for the complainant company here?

A. Yes.

Q. Now, what work did you do, or what did your position call for while you were chief gas engineer of the Public Service Commission for the First District?

A. Well, I was in charge of all the gas engineering work done by this Commission. The work that was required was surveys of pressure conditions and other gas standard matters; analysis of cost extensions where such extensions were charged to capital, and it was intended to capitalize them by the issuance of stock or bonds which had to be approved by the Commission; examination of actual work done in connection with extensions and improvements in
1839 plants of the various gas companies in the District; examination as to the propriety of charging certain amounts to capital account in connection with these cases; also examination of estimates of the cost of proposed extensions to be made in connection with bond and stock applications, the necessity of the improvements contemplated and the cost of the same.

Q. Did you make appraisals of the properties of companies?

A. Yes, I made all of the gas appraisals that were made during the time I was with the Commission.

Q. Did you make investigations of service?

A. A great many of them.

Q. And the standard of service?

A. Yes.

Q. Were you in charge of the testing laboratories maintained by the Commission for testing the quality of gas for a time?

A. I was. I started these testing stations and was in charge of their operation after they were installed.

Q. You are a graduate of what university?

A. University of Wisconsin.

Q. With what degree?

A. Bachelor of Science and Electrical Engineering.

Q. In what year did you graduate?

A. 1907.

Q. From June 29, 1907, to May 31, 1909, you were with what company?

A. I was with the Laclede Gas Light Company of St. Louis.

Q. In what capacity?

1840 A. I was assistant to the superintendent at the Station A plant, and first was in charge if engines, boilers, and all other power plant equipment at the station, being responsible to the station superintendent for the maintenance of all such power plant ap-

paratus, that is, engines, boilers, pumps, elevators and other power plant equipment.

Q. Did you make any estimates of the cost and probable operating results for a new power plant equipment installed there or to be installed?

A. I made many such for contemplated changes, and had charge of the installation of such apparatus as was put in at this station.

Q. Were you in charge of the coal gas plant of that company at Station A?

A. I was at a later date.

Q. How many coal gas houses?

A. There were two of them.

Q. And with a capacity of how much, approximately?

A. Three million cubic feet per day.

Q. Were you at one time in charge of the water gas plant at Station A of that company?

A. I was.

Q. With what capacity?

A. From six to eight million per day.

Q. Six to eight million cubic feet a day?

A. Yes, sir.

Q. From June 1, 1909 to September 30, 1909, you were with what company, do you recall?

A. I was with the Kettle River Quarries Company of Madison, Illinois.

Q. In what capacity?

A. I was assistant to the Superintendent, in charge of night operation of the creosoting plant.

1841 Q. After that, in October, 1909, you returned to the Laclede Gas Light Company, did you not?

A. I did.

Q. And you stayed there how long, do you recall?

A. I stayed there until April, 1911.

Q. What were you in charge of then, on your second employment by the Laclede Gas Light Company?

A. I was assistant to the chief engineer, and in charge of the drafting room, and responsible to the chief engineer for all the design work done by the company, in general charge under him of new construction and reconstruction work. I was required to keep in touch with all of the work handled through the chief engineer's office, and also was in charge of the making and keeping of all gas mains records.

Mr. Ransom: May the record show that this witness is now reading instead of giving from his recollection, reading from a memorandum.

Q. You are not reading from a memorandum, Mr. Hine?

A. I was glancing at one.

Q. To refresh your recollection?

A. Well, just to facilitate matters.

Q. But nevertheless it is your recollection now that that is the fact, is it not?

A. Absolutely.

Q. Now, you were in charge of the designs, and in general charge of the construction of a new and modern coal gas house having a capacity of 3,000,000 cubic feet per day there?

A. Yes, I was in general charge of this work under the chief engineer.

1842 Q. Were you in charge of a meter shop and branch office?

A. Yes.

Q. And miscellaneous buildings?

A. A good many miscellaneous buildings and structures, and gas work improvements.

Q. How about a 7,500 kilowatt electrical plant?

A. I was in charge of the design of that electrical plant, and also the design and installation of a low pressure steam turbine, and the design of the plant, connections and layout of the plant.

Q. Were you in charge of overhauling and re-designing the construction of a great amount of works, pipe, and miscellaneous gas works equipment?

A. I was.

Q. Were you in practical charge of the inventory and appraisal of that company's property?

A. I was.

Q. And in that connection did you have available and use vouchers and cost records covering a very considerable portion of its property?

A. I did.

Q. Did you assist the chief engineer on various jobs that had to do with the valuation of the gas and electrical properties?

A. I did.

Q. While you were with the Public Service Commission of the First District, the public utilities companies over which the Public Service Commission had jurisdiction, did they comprise about 15 to 20 per cent of the manufactured gas produced in the United States exclusive of by-product coke oven gas?

A. They produced at least that much.

1843 Q. While you were with the Public Service Commission did you check the gas of all plants and main extensions made by gas companies where such improvements were financed by the issuance of stock and bonds?

A. Yes, with one exception I believe.

Q. Did these amount to millions of dollars?

A. They did.

Q. The work included the detailed checking of construction cost as shown by the company's books, vouchers and records, an examination of actual work done in order to ascertain the reasonableness and necessity of expenditures, and in order to be able to certify as to the propriety of charging same to capital account, did they not?

A. They did.

Q. Did you keep in touch with the operating and construction

costs and prices of gas works apparatus, the cost of construction material, the cost of material used for the manufacture of gas both in New York City and other parts of the country during that time?

A. I did.

Q. And have you ever since?

A. I have.

Q. Have you made studies and reports with respect to gas rates, gas pressure conditions, gas service standards, the quality of gas supplied, the operating cost, the estimated cost and necessity of plant and main extensions and so forth, and testified to the same before the Commission?

A. I have.

Q. Did you appraise the properties of the Brooklyn Borough Gas Company?

A. I did.

1844 Q. The Newtown Gas Company?

A. Yes.

Q. The Richmond Hill & Queens Gas Light Company?

A. Yes.

Q. The Woodhaven Gas Light Company?

A. Yes.

Q. The Jamaica Gas Light Company?

A. Yes.

Q. The Kings County Lighting Company?

A. Yes.

Q. These appraisals were in connection with rate cases or applications for the approval of the issuance of certificates, were they not?

A. They were; applications for bond and stock issues, the approval of bond and stock issues.

Q. Did this work of appraising the properties of these companies involve the preparation of inventories, and an examination and analysis of all expenditures charged to construction?

A. Yes, all expenditures charged to construction at least during the recent years.

Q. Did this work keep you in constant touch with the prices of gas works equipment of all kinds as well as with general construction cost?

Mr. Ransom: I object to that.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. It did.

Q. Have you also done some work in a consulting capacity?

A. I have.

Q. Did you make an inventory and appraisal of a portion of the works of the Haverhill Gas Company of Haverhill, Massachusetts?

A. I did.

1845 Q. Did you make a complete inventory appraisal of the property of the City Gas Company of Norfolk, Virginia?

A. I did.

Q. And a study of that company's operating results?

A. Yes.

Q. Did you make a complete appraisal of the tangible property of the Minneapolis Gas Light Company of Minneapolis, Minnesota?

A. Yes.

Q. On more than one occasion?

A. I made an appraisal first as of July 1, 1918, and recently brought that up to date as of December 31, 1919.

Q. Did you also act as consulting gas engineer for the United States Bureau of Standards?

A. I did.

Q. Since March, 1918, what business have you been engaged in?

A. I have been associated with Milo R. Maltbie.

Q. Did you appraise the gas property of the Municipal Gas Company of Albany?

A. I did.

Q. That was a company with a capacity of about how much, do you remember, Mr. Hine, offhand?

A. No, I do not. They had three machines. They could probably have made about somewhere in the neighborhood of 4,000,000 cubic feet a day. They had no necessity for making that much.

Q. Do you recall that the sales of that company were approximately 6,000,000 cubic feet of gas a year?

A. It was.

1846 Q. I mean 600,000,000?

A. Yes, 600,000,000, you are right.

Q. 600,000,000?

A. Yes.

Q. Did you appraise the gas property of the Utica Gas & Electric Company of Utica, New York?

A. I did.

Q. Are you familiar with the various kinds of apparatus and facilities used by gas companies at the present time?

A. I am.

Q. Have you done any work in connection with the Watertown Gas Company?

A. I have.

Q. That is Watertown, New York?

A. Watertown, New York.

Q. Have you done any work in connection with the Ontario & Pavilion Natural Gas Company in the western part of the State?

A. Yes.

Q. Have you done any work on the appraisal of the property of the New York & Richmond Gas Company?

A. I have appraised, inventoried and appraised the property of the New York & Richmond Gas Company.

Q. Did you do some work in connection with the Consolidated Gas Company?

A. I did.

Q. And testified in that case?

A. I did.

Q. You testified in the case of the Minneapolis Gas Company?

A. Yes.

1847 Q. On two occasions, did you not?

A. No, one occasion.

Q. Recently?

A. Yes.

Q. You testified in the Municipal Gas Company case in Albany?

A. I did.

Q. And the Utica Gas & Electric Company of Utica?

A. Yes.

Q. Have you made an examination of the properties of the company known as the New York & Queens Gas Company?

A. Yes.

Q. The complainant company?

A. I have, the New York & Queens Gas Company.

Q. And did you go over there and make an examination of that company's plant located at Flushing?

A. I have been there several times, and was over there at the end of last week for a day.

Q. State, will you, Mr. Hine, generally, what you did do in relation to that company.

A. Well, I have done a great deal of miscellaneous work in connection with that company.

Mr. Ransom: That is objected to and I move to strike that out as vague and meaningless.

The Master: Yes, but I will let it stand.

A. (Continued.) In going over the inventory of the company's property that was submitted in evidence in this case, and in having same checked up in a general manner.

1848 By the Master:

Q. What do you mean "in a general manner"?

A. That is, spot checking rather than absolutely detailed checking, and an examination particularly of the cost of the company's property as shown by the books of the company.

By Mr. Chambers:

Q. Did you make an examination of the company's buildings?

A. I did.

Q. You had, had you not, a number of men working with you and under your direction and supervision?

A. Yes.

Q. On this work?

A. Yes.

Q. Those men were all working under your supervision and direction?

A. They were.

Q. Were they, some of them, engineers?

A. They were all engineers.

By the Master:

Q. What kind of engineers; there seem to be about a million different kinds of engineers floating around this country?

A. Young engineers; Mr. Goldthwait who graduated as an electrical engineer; he has done various engineering work, and he was making certain examinations for me, and there were two of the engineers employed by the Public Service Commission on work a great deal.

Q. What kind of engineers were they; who were they?

A. They were Mr. Zients.

Q. What kind of an engineer is he?

A. A practical electrical engineer.

1849 Q. You mean he is entitled to a degree as an engineer?

A. I could not say whether or not he has a degree; he has been working at engineering work I know.

Q. Who else?

A. Mr. Rode.

Q. Do you know whether he is a graduate engineer?

A. I do not; I think he is a graduate engineer but I am not certain.

Q. All you know about it, is, he has been doing engineering work for the Commission?

A. He has been doing engineering work for the commission for some time and also work in connection with the examination of the books.

By Mr. Chambers:

Q. Were there other men working on this work with you?

A. Mr. Unger, also an engineer.

By the Master:

Q. Graduate?

A. A graduate engineer but I do not know what his degree was, whether electrical, mechanical or——

Q. Civil?

A. Civil or not.

Q. Or gas?

A. Well, there is no gas engineering. There is a course in only one university.

By Mr. Chambers:

Q. And this work was performed by you and these engineers in May and June, or this spring?

A. Yes, recently.

Q. Did you make an appraisal of the buildings of this company, the New York & Queens Gas Company?

1850 Mr. Ransom: If your Honor please, I object to that on the ground that it does not appear that the witness has any possible qualifications and as immaterial and incompetent.

The Master: Objection overruled.

By the Master:

Q. Did you make an appraisal of the buildings?

A. I made an appraisal of the cost of these buildings.

Q. Of the cost? What do you mean by an appraisal of the cost of the buildings; what kind of an appraisal is that?

A. That is an appraisal of the cost.

Q. You mean the cost to reproduce?

A. No, sir.

Q. Of the original cost?

A. Of the original cost.

Q. You mean your estimate of what it cost them originally to build?

A. No. I set up figures. I can explain probably better by telling just what I did.

Mr. Chambers: I think if we can go on, we will show what it is.

The Master: We are going on right now, my way.

The Witness: The cost as shown by the books of the company.

The Master: Then I do not want your appraisal of that—next question. How else did you determine the cost?

Mr. Chambers: I object. I think you ought to let me develop this like you did Mr. Miller.

The Master: I am going to develop all that I want.

1851 Mr. Chambers: The same as you let Mr. Miller try to do.

The Master: I want to know what this witness is testifying to, whether he is testifying to what the books show or whether he is testifying to his opinion.

Mr. Chambers: We will bring that out.

The Master: I am going to bring it out now. What is it, Mr. Hine?

Mr. Chambers: I object.

By the Master:

Q. What is it you did; did you form an opinion as to what it cost them originally?

A. No.

Q. Or analyse the books, and are now stating what the books show?

A. Stating what the books show for property installed since 8/1/1904, and have used the figures shown in Complainant's Exhibit 96 for the property installed prior to 8/1/04 and still there.

Q. In other words, you took Complainant's Exhibit 96 showing the amount expended prior to 1904 and yourself made an inspection of the books as to expenditures made since 1904; is that the idea?

A. Yes.

The Master: That is not an appraisal, Mr. Chambers. He is now purporting to testify what the books show.

Mr. Chambers: Why did you not say that when Mr. Miller was on the stand?

The Master: It doesn't make any difference what I said or didn't say. I am not accepting Mr. Miller's statement of his opinion as to costs when he testified as to what the books show.

1852 By Mr. Chambers:

Q. Well, as to buildings, Mr. Hine, what figure did you use for buildings installed prior to 8/1/04?

The Master: He says he took the book figures since 1904.

By Mr. Chambers:

Q. What amount was that you took for buildings installed prior to 8/1/04 from Exhibit 96?

Mr. Ransom: I object to that.

The Master: Objection overruled.

A. $17,500, shown at page 2.

Q. Have you prepared a table 10 on buildings?

A. I have.

Q. In that you set forth that figure you have just mentioned for buildings installed prior to 8/1/04?

A. Yes.

Q. Next, you included some figure for the new generator house since that time?

A. Yes.

Q. You have set forth that amount in this table?

A. Yes; $1,452.75.

Q. And what is that made up of, the figure for the new generator house; what is it for?

A. Well, that was for various additions to practically all of these buildings that have been added since 1904, or additions. There were a few small buildings, and these were various expenditures on account of those additions as shown by the books.

Q. Now, the exhauster room?

A. The same thing, $692.28.

Q. The pump house?

A. $43.02.

1853 Q. And the coal bin, I will not ask you to give the amount, the same for the coal bin, the two-story?

A. Yes, most of these being just additions.

Q. And the coal bin, one-story?

A. The same thing.

Q. And the boiler house?

A. The same thing.

Q. The oil house?

A. Yes, the same thing.

By the Master:

Q. Mr. Hine, did Mr. Miller in his exhibits show the same figures?
A. He did.
Q. Did you change them in any way?
A. I did not.

By Mr. Ransom:

Q. Did you change the figure for the generator house?
A. No.

The Master: I want to know where there is any issue.
Mr. Chambers: I will show you in a minute.

By Mr. Ransom:

Q. What is your figure on that?
A. $1,452.75.

The Master: Let us get to the issue, Mr. Chambers.
Mr. Chambers: I cannot until I show how we start. I have to develop this.

By Mr. Chambers:

Q. Now, in this first column, Mr. Hine, of Table No. 10, you set forth the items, some of which we have already mentioned?
A. Yes.
1854 Q. I mean the description, what they are?
A. Yes.
Q. And in the second column the cost?
A. The cost in the second column.
Q. In the manner you have just described?
A. Yes.

The Master: Have you got a copy of this paper you are looking at, Mr. Chambers?
Mr. Chambers: Yes.
The Master: Let me see it; I can follow you better.

By Mr. Chambers:

Q. Now, in the second column what have you done, Mr. Hine, as to each one of those items?
A. Set forth the cost.
Q. In the third column?
A. I have——

By the Master:

Q. Just a minute. This cost total of $46,217.51 agrees with Mr. Miller's table of costs for the same items?
A. I believe it does, yes.
Q. Well, who would know?

Mr. Cummings: Anybody who checked that would know.

The Master: But this witness ought to know whether it tallies or not.

The Witness: That checks with Miller's.

By Mr. Chambers:

Q. In the third column, what have you done, Mr. Hine?

A. I have set forth the accrued depreciation.

By the Master:

Q. What do you mean by accrued depreciation?

A. That is the depreciation due to all causes, such as inadequacy, the progress of the art, wear and tear.

1855 Q. You mean observed?

A. No, I mean the depreciation due to all causes.

Q. You mean that this building, for instance, the last item, the tar tank, 1917, $241.21, you looked at it and you found it had gotten rusty and it is old and obsolete and some other things, and therefore you do not believe it is worth as much as when it was new?

A. No not exactly that. I believe that the age of the item is the best measure of the depreciation.

Q. Well, then, this figure of depreciation is an arbitrary figure?

A. It is my estimate.

Q. Without regard to any observed conditions?

A. Well, yes; it takes into account the observed condition also; it takes into account all of those conditions.

Q. Did you use the same percentage of depreciation all the way through here?

A. No, it varies with different items. For instance, on that small tar tank, the estimated useful life and service was taken as twenty-five years. In connection with that drip in 1917, it is fifty years; so for brick structures. The estimated use or life of service was taken as fifty years, and on the brick structures as twenty-five years.

Q. But your depreciation item is based entirely upon your testimated loss of the particular article?

A. It is.

Q. Not with reference to the particular condition in which it was when you estimated it?

A. Not a particular condition of the particular item, but after an inspection of the whole thing, because if a plant was not

1856 maintained, the depreciation and the useful life of service would be much shorter, and that must be taken into consideration.

Q. Was this plant in good condition?

A. This plant I would say is well maintained, generally speaking.

Q. So that the record may be perfectly clear, and I think everybody understands the point in this connection, what you did was, you went over and looked at the plant, you reached the conclusion that it was well maintained and in good condition and being well

maintained and in good condition and you fixed the reasonable life of the various items as in your judgment they should develop, in other words, you thought a tar tank of this kind ought to last twenty-five years?

A. On the average.

Q. And a drip tank, whatever it was, fifty years?

A. Yes, on the average, yes.

By Mr. Chambers:

Q. If well maintained?

A. If well maintained.

The Master: He says it is well maintained; he assumed that it will be well maintained.

The Witness: I did.

Mr. Chambers: He said it would not last so long if it was not well maintained.

By the Master:

Q. That being so you arbitrarily fixed the amount of depreciation based upon the length of time that you think this thing will live in the light of the number of years that it has already been in use?

Mr. Chambers: Just a minute, Mr. Hine. I object to the Master's question on the ground that it is incompetent, immaterial and irrelevant, and it is cross-examination, and I object strenuously to the use of the word "arbitrary," because he did not.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Master: The Master is going to find out just how the witness figured his depreciation so that it can be squarely on the record. The Master probably will find as he did in the Consolidated case that there ought to be no deduction for depreciation, but he is going to get this record straight; that is all there is about it.

Mr. Chambers: I cannot help what the Master will find. The courts have laid down the rule which should be followed by the Master. Whether the Master wants to disregard it or not is another question.

The Master: I am going to get the record right so that if the Court reverses me it will know what it is talking about.

Mr. Chambers: Exception.

The Witness: I do not think I did it in an arbitrary manner.

By the Master:

Q. What you did was this. For instance, the tar tank, you figured ought to have an average life of twenty-five years?

A. Yes; tanks of that description.

Q. It is now two years old?

A. Two and a half.

Q. So that you figured it has depreciated two and a half twenty-fifths?

A. Yes.

1858 Q. Ten per cent?

A. Ten per cent.

Q. Is that so?

A. Yes.

Q. Now, the drip, you figured fifty years?

A. Fifty years.

Q. That has been in existence two and a half years?

A. Yes.

Q. So you figured it as two and a half fiftieths?

A. Yes.

Q. And so as to the other items?

A. Yes.

Mr. Ransom: Of course, your Honor will allow me a general objection and exception to this whole line of testimony of this witness, on the ground that he is not in any way qualified to do what he has undertaken here to do—not qualified to form any estimate of the life of the property, he has not any familiarity with this particular property, in any adequate degree, and what he has attempted to do is unsound, academic, theoretical, contrary to law and contrary to the facts to which he has himself testified.

The Master: Objection overruled.

Mr. Ransom: Exception.

By Mr. Chambers:

Q. Are you familiar with the rules laid down in the various decisions of the United States Supreme Court——

Mr. Ransom: Objected to as immaterial.

The Master: The question has not been finished yet.

Q. (Continuing:) ——on depreciation?

1859 The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Cummings: You ought to let him testify whether he is familiar with it.

The Master: What is that?

Mr. Cummings: You should let him testify whether or not he is familiar with it.

Mr. Ransom: He has shown he is not familiar with it.

Mr. Cummings: There would be no harm in that.

The Master: Next question, Mr. Chambers.

Q. Have you read the decision of the Court of Appeals and of the Appellate Division of this State in the case of People ex rel. Kings County Lighting Company versus Wilsox and others?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Ransom: The witness has either shown that he has not read it or else disregarded it.
Mr. Chambers: Exception.

Q. Have you read the decision in the case of Knoxville Water Company versus Knoxville, reported in 212 U. S., page 1?

Mr. Ransom: Objected to as immaterial.
The Master: Objection sustained.
Mr. Chambers: Exception.
The Master: And Mr. Chambers is directed not to ask any further questions on that line, because the Master will not permit this witness to state whether he has read any of the decisions of the courts.
Mr. Chambers: I take an exception.

Q. In the last column on Table 10, what does that figure or the figures there represent, Mr. Hine?
1860 A. The cost less the depreciation. That is, it is the cost as shown in the second column less the depreciation as shown in the third column—the difference between those two.
Q. Is that table correct?

Mr. Ransom: Objected to.
The Master: What do you mean correct?
Mr. Chambers: Just what I say.
Mr. Ransom: It is academic and theoretical.
The Master: You mean does that table correctly set out his claim of depreciation and cost less depreciation. That is all you mean by it, isn't it, Mr. Chambers?
Mr. Chambers: His estimate.
The Master: Yes. Overruled.
Mr. Ransom: Exception.

A. It does. It is correct and does represent my opinion.

Mr. Ransom: I move to strike out "It is correct."
The Master: Overruled.
Mr. Ransom: Exception.

Q. That is as of December 31, 1919, Mr. Hine?
A. Yes, sir.

Mr. Chambers: I offer Table No. 10, just described by Mr. Hine, in evidence.
Mr. Ransom: Objected to as incompetent, irrelevant and immaterial.
The Master: Have these tables been furnished you, Mr. Ransom?
Mr. Ransom: No, of course not.
The Master: Why did you not let Mr. Ransom have copies of these tables to save time?
1861 Mr. Chambers: Just a minute, do not be hasty. Because they were just finished in time to be testified to today.
Mr. Ransom: It was well timed.
The Master: I will give you all the time that you want, Judge Ransom, to look them over.

Mr. Ransom: Well, I object to the receipt of this in evidence on the ground it is incompetent, irrelevant and immaterial, the qualifications of the witness to do any such academic and theoretical thing for the purpose of destroying this company's investment and the right to earn a return upon the investment has been in no way shown. The table is made up on an abstruse theory which is contrary to law and contrary to fact, contrary to what the witness has himself testified to regarding this company's property, in so far as his casual knowledge of it extends. It is not within the scope of any issues in this case, and no possible basis for the application of any such academic and destructive theory of depreciation to investment.

The Master: I will overrule the objection.

Mr. Ransom: Exception.

Mr. Chambers: We are just puncturing the inflated values here, that is all.

The paper was marked Defendants' Exhibit A-96.

Mr. Cummings: Why don't you limit the complainants as to time, the same as you did the defendants?

The Master: Because the complainant has uniformly and throughout this case handed the exhibits to the defendants weeks and
1862 months before the exhibits were used, and the defendants have not done it.

Mr. Cummings: You ought not to say that of the Commission, because I think the Commission have used their best efforts in that way.

The Master: But the Attorney General has not, anyway.

Mr. Chambers: The Attorney General did not as to this particular paper.

Mr. Ransom: Nor any others. The Attorney General has not furnished us with copies of anything in this or any other case.

Mr. Chambers: That is not correct.

Mr. Ransom: May the record show my request for a copy now, at least.

The Master: I am going to see that you get it now.

Mr. Chambers: I am glad to have on the record how we are being crowded here. We have not the time to give them exhibits.

Mr. Cummings: Complainant has been given unlimited time.

Mr. Chambers: I hand the other side Table No. 10.

Mr. Ransom: This is one copy.

Mr. Chambers: That is the copy of Exhibit A-96.

Mr. Ransom: I ask for two copies, as we have always furnished you, at your request, two copies.

Mr. Chambers: Some of the exhibits in this case we have not at all at the present time.

Mr. Ransom: They must be your own.

1863 Mr. Chambers: They are yours. Some of them the Attorney General has not at all, to say nothing of giving them to us in advance.

Mr. Ransom: If you had been here you would have had them.

The Master: Proceed, Mr. Chambers.

Q. Did you prepare another table, Mr. Hine, designated for convenience Table No. 11?

The Master: Mine is marked 11-A. He apparently has two sheets, 11-A and 11-B.

Mr. Chambers: Two sheets, A and B.
A. Yes, sir.

The Master: It is one table, is it?
The Witness: One table on two sheets.

Q. Consisting of two sheets, A and B?
A. Yes, sir.
Q. The first column under the title "Items" describes the property, does it not?
A. It does.
Q. And this table consists of apparatus and piping only, does it not?
A. Yes, sir.
Q. Under the title "Cost of that portion of apparatus and piping installed prior to 8-1-04," where did you get that figure?
A. From the complainant's Exhibit 96.
Q. And after that where did you get your figures under "Cost"?
A. Those are the costs as shown by the books.

By the Master:

Q. I assume those figures tally, then, with Mr. Miller's figures?
A. They do.
Q. A total cost of $229,000 odd?
Yes, sir.

1864 By Mr. Chambers:

Q. The next column, "Depreciation," that represents what?
A. The accrued depreciation as of December 31st, obtained in the same manner and using the same process as in connection with Table 10.
Q. And the last column, "Cost Less Depreciation?"
A. That is the difference between the cost and the depreciation.
Q. And is this table correct, and does it represent your estimate of the apparatus and piping as of December 31, 1919?
A. It represents the cost and my estimate of the depreciation and the cost less depreciation, as I have described it.
Q. And is it correct?

The Master: You have asked that too many times.

A. Yes.

The Master: You offer it in evidence, with the same objections, ruling and exception.
Mr. Chambers: I offer in evidence Table No. 11, consisting of two sheets, A and B.
Mr. Ransom: The two sheets are to be marked as one exhibit?
The Master: Yes.

Marked Defendants' Exhibit A-97.

The Master: In all of these exhibits did you take the costs as they appeared from Exhibit 96 and the books?
The Witness: Yes, sir.

The Master: Now Table 12, Mr. Chambers.

Q. Mr. Hine, referring to Table No. 12——

The Master: There seems to be three sheets to that, A, B and C.

1865 Q. That is what, miscellaneous?
A. Those are the miscellaneous items, comprising store equipment——

The Master: Office equipment, stable and garage equipment.
The Witness: Office equipment, stable and garage, laboratory equipment, tools and appliances, some miscellaneous items summarized on the bottom of the third sheet.

Q. You obtained the figures there in the same way as you did for the other exhibits?

The Master: As to original cost?

A. Yes.

By the Master:

Q. And your depreciation item you reach in the same way?
A. In the same manner.
Q. And your depreciation cost is the result of the same computation?
A. It is.

The Master: You offer the Table No. 12, three sheets, Mr. Chambers?

The Witness: I beg pardon, but there is an error on office equipment, on the first sheet, and the figure there should be 1909 instead of 8-1-04, in the first line.

Q. Installed prior to 1909?
A. Yes, that is shown by Exhibit 96 as an inventory figure as of that date.

The Master: The offer is made of this Exhibit 12, three sheets, Mr. Chambers?
The Witness: I beg pardon, but there is an error on office equipment, on the first sheet, and the figure there should be 1909 instead of 8-1-04, in the first line.
1866 Q. Installed prior to 1909?
A. Yes, that is shown by Exhibit 96 as an inventory figure as of that date.

The Master: The offer is made of this Exhibit 12, three sheets A, B and C, with the same objection, ruling and exception.

Mr. Chambers: I offer Table 12 in evidence, consisting of three sheets.

The Master: I have offered it for you.

Mr. Chambers: But I would like to offer my exhibits.

Mr. Ransom: It is offered over my objection and exception.

Marked Defendants' Exhibit A-98.

Mr. Chambers: I want to have you kind of consider these as you go along. Look at that Ford runabout.

The Master: What is there to consider any more about Table 12 than there is about Tables 11 and 10? They are all upon the same theory.

Mr. Chambers: The Ford runabout, you might be interested in that.

The Master: They are all on the same theory.

Mr. Chambers: 1913 Ford runabout is not worth today any $546.50.

The Master: I am not quite sure about that. If that Ford runabout is in good condition I am apt to buy it myself at that price.

Mr. Cummings: It is only valuable as an antique, that is all.

The Master: No, I think if it is in good condition I would buy it now—if the company would sell it for $546.

1867 Mr. Ransom: Especially if it is rebuilt in all its wearing parts.

The Master: You show me a good Ford for $546 and you can sell it to me now, if it is in good condition and in good shape.

By Mr. Chambers:

Q. Table No. 15, Mr. Hine, is Buildings and Apparatus, debits and credits, 1904 to 1919?

A. Yes, sir.

Q. Will you describe what that shows?

A. That shows the debits and credits on account of Buildings and Apparatus for the period 8. 1. 04 to 1919, inclusive, year by year, as shown by the books.

Q. Down to what, as shown by the books?

A. Well, these figures are all as shown by the books and there is a note below which shows the accounts which are included under that category Building and Apparatus.

The Master: Did you include it?

The Witness: Yes.

Q. The column "Debits" represents the debits?

A. The debits, yes.

The Master: Yes, I think that must be so, but what does debits mean, added to or taken from?

The Witness: That means added to the accounts, the increases in the book figures.

Q. And the credits?

A. The credits are the deductions from the book figures. Now, in

certain of the years prior to 1909 those credits may include adjusting entries—that is, which really would be set against the debits and reduce the debits. It would make no difference in the net result, but it was impossible to make the analysis to find out what
1868 were real credits and what were adjusted credits in this case.

Mr. Ransom: I move to strike out the witness' answer. He has not shown himself in any way qualified to pursue this method of assassination. He is not an accountant and that is not descriptive

The Master: I will take it.

Mr. Ransom: Exception.

The Master: I shall expect Mr. Hine as soon as he is finished with his direct examination to hold himself in readiness to produce his working sheets for the inspection of counsel for the complainant and their accountants or experts, whoever they may be, in order to save time on cross-examination here.

Q. Is this table correct, Mr. Hine?

Mr. Ransom: Objected to.

The Master: I will sustain that objection.

Mr. Chambers: Exception.

Mr. Ransom: He is not an accountant and has not even undertaken to describe himself as an accountant.

Q. Is it accurate?

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: I am letting his statement stand that he looked at the books and he is taking these entries off, but I am not going to let him testify that he is an accountant.

Mr. Ransom: And he has not testified to that.

Mr. Chambers: I object to that. I call your Honor's attention to the fact that you are making some very—well, I do not know just what word to use.
1869 The Master: Use any word you like.

Mr. Chambers (continuing): —arbitrary rulings, that are not in accordance with any decision I ever heard of

Mr. Ransom: This witness has not even stated that he examined the books and vouchers.

Q. Did you, Mr. Hine, make a check on the books?

A. I have made a check on the books, in comparison with the reports and exhibits in evidence. I did not do all of the detail work in connection with these. They check into the balances and I prove they are correct without doing the detail work.

Mr. Chambers: I offer in evidence Table No. 13.

Mr. Ransom: Objected to on the ground that the witness by no possibility is qualified to do any such thing as this; he is not an accountant, has not had any accountant experience. He has undertaken an intricate process which no accountant would resort to or

even try to follow. I also object that it has not any bearing on the issues in this case.

Mr. Chambers: How ridiculous and silly that is.

Mr. Ransom: Let me finish my objection once, please.

Mr. Chambers: I would like to stop you a minute, because it is ridiculous to lumber up the record with statements of that sort.

Mr. Ransom: What your Honor is doing in effect by your ruling is saying that anything the mind of this witness Miller or anybody else can get up can be dragged into this record, and the risk
1870 of getting rid of it and exposing the fallacy and unsoundness, that must be upon the complainant, without any authentication of its correctness before it goes in.

Mr. Chambers: I think counsel ought to deal with the courts in a fair way. In answer to that I will say that Mr. Miller pretended to do the same thing here, and counsel here is not dealing with the court fairly and justly. Mr. Miller's 96 does the same thing.

Mr. Ransom: That is not so.

Mr. Chambers: Mr. Ransom, there ought to be some rule that would compel counsel in a given case to stick to the same ruling that he invokes when he presents his evidence—consistent, you can not be that.

Mr. Ransom: If the counsel for the Attorney-General ever took the oath at the Bar, there ought to be some method of dealing with him.

Mr. Chambers: You are only a cadet lawyer, and you better try it again once more.

The Master: I do not think that Mr. Hine has qualified as much of an accounting expert.

Mr. Chambers: Mr. Miller did the same thing. You sat here and you said nothing whatever when Mr. Miller presented the very same thing, and I show here by an overwhelming lot of testimony that Mr. Miller was not competent, not only to take the figures off the books, but to give any testimony here on the value of property.

Mr. Ransom: Mr. Miller did a very different thing. He ascertained from the vouchers and the records the cost of the
1871 property which he found there was used. Mr. Miller did not undertake to do an accounting process of the intricate sort, which some one has done for this witness, and which is coming in here, if this document is admitted—coming in without any authentication of any kind. Debits and credits—he does not even know that the thing which he calls a debit is a debit, or that the thing which he calls a credit is a credit. Mr. Miller actually kept books in a gas business.

Mr. Deegan: Mr. Hine looked over more books than Mr. Miller ever kept.

Mr. Chambers: Some day we will have these cases heard in full some day. I just want to warn counsel and the court of that.

The Master: Why the necessity of a warning to the court?

Mr. Chambers: Why, because I want the same rule given to us as was given to the other side. Well, I won't say that, if we have

just half, if you would apply half the rule that counsel asks you to invoke in his favor, in our favor, we would be satisfied.

The Master: I think I will take it.

Mr. Ransom: Exception. It puts a burden on this complainant that has never been put on a complainant in any case at law, the burden of taking something absolutely unauthenticated by any qualified testimony, and saying to us that we must find out what weird and wonderful things some one did to this witness, and exposing here its fallacy and unsoundness.

1872 The Master: I think I had better take it.

Mr. Chambers: It is taken right from your books.

The Master: I have ruled on it.

Paper received in evidence and marked Defendants' Exhibit A-99.

Q. Did you prepare another table, Mr. Hine, designated for convenience as Table 14?

By the Master:

Q. Well, you prepared a number of tables along the same line, Mr. Hine?

A. I did.

Q. I see Tables 14, 15, 16, 17 and 18. They are all along the same line?

A. They are.

Q. Applicable to different kinds of property?

A. Yes, different accounts.

Q. But they are all done in the same way precisely as you did Table 13?

A. Well, something should be said about Tables 15, 16, 17 and 18.

Q. Say it.

A. In that there are columns showing adjusting credits and retirements. Now, the adjusting credits are credits which would represent the debits, that is, there were overcharges and adjustments of several accounts, payments made by consumers, the credits.

Q. The adjusted debit is the balance after adjusting the credits against the total?

A. It is taking the adjusting credits from the total debits so it would make no change in the net result. That is, instead of having less on the credit side where the retirements would be based on the books, you have a lesser amount on the debit side, so it

1873 leaves the same increase in property value, only they are not treated as retirements.

Mr. Ransom: I submit that this witness is not qualified for any such fantastic thing, to lumber up and confuse this record.

Mr. Chambers: I offer Table 14 in evidence.

Mr. Ransom: Just look at the kind of thing he is trying to do. I do not think it would be permitted, even if he was an accountant.

Mr. Chambers: I ask if Table 14 is correct.

The Master: It is claimed that these figures are merely based upon the books, I suppose. That is your testimony?

The Witness: Yes.

Mr. Ransom: He has undertaken to take the books, and then mark them up, and mark them down, and mark them around, and mark them out.

The Witness: I have done no such thing whatsoever.

The Master: I will take these. Table 14 is objected to, the objection is overruled, and exception allowed.

Paper received in evidence and marked Defendants' Exhibit A-100.

The Master: Now, you offer Table 15, Mr. Chambers?

Mr. Chambers: I offer Table 15 in evidence. I would like to ask a question about Table 15.

By Mr. Chambers:

Q. What is known as the Douglaston Extension, will you please explain that, Mr. Hine?

1874 A. Those were the charges on account of the Douglaston Extension. They are included in the total debits, the adjusting credits and the adjusted debits for the year 1919, and they are also set forth separately below.

Q. Is that table correct?

The Master: I have asked him one question that covers all that.

Mr. Chambers: Does that relate to all these tables?

The Master: Yes. He says that as to all these tables the figures set down are correctly taken from the books.

Mr. Ransom: He has not quite said that, I believe.

The Master: Is that what you said, Mr. Hine?

The Witness: I believe I said that; at any rate I meant that.

Paper received in evidence and marked Defendants' Exhibit A-101.

The Master: Now, you offer Table 16 in evidence?

Mr. Chambers: I offer Table 16 in evidence.

Mr. Ransom: I object to it on the same grounds.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-102.

Mr. Chambers: I offer Table 17 in evidence.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

1875 Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-103.

Mr. Chambers: I offer Table 18 in evidence.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.
Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-104.

Q. In Tables 16, 17 and 18 you have treated the Douglaston Extension in the same manner you described a moment ago?
A. I have.
Q. Now, you have prepared another table designated for convenience as Table 20, have you?
A. I have.
Q. That is "Cost of Fixed Capital 1904 to 1919," is it?
A. It is.
Q. Will you please describe what this table represents?
A. This represents the cost of these various subdivisions of the property that I have set up, starting with the figures as of December 31, 1919, which was shown by the preceding tables, and then working back from the book debits and credits to the date as of August 1, 1904, by subtracting the additions, and adding on the deductions as I went back. The Douglaston Extension is set forth separately.

The Master: I see the figure there is $128,000. I thought it was $146,000.
The Witness: That figure that was put in evidence took it beyond December 31, 1919. It went up to some time in 1920.
1876 The Master: Oh, I see.

Q. Additions and deductions as shown in the preceding tables?
A. Yes.

The Master: What is the point? Your figures show the cost of the fixed capital as of December 31, 1919, to be $935,699, plus $128,670, is that right?
The Witness: Yes, including the Douglaston Extension. That is exclusive of land—there is no land included in this table.
The Master: Your testimony is that in the way you have described, you reach the conclusion that the company's fixed capital other than land, on December 31, 1919, was $1,064,000?
Mr. Ransom: That is exclusive of franchises and rights.
The Master: Yes.
The Witness: That is the cost of this property as set forth here, exclusive of land. There is depreciation in it. That is the cost.
The Master: A little over a million dollars?
The Witness: Yes.
The Master: For the tangible properties?
The Witness: Yes.
The Master: Exclusive of land?
The Witness: Exclusive of land.

Q. There is no working capital in there, is there?
A. No, and no engineering and superintendence.

The Master: And no interest during construction?

The Witness: No.

1877 The Master: And no taxes during construction?

The Witness: No.

Mr. Chambers: I offer Table 20 in evidence.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-105.

Q. Did you prepare another table designated for convenience as Table 25?

A. I did.

Q. That is "Depreciation, 1904 to 1919?"

A. It is.

Q. Year by year?

A. Yes, sir, as of the end of the year, except for the first item, which is as of August 1, 1904.

Mr. Chambers: I offer Table 25 in evidence.

The Master: What is that depreciation? You say that this amount of $214,569 under 1919 is to be taken from that $935,699 on Table 20?

The Witness: Yes, I believe they should. That figure for 1919 is the summation of the figures shown on the first tables.

The Master: That is accrued depreciation, as you term it?

The Witness: Yes.

Mr. Ransom: I make the same objection to that.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-106.

1878 Q. Did you prepare another table designated for convenience as Table No. 30?

A. I did.

Q. That is "Cost of Fixed Capital Less Depreciation, 1904, to 1919?"

A. Yes.

The Master: Well, that is another computation based upon Tables 20 and 25?

The Witness: Yes, sir.

The Master: That shows the deduction of the accrued depreciation from the cost?

The Witness: Yes, sir.

The Master: You offer that in evidence?

Q. Is it correct?

The Master: Oh, I don't care about that.

Mr. Chambers: Exception.

Mr. Ransom: I object to it on the same grounds.
The Master: Objection overruled.
Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-107.

Q. Did you prepare another table designated as Table 31, "Fixed Capital, Including Engineering, from 1904 to 1919?"
A. I did.
Q. What does that represent?
A. This table shows the year, cost, depreciation, and the cost less depreciation, as shown in the preceding tables, plus the engineering that has been charged to capital accounts from 1909 to 1919, inclusive, plus 5% for engineering on the items of property that were installed prior to August 1, 1904, the engineering being depreciated on the same basis as the property was, the same average rate as the property depreciation.

1879 By the Master:

Q. In other words, you took the cost of these various years as they appeared in other exhibits, taking 1919 to illustrate?
A. Yes.
Q. Your other exhibits show a cost of $935,699, without depreciation?
A. Yes.
Q. To that you added 5%, making $955,641?
A. I don't believe I followed your first statement.
Q. Without engineering, the figures show for 1919, $935,699?
A. Yes.
Q. To that you added 5% for engineering, did you?
A. No, I added the actual engineering charged on the books from 1909, and 5% for engineering prior to 1904.
Q. Then the difference between $935,699, and $955,641, is the engineering charges as shown on the books?
A. Yes.
Q. Is that correct?
A. That is right.
Q. That is, you have depreciated on the $955,641?
A. Yes, it is depreciated just in the same manner, that is, the engineering is depreciated just the same as the property it applies to.
Q. Spread over the same number of years?
A. If the depreciation on the average for buildings, the accrued depreciation, was 20 per cent, the accrued depreciation on the engineering would be at that same rate, on the same basis.

1880 By Mr. Chambers:

Q. Did you find, Mr. Hine, that the engineering after 1904 was less than 5 per cent?

Mr. Ransom: I object to that as incompetent. The witness is not qualified to answer.

A. Oh, in connection with that there, the five per cent was added only to the buildings, apparatus and piping, and to the mains. There was nothing added for engineering to the miscellaneous items, or to services, meters and meter installation. This last question was what?

Q. Did you find the engineering after 1904 was less than 5 per cent?

Mr. Ransom: I object to that as incompetent.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Yes.

Mr. Chambers: I offer Table 31 in evidence.

Mr. Ransom: I make the same objection, and I object to it on the further ground that the witness is in no way qualified to prepare any such table or make any such estimate, or calculate any such rate of depreciation of engineering, whatever that may be. It is carrying a fantastic theory to a fantastic extreme.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-108.

Q. Did you prepare another table designated for the purposes of convenience as Table 32, being "Average Fixed Capital Including Engineering"?

A. I did.

1881 Q. What does that table represent?

A. Well, that table represents for the year 1919, for instance, the average of the figures shown on Exhibit A-108 for the beginning and end of the year, so it would be the average for the year 1918. The preceding table, Exhibit A-108 shows the cost as of December 31st. This is the average for the beginning and end of each year.

Mr. Chambers: I offer that table in evidence.

Mr. Ransom: I object to it as incompetent, irrelevant and immaterial, and on the other grounds already stated, and on the ground that there is no basis for any such average, nor any utility in any such average.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-109.

Q. Did you prepare another table, Mr. Hine, designated for convenience as Table 33, "Average Fixed Capital Including Engineering, 1909, but exclusive of Land?"

A. I did.

Q. What does that table represent?

A. That table represents the average as shown by Table 32, exclusive of the Douglaston Extension in one case, including the Douglaston Extension at half cost in the second case, and including the Douglaston Extension at cost in the third case, and in each instance it shows the cost, the depreciation, the cost less depreciation, and the average for 1919.

Q. Why did you include the Douglaston Extension at half cost?

1882 Mr. Ransom: I object to that as immaterial and incompetent. There must be some limit as to what this kind of a witness can do.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Because I was directed to prepare figures to show what that would amount to if constructed prior to the high prices existing during the war. My estimate is that it would cost about half what it did cost during the period of high prices.

By Mr. Ransom:

Q. Will you state who instructed you to do any such thing?

A. I was instructed by counsel to prepare such figures.

Q. By whom?

A. Mr. Chambers.

By Mr. Chambers:

Q. That is to say, it is your opinion that it would cost about half what it did cost if they had built this extension at pre war prices, Mr. Hine?

The Master: I am ruling that question out for the sole reason that it is a perfect waste of time, the witness already having made that very statement. I am not going to permit a question of that kind that simply repeats what a witness has already said.

Mr. Chambers: If it is in the record that he answered it, I don't want to ask the same question twice.

The Master: But you did.

Mr. Chambers: Hereafter it will be claimed that I didn't ask it and he didn't answer it, and hereafter it will be claimed that I didn't ask Mr. Hine if these tables were correct.

1883 The Master: Go on.

Mr. Chambers: I offer that table 33 in evidence, I will ask him if it is correct.

The Master: I won't allow that question.

Mr. Chambers: Exception.

Mr. Ransom: I object to it on the grounds previously stated.

The Master: Objection overruled.

Mr. Ransom: Exception.

Table received in evidence and marked Defendants' Exhibit A-110.

Q. Did you prepare another table designated for convenience as Table 34?

A. I did.

Q. "Average Annual Depreciation Requirement, 1904 to 1919"?

A. I did.

Q. What does that represent?

A. That represents on the basis of the lives assumed for each class of property, each class and kind of property, and each unit of property, where they were considered by units, and annual requirements that would need to be taken out of operating expenses in order to produce a fund which at the end of the average useful life of the property would represent its costs.

Mr. Ransom: Did he say taken out of operating expense?

The Master: Yes.

A. (Continuing:) That is, included in operating expense. The cost would have to be included, but not operating expense, not reducing operating expense, but increasing it.

The first column shows the year. The second column is the depreciation requirement average for each of the years, and
1884 in the third column it has been reduced to cents per thousand cubic feet of gas sold.

The Master: Does it vary?

The Witness: It does.

Mr. Chambers: I offer that Table 34 in evidence.

Mr. Ransom: I object to it on the grounds already indicated, and on the ground that it is academic and theoretical, and no warrant for any such thing in law or in fact, and contrary to the facts here shown. The company does not do any such thing, there is no requirement of law that any such thing should be done.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-111.

The Master: Without computing this accurately, just glancing over the figures, I see it runs as high as 7.27 in one year, and only in two or three years do you go below 6. Do you know what it averages? About $6\frac{1}{2}$ cents, does it, through the years?

The Witness: I have not arrived at an average, but I should say it would be close to 6 cents.

The Master: Oh, it must be more than that.

The Witness: There are about five of them below 6.

Mr. Chambers: There are six of them below 6.

The Master: Of course I am guessing at it from glancing at the exhibits, but I should imagine it is between 6 and $6\frac{1}{2}$ cents.
1885 That should be added to the cost of gas to take up the accruing depreciation?

The Witness: Yes.

The Master: So that throughout these years you would say that

this company, in addition to the ordinary repairs and replacements and the like, ought to have charged the consumers 6 or 6½ cents more for gas?

The Witness: In addition to repairs, not in addition to replacements. This only should take care of replacements. When they take out an engine for some reason or another, the fund would be charged with the cost of that engine.

The Master: My recollection is that they included in their accounts about 3 cents for replacements.

The Witness: I don't remember at the present time just what it was.

The Master: And you say by your exhibit that in addition to the 3 cents for replacements they ought to charge up about 6¼ cents or more to include accrued depreciation and replacements, and depreciate their plant every year as against that?

The Witness: They should lay aside that much to apply to accruing depreciation due to all causes to take care of the cost of property retired.

The Master: You did not suggest any such item in the Consolidated case, did you?

The Witness: I did not handle that end of it at all.

The Master: Well, you did not suggest any such thing, did you?

The Witness: No.

1886 The Master: You testified to accrued depreciation?

The Witness: I did, to accrued.

The Master: But you made no suggestion as to taking care of this company's accrued depreciation by charging the consumers more for gas?

The Witness: I didn't even make any computation as to what that would amount to. That was handled by another side.

The Master: I want to make it clear that, although you testified to accrued depreciation, you made no suggestions in that case that if I allowed accrued depreciation I could take care of the company's interest by charging more for gas.

Mr. Ransom: I maintained that that 3 cents was extremely low for replacements.

Mr. Chambers: Mr. Hine did not testify anything about it, of course, he did not cover that subject. He is covering it here.

The Master: Well, nobody made any such suggestion in the Consolidated case.

Mr. Chambers: Well, the burden is not on the defendants.

The Master: Oh, yes, when you are advancing a theory of accrued depreciation, and when I indicated that I would not follow any such item of accrued depreciation in the way it was presented, the logical thing to do was to present the kind af testimony that Mr. Hine is now presenting, that would indicate that the company, in some form or other should charge the consumer against this accrued depreciation.

1887 Mr. Chambers: In answer to that, I will say that to this day I have some additional testimony that I would like to present in the Consolidated case on a number of things. You will

find in the very closing paragraph that I took that position that we were not through. Your Honor is the last one that can complain about that.

Q. Mr. Hine, in checking over the records of this company and the reports made to the Public Service Commission, did you ascertain how long the properties of this company lasted, some of them?

Mr. Ransom: I object to that as incompetent.

A. Well, you cannot obtain from these records the useful life of the property of this company, that is, the life that it had lived.

Q. But can you generally in other companies?

Mr. Ransom: I object to that as vague. He could not ascertain it, because the properties do not wear out and have not.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you ascertain?

Mr. Ransom: I object to that, he says he could not.

The Master: Objection sustained.

Mr. Chambers: Exception.

By the Master:

Q. What was the total depreciation for 1919?

A. Roughly it is $211,000.

Q. Is that including or excluding Douglaston?

A. It doesn't make any difference.

Q. On the basis of 6½ cents on the average of gas sold by this company in 1919, they would only get $21,000?

A. Yes, about that.

Q. How is $21,000 going to take care of $218,000?

A. You mean they should lay aside in 1919——

Q. I asked you what the amount was for 1919 alone?

A. Oh, the amount accruing then?

Q. Yes.

A. That is shown on this table, Exhibit A-111, as $20,282, exclusive of the Douglaston Extension, and $21,225 including the Douglaston Extension, and these are reduced to cents per thousand cubic feet, so of course it would be the same.

Q. Where does the consumer get off on that? What difference does it make to the consumer whether no depreciation is allowed at all, or whether the consumer is charged for depreciation as he gets the gas?

A. Well, it seems to me there has got to be a depreciation fund kept up in order to maintain the investment, both for the protection of the consumer and for the protection of the company.

Q. Yes, but what difference does it make to the consumer whether the rule I adopted in the Consolidated case is taken or not, not to allow depreciation, or the rule that you advocate, charging it to the consumer?

A. I don't know, but I think this way is right, irrespective of how it would figure.

Q. But I want to know what difference in results it would make so far as the consumer is concerned?

A. I don't know what difference it would make.

Q. Would it make any?

A. I don't know. What rate of return do you take?

1889 Q. I don't know.

A. I don't know, either.

Q. Does it depend upon the rate of return?

A. In making a mathematical calculation as to what this would do you would have to take into account the rate of return, but it seems to me that what the consumer has got to do is to pay enough in his rate to take care of the depreciation that accrues, and that the company has got to keep their books so as to set that up, so when the property is retired for any cause whatsoever that fund can be charged with the cost of the property.

Q. Now, in the Consolidated case you made no such statement, did you?

A. No.

Mr. Chambers: I object to that as already covered.

The Master: I am going to have this record so clear that anybody who runs can read it.

Mr. Chambers: That is what I started to do a few minutes ago.

The Master: If Mr. Hine has testified to the facts correctly now, then the Court was being imposed upon in the Consolidated case when the defendants did not suggest the same thing, and I want the Court to know that in the Consolidated case right here on this record. I won't stand for it, it is not justice and it is not right. The testimony offered in the Consolidated case and that I rejected was testimony to the effect that from the cost of the property to the company should be taken the amount for accrued depreciation.

Mr. Ransom: He still says that.

1890 The Master: There was not the slightest suggestion that the consumer should in some way, shape or manner pay for that accrued depreciation. It makes a whole lot of difference.

Mr. Chambers: You wouldn't let me show it.

The Master: Nonsense, there never was a suggestion of that kind. As I bring out from this witness, this whole thing turns upon the rate of return. If in times of high money rates, the rate may be eight per cent, then it makes a little difference. When the rate is as low as six per cent it probably does not make any difference at all. I want this record to show clearly that the defense was not fair with the Court in the Consolidated case.

Mr. Chambers: I except to that.

The Master: That there must be an accrued depreciation deducted without any countercharge against the consumer.

Mr. Chambers: I take an exception.

The Master: Go ahead. This testimony of Mr. Hine simply confirms the conclusion that I reached in the Consolidated case that the accrued depreciation should not be deducted.

Mr. Ransom: It also shows that the allowance in cutting down the renewal and replacement figure was wrong.

The Master: No.

Mr. Chambers: Why didn't you take off what the company itself had set up?

The Master: Well, I made a speech on the record; go ahead.

1891 By Mr. Chambers:

Q. Mr. Hine, in your experience with the Public Service Commission, and in these bond issues, did you have occasion from time to time to check over the reports made by the companies to the commission and did you thereby ascertain from your experience gained in that way the life of the various pieces of property used in the gas making business?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Cummings: You have characterized these as arbitrary figures. He wants to show the basis of it.

By Mr. Chambers:

Q. What was the average period of construction you ascertained here in this New York & Queens case?

The Master: From where, from what source?

Mr. Chambers: From an examination of the books.

The Master: Of whose books?

Mr. Chambers: The New York & Queens Gas Company.

The Master: That I will allow.

Mr. Ransom: Construction of what?

The Master: Of any of their property.

Q. First I will ask if he did ascertain?

A. No, I did not from the books. I estimated the average period of construction.

Q. And what estimate did you place?

Mr. Ransom: I object to that as incompetent, immaterial and irrelevant, not pertinent evidence here, and as vague and in-
1892 definite; it does not relate to anything. What does he mean? The average period of the construction of a smoke stack or a generator stock.

The Master: I will sustain the objection on the ground that the question is not definite enough. Particularize what kind of property you mean.

Q. Will you state, Mr. Hine, the average construction period and for what property did you estimate?

Mr. Ransom: Objected to as vague and meaningless and indefinite. The books and vouchers show what the period was, no occasion for estimating.

By the Master:

Q. How did you make any estimate about it, Mr. Hine?

A. The only way you can do that would be by viewing the character of the property and the time that it takes to put in certain kinds of property from the time construction work is started until the units are put in service.

Q. In what year?

A. I have not taken any specific study of any year.

Q. What year did you have in mind as to the rapidity with which work was done?

A. I had no particular year in mind. I had in mind the weighted average for the entire property of the company.

Q. Can you do work as rapidly now as you could five years ago?

A. No. I was not estimating how long it would take to rebuild that property now. What I was estimating was the weighted
1893 construction period for the property as it was built.

The Master: I think I will sustain the objection.

Mr. Chambers: Exception; will your Honor state why you sustain the objection to that?

The Master: Yes; I think the question is entirely too indefinite.

Q. Did the books show, Mr. Hine, the average construction period of this company?

A. No; the books would not show the construction period.

By the Master:

Q. Would not the pay roll accounts and contractors' vouchers show what time it took them to do a piece of work?

A. You will have to determine the time when it was put into service, and I do not know of any record that shows when work was started and when the unit was put in service, taking all the properties of this company. I know that with main extensions, generally speaking, a short piece of main is laid, put in service almost immediately. With meters——

Mr. Ransom: I object to this. He is rambling on about this thing after the objection has been sustained.

A. (continued). They are added to capital account as purchased. With service, generally speaking, they are put in service almost as soon as they are built, and it only takes a day or so to build them. And with plant equipment, items like holders, they would take a considerable period to build, say eight months, and other plant equipment would vary.

1894 By Mr. Chambers:

Q. Are you able to say what would be the weighted average of that construction period for the property described in these various tables?

A. Yes. I have estimated that it would not be in excess of six months.

Mr. Chambers: That is all.

The Master: Do you want to cross examine now?

Mr. Ransom: You see the situation. They have kept these books and tables carefully concealed until this morning. This is the first time any of us have seen any of them and they sprung all of them out of their pockets all of a sudden. I am frank to say that it is the kind of a thing that we are in a position where we have no other alternative——

By Mr. Chambers:

Q. Mr. Hine, when were these tables finally completed?

A. Yesterday afternoon.

By Mr. Ransom:

Q. Were none of them completed until yesterday noon?

A. I think probably some of them had been completed; Monday, I believe.

By Mr. Chambers:

Q. You mean this week?

A. Yes.

By Mr. Ransom:

Q. None of them had been typed until Monday?

A. I do not believe so.

By Mr. Chambers:

Q. I might ask you this. Did you get them ready just as quickl as you could, Mr. Hine?

1895 A. I did.

Q. Did you secrete them in any way?

A. I did not.

Q. Did you carefully conceal them?

A. No, sir.

Mr. Ransom: You did not furnish any of them: that is th only significant fact.

Mr. Chambers: That is my responsibility. We are overcrowde we are rushed. There is an undue haste to try these rate cases. is not fair to the consumer nor to counsel representing the consume the way that you are trying to rush through these cases and g abortive judgments. You have not even made the City of N York a party and they ought to be.

The Master: As I understand it, you are through with Mr. Hin direct examination. His cross examination is suspended until hear from Judge Ransom.

Mr. Chambers: Mr. Hine is ready to be cross examined.

The Master: Cross examination is suspended.

Mr. Chambers: When will they cross examine?

The Master: When they look at your exhibits.

Mr. Chambers: Suppose they say instead of the Master. Suppose the complainant company tells us with some reasonable degree of definiteness when they will be ready to proceed. Can your Honor get them to do that?

The Master: No.

Mr. Cummings: I guess the time is unlimited.

1896 Mr. Chambers: You mean you are going to allow them to take as long as they want to?

The Master: Yes, if they are in no hurry to finish the case you need not worry about it.

Mr. Ransom: We are in a position where they just compel us to take time and delay justice to this company.

Mr. Chambers: I would like to tell the Court right here that on the 11th inst. we were ready to proceed with the argument in the Consolidated Gas case on your report and counsel for the other side stated in open court that they were not ready, and the company was not ready, and they withdrew their notice.

Mr. Ransom: We are absolutely ready to argue it.

Mr. Chambers: Put that in parallel columns with the statements that were made then.

Mr. Ransom: The statement is an absolute falsehood and the man who made it knows it.

Mr. Chambers: You are a liar; take that stenographer.

Mr. Ransom: You are a liar.

Mr. Chambers: You were told you are a liar in the court room the other day, and it is true. Ransom, you cannot tell the truth.

The Master: I do not want to hear any more about that.

Mr. Chambers: If the Master were not here I would say some more about you.

The Master: Now stop that.

1897 Mr. Chambers: You are a coward besides on top of the rest.

Mr. Ransom: We will deal with that in the proper place.

MILO R. MALTBIE, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Chambers:

Q. Mr. Maltbie, what is your business?

A. Public utility consultant.

Q. You are a resident of the City of New York?

A. I am.

Q. And were you a member of the Public Service Commission, of the First District, for a time?

A. For nearly eight years.

Q. And you were appointed to that office when the Commission came into existence?

A. 1907, and re-appointed in 1910.

Q. The Public Service Commission of the First District had supervision and control over what public service corporations?

A. Over all gas, electric and street railway companies operating in the City of New York, and in such companies as far as the corporate affairs were concerned if their lines extended outside of the City of New York; had jurisdiction over the railroads operating in the City of New York exclusively and over property of the companies that was in the City of New York although not exclusively operating here.

It also had charge of the preparation of the plans for laying out rapid transit routes, the negotiation of contracts for their
1898 construction and for their operation.

It had jurisdiction over the securities, rates of fare, methods of keeping accounts and books of these companies, and other things set forth in detail in the act.

Q. Now, did the Commission supervise the construction work and control the operation of all the rapid transit subway lines built by the City of New York or under franchise contracts from the City?

A. Yes.

Q. After you were Public Service Commissioner what public office did you hold?

A. The only public office I held after that was for about one year and nine months when I was City Chamberlain of the City of New York.

Q. And while City Chamberlain, about how much money did you handle, or did that office handle annually?

A. About $800,000,000 to $1,000,000,000 annually.

Q. Were you the adviser to Mayor Mitchel on gas, electric and telephone rates?

A. I was.

Q. Also contracts with conduit companies?

A. Yes.

Q. The New York Central Improvement?

A. Yes.

Q. And various other franchise and utility matters?

A. Yes.

Q. During the war, what were you engaged in?

A. Well, first I was connected with the Ordnance Department in the War Department, and had charge of the negotiations
1899 of contracts for the purchase of toluol, and for the construction of toluol plants connected with artificial gas companies.

I also had charge of the negotiation of the contracts with the gas companies where these plants had been built for the operation of them for a time, and later I was connected with the United States Shipping Board, Emergency Fleet Corporation, in charge of their property bureau, having to do with the purchase and commandeering and appraisal of land for the housing developments built under the Emergency Fleet Corporation, amounting in all to about $75,000,000.

I had charge of the negotiation of the contracts for the extension of the public utilities in which these various developments, that is

gas, electric lighting, street railways, and in a few instances telephones; I was later adviser to Chairman Hurley of the United States Shipping Board as to power matters and had to do with the negotiation of contracts for the advance of money by the United States Government for the construction of additional power facilities by the power companies, and I was engaged upon this work when the armistice came and shortly after as soon as the work was completed I resigned.

Q. What university are you a graduate of, Mr. Maltbie?

A. I received the Degree of Bachelor of Philosophy from Upper Iowa University; the Degree of Master of Philosophy from Northwestern University, and the Degree of Doctor of Philosophy from Columbia University.

Q. In what year did you graduate from Upper Iowa University?

A. In 1892.

1900 Q. And from Northwestern University?

A. 1893.

Q. And from Columbia University?

A. 1897.

Q. And from 1893 to 1895 what business were you engaged in?

A. I was Professor in a college in Illinois teaching mathematics and economics.

Q. And then did you accept a Fellowship in administrative law in Columbia University?

A. I did.

Q. How long a time did you spend at Columbia?

A. I was there two years.

Q. And what did you specialize in?

A. In administrative law and economics.

Q. During the next eight years after that, what business were you engaged in, what occupation?

A. Well, I made a number of investigations, prepared a number of reports on franchise matters for various organizations, bodies, public officials, the Merchants Association of New York, the New York Reform Club, the Civic Federation of Chicago, the National Civic Federation and a number of others.

Q Did you lecture upon municipal government at Columbia?

A. I did for a short time.

Q. And were you editor at one time on municipal affairs?

A. Yes.

Q. From 1906 to 1907, what were you engaged in?

A. I had charge of the investigations for the National Civic Federation into the relative merits of municipal and private ownership of

1901 public utilities in Great Britain, there being accountants and engineers under my direction, I think, about twenty-four plants were investigated in an engineering and accounting way and reports prepared. These reports I later analyzed and digested. I also prepared a report upon the franchise conditions and general conditions relating to public utilities, methods of accounting, and things of that sort, and was engaged on this work until the spring or summer of 1907.

Q. From 1907 to 1915, you were a member of the Public Service Commission of this State?

A. Yes.

Q. What did you have special charge of while you were with the Commission; what kind of cases?

A. Nearly all the gas and electric rate cases that came before the Commission were referred to me. Nearly all of the cases involving the issuance of securities by the companies during that period, and certain cases relating to street railway service, particularly as to the lines in Manhattan; matters of accounting under the uniform system of accounts and the preparation of the uniform system of accounts.

I was also chairman of the committee having to pass upon all of the plants for rapid transit work that were prepared by the engineering department before they were finally approved by the Commission, and then I had more or less to do with the negotiation of the contracts for the present rapid transit lines, that is, the lines that are being constructed now under contracts with the two companies.

Q. The total value of the properties appraised by you amounted to about how much, Mr. Maltbie?

1902 A. About a hundred and twenty-five million dollars.

Q. Did you have charge of all gas and electric rate cases before the Commission?

A. Nearly all of them.

Q. Did you have charge of a majority of the cases before the Commission involving the issuance of stock, bonds, and other securities?

A. Yes.

Q. What was the total amount involved in these cases?

A. About six hundred and twenty million dollars.

Q. Did you have supervision of the preparation of the uniform accounting systems for all public utilities under the jurisdiction of the Commission?

A. Yes.

Q. Were you chairman of the committee of the Commission which passed upon the construction plans for all rapid transit work?

A. Yes, I have stated that.

Q. While a member of the Public Service Commission, do you recall the estimated expenditures of the work under contract?

A. Involved in those plans to which I have referred, about $124,000,000.

Q. And were contracts calling for many additional millions partly completed?

A. Yes.

Q. Now, then, for several months in 1915, did you represent the State Railroad Commission of the United States before the Interstate Commerce Commission?

A. I did.

Q. That was in connection with the valuation of railroads?

1903 A. The valuation of all the railroads of the United States.

Q. And you resigned that office to accept a membership in the Advisory Board, upon the valuation of railroads, of the Interstate Commerce Commission?

A. I left that position to become a member of the Advisory Board of the Interstate Commerce Commission.

The Master: Was that valuation that you made part of the work of which the result was published a week or two ago?

The Witness: Of course, I was just going to say the Advisory Board had to do with the general questions of policy and methods for all of the work on all of the systems, and in only two cases to which I will refer did I have specifically to do with any one property. The methods and principles which were considered by the Advisory Board were of general application, relating to the general methods of conducting valuation work on all of the systems; and the valuations to which you have referred are a result, not of that work, but of all of the work.

Q. What was the work of the Advisory Board?

A. Well, I have just stated it had to do generally with the methods and principles to be followed by the accountants and engineers in all of their valuation work upon all of the lines. The two instances in which I was asked by the Commission to make specific reports were the Norfolk & Southern System and the Winston-Salem Southbound. I prepared in those cases the reports, the accounting reports on those two systems—of course, the accountants doing the
1904 work under my general direction and reporting to me, and the results being taken by me and compiled and analyzed and the reports written.

Q. While you were City Chamberlain, did you negotiate an adjustment of electric lighting rates?

A. I took part in the negotiation for the adjustment of the electric lighting rates.

Q. Were those rates accepted by the company?

A. They were.

Q. Do you remember how much of a saving to the consumers and to the City it amounted to annually?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you investigate the electric subways of the City and prepare a report?

A. I did.

Q. As to their cost?

A. As to their cost and as to the financial results under their contracts with the City.

Q. Did you investigate and report upon the plans for the reconstruction of the freight lines of the New York Central?

A. I did.

Q. Did you advise the Mayor on numerous other franchise and utility matters?

A. Yes.

Q. Including the method of leasing of waterfront property?

A. I did.

Q. You said that during the war you negotiated at the request of the Federal Government contracts on behalf of the War Department?

A. Yes. I think I have covered that work, with the exception of a few things which I did for the War Industries Board,
1905 particularly Mr. Baruch, in relation to the efficiency and cost of coke oven plants, and some reports that I made for the Secretary of War directly.

Q. Were you selected at one time as final arbitrator to determine the value of property of an oil corporation taken by the Federal Government?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I was.

Q. During the past five years have you advised the Public Service Commission of Pennsylvania in the Philadelphia Electric rate case?

A. Yes. In that case we made an investigation to determine the actual cost of the property, amounting to about $24,000,000, and I advised the Commission as to the value of the property and the rates to be fixed.

Q. Did you analyze the finances of the Norfolk Gas Company and appraise certain elements entering into the valuation of its property?

A. I did, and testified before the State Corporation Commission of Virginia.

Q. Did you investigate and report upon the street lighting situation in Toledo?

A. I did.

Q. And the reasonable rates therefor?

A. I did.

Q. Did you negotiate a franchise or street lighting contract and a reduction of electric rates for the City of Lexington, Kentucky?

A. I did

Q. Did you advise the City of Boston in connection with the arbitration to determine reasonable rates for street lighting?

1906 A. I did.

Q. Did you direct the appraisal of gas property and an accounting investigation into the affairs of the Municipal Gas Company of Albany?

A. I did.

Q. Did you direct the appraisal of the gas property and accounting investigation into the affairs of the Utica Gas & Electric Company of Utica, New York?

A. I did, of the gas part of the property of the Gas & Electric Company of Utica.

Q. And did you act as counsel in that case for the City of Utica before the Public Service Commission?

A. I did.

Q. Did you direct engineering and accounting investigation into the affairs of the Consolidated Gas Company?

A. I did.

Q. And did you testify in that case on certain matters?

A. I did.

Q. Were you employed by the City of Minneapolis in 1918 to appraise the property of the Minneapolis Gas Light Company?

A. I was, and to make an accounting investigation of the company, also.

Q. That is, you were to ascertain the used and useful in the production, distribution and sales of gas of that company?

A. That is correct.

Q. In 1920 were you again employed by the City of Minneapolis?

A. I was.

Q. For the purpose of bringing the appraisal investigation down to date?

1907 A. Bringing the appraisal and making an accounting investigation complete up to January 1, 1920.

Q. Did you testify before the court there, the Special Master in that case?

A. I did, for some nine days.

Q. Have you advised cities, Government authorities, associations and private clients in some twenty other cases?

A. I have.

The Master: Now what do you want Mr. Maltbie to testify to here?

Mr. Chambers: Well, organization, legal and general expenses.

Q. Have you made some investigation of the affairs of this complainant company, Mr. Maltbie?

A. I have.

Q. Did you make an investigation as to an allowance to be made for organization, legal and general expenses?

A. Well, I have prepared an amount which I consider the maximum amount should be allowed for organization, legal, general and preliminary expenses, having to do with the formation of the company and the securing of the necessary rights and privileges, on the basis of an estimate up to 1904 and an investigation to determine what, if anything, the Company had actually paid and had charged in its books of account to a fixed capital account for any such items from the middle of 1904 to the end of 1919.

By the Master:

Q. Does this figure that you are now discussing include franchise rights?

1908 A. It includes what might be the legal expenses connected with the securing of the franchises, but nothing for the value of the franchise itself independent of the cost.

Q. Suppose they had to pay somebody who owned the franchise for it, in order to get it?

A. I do not include that.

By Mr. Chambers:

Q. Did you find any charges on the books, Mr. Maltbie, for organization, legal and general expenses, as such?

Mr. Ransom: Objected to. The books speak for themselves.

The Master: I will allow it.

Mr. Ransom: The question of whether the account is in that particular form is not important. He cannot characterize the account.

The Master: I will allow it.

Mr. Ransom: The accounts were prior to the creation of the Public Service Commission. The form in which they were set up was one entirely within the rights of the company. There was no requirement of law that they should be given any particular labels.

The Master: I do not understand the witness limits his answer to particular labels—do I? Is that what you mean, Mr. Maltbie?

Mr. Ransom: He characterizes what the company has.

The Witness: I cannot answer any of those questions yes or no; I can tell you what I did.

By the Master:

Q. What I am getting at is this: Suppose there was an
1909 expense which was a legal expense, but you did not find it in the Legal Expense Account, would it be included in your figures?

A. Since 1904 there are no items charged, and so labeled, to a Fixed Capital Account. If the expenses were incurred, legal expenses, they were charged as an operating expense and the operating expenses so show.

Q. Have you included it in your figures?

A. I have not included anything since August 1, 1904, for any of those items, because I could find none of those items that were incurred by the company that were not charged as an operating expense.

Q. What difference does it make, for the purpose of these figures, whether they were charged in operating expense or not?

A. Well, they cannot have it twice. I assume that counsel for the complainant would grant that they cannot have it twice.

Q. That may be, it is not a question of whether they can get it twice, but the question is the value of this property and its cost, and one of the elements you say is legal, general and organization expense.

A. Yes.

Q. I do not care and I cannot see how the courts can be interested in the question as to where it is charged, if we are trying to determine what the value of the property was and its cost.

A. I am not attempting to give a figure for reproduction cost of the property and, furthermore, your Honor, you have got to take two things: You have got to take the value of the property
1910 and you have got to take the operating expenses. Now, if you say that this company should be allowed in its value certain items representing legal expenses paid to counsel, which during these years prior to 1909 were classified according to the way the company wanted to classify them, since 1909 classified according to the order of the Commission, and in that period classified as

an operating expense, you cannot take operating expenses just as they are.

Q. Why not?

A. Because if you do you put it in capital account once, then you include it as an operating expense, and you have it twice.

Q. Yes, that may be, but we have two different situations—one, we are now trying to find out what the actual cost was to this company.

A. Yes, but these two things have got to be consistent. You cannot put it into capital account and put it into operating expenses, too.

Q. That may be.

A. Nor can you leave it out of capital account and leave it out of operating expenses, too.

The Master: You may proceed, Mr. Chambers.

By Mr. Chambers:

Q. What figure did you estimate for organization, legal and general expenses—what sum?

Mr. Ransom: Objected to as incompetent. This witness, with all his narration of qualifications, has shown no relation to the actual development of any such enterprise. He never started an enterprise of this sort; he never incurred expenses of this kind during the time that the organization and development expenses of this com-
1911 pany were incurred; he was not in any way identified with anything in the world of a construction nature or affairs, or with practical activities, but was engaged purely in an academic capacity.

The Master: I will take it.

Mr. Ransom: He never had anything to do with those matters during that period.

The Master: Overruled.

Mr. Ransom: Exception.

A. On the basis of an allowance for organization, legal, general and preliminary expenses prior to August 1, 1904, and on the basis of what the books themselves show for expenses incurred since that time, I have allowed as the maximum amount $10,000.

By the Master:

Q. That is, your estimate is that $10,000 will cover it?

A. Would cover these expenses on the property up to 1904, and since then there have been no charges on the books. They have gone into operating expenses, so I add nothing since 1904. It is virtually $10,000 as the maximum amount for a company with the property that it had up to August 1, 1904, which was around $300,000.

Q. Is that based upon your understanding of what it actually cost, or your estimate of what it should have cost?

A. No, it is an estimate of an amount on the basis of what it reasonably did cost.

Mr. Ransom: I move to strike out the statement of the witness that $300,000 was the cost of the property that the company had in August of 1904. It is contrary to the evidence on both sides of the case.

1912 The Master: Yes, I will strike out that statement.

Q. Whatever they had at that time you figured at $10,000?

A. Yes, and that statement is based upon the figures put in evidence this morning by Mr. Hine, down to 1904.

The Master: Yes. Then I will strike out that testimony.

Mr. Chambers: I object to you striking it out.

The Master: That objection is overruled.

Mr. Chambers: Exception.

By Mr. Chambers:

Q. Mr. Maltbie, did you prepare some figure on working capital for this company?

A. I did.

Q. What do you mean by working capital?

A. Well, I have prepared one figure in this case for working and construction capital in one item, and by that phrase I mean the amount of money or its equivalent in property which the company must provide in advance of the time when it will be reimbursed by the consumers of the gas company, either in the way of payments for gas or in payments for the rental of appliances. I have also included the funds or equivalent in property that would have to be provided by the company for construction work in advance of there being entered in the amount upon which the company is entitled to a fair rate of return. Generally speaking, these relate, of course, to materials and supplies, stoves, appliances in this case, the operating expenses that must be advanced, the operating materials that

1913 must be paid for in advance, and the cash that must be on hand to meet the bills as they are presented.

Q. What investigation did you make prior to fixing this amount for working capital and construction capital?

A. I made an investigation or an examination of the exhibits that have been presented as to the operating expenses, the exhibits showing the balance sheets of the company, and the exhibits showing the amount of materials and supplies on hand, all of which were placed in evidence by employees of the Public Service Commission. I read the evidence to some extent, so far as it relates to working capital questions; I had certain investigations made to determine how meters were read and how bills were rendered, the amount of time that elapses before bills are paid. I made an analysis of the accounts receivable to separate the amounts due from consumers for gas from those due from consumers for appliances, the amount sold through prepayment meters and the amount of time that the company is allowed before it is required to pay its bills for supplies and things of that sort.

Q. Are you able to say what would be a fair and reasonable amount for working capital for this company, the complainant company?

The Master: Working capital and construction capital?
Mr. Chambers: Working capital and construction capital.
Mr. Ransom: That is objected to as immaterial.
The Master: Objection overruled.
Mr. Ransom: Exception.
1914 Mr. Chambers: Working and construction capital together.
Mr. Ransom: May I state my objection. I object to it on the ground that the witness has no qualifications to do anything of the sort. The fact that he sat in one or two judicial bodies and several non-judicial bodies and heard other men who presumed they were qualified testify about these things does not make him qualified to testify about them. The man who sits and listens to testimony may acquire a certain familiarity with the subject, but he thereby does not become an expert qualified to testify in a court of law. The judge who tries a negligence case does not become a competent medical witness nor a competent witness as to the producing causes of accidents, or any other matter requiring expert testimony. On that basis the Judge who sits on the bench would become a qualified witness in a patent case. Furthermore, this witness has had no experience himself in running an enterprise, he has no basis for saying what money has to be on hand, what materials and supplies have to be on hand, what must be in the exercise of good business judgment the provision in order to keep the company going and its affairs conducted on a sound economic basis.
The Master: Overruled.
Mr. Ransom: Exception.

A. I would add one thing more to the things that I investigated, and that was that I analyzed the balance sheets of the company to show, by a comparison of current assets with current liabili-
1915 ties, what net amount the company itself had on hand from time to time available for working and construction capital. I have prepared a table showing the amount of working and construction capital as the average for the years from 1904 to 1920 inclusive.
Q. That is designated as Table 40, is it, Mr. Maltbie?
A. It is.

Mr. Chambers: I offer Table No. 40 in evidence.
Mr. Ransom: Objected to on the grounds already indicated, and upon the further ground that we are not concerned in this case with the working capital as of 1904 or 1905 or any of those earlier years. The witness has no qualifications to testify as to those years or as to any years.

By the Master:

Q. What is that, about 20 cents a thousand; $70,000 for 1920?
A. It will be about 20 cents a thousand in 1920.
Q. There was a little more than that for 1919 due to the Douglaston Extension?
A. Due to the Douglaston Extension very largely.

The Master: I will overrule the objection.

Mr. Ransom: Exception.

Marked Defendants' Exhibit A-112.

By Mr. Chambers:

Q. Mr. Maltbie, you did not base this on cents per thousand cubic feet, did you?

A. No. I worked it out in amounts for each year.

Mr. Ransom: Have you the items that make up that $70,000?

1916 The Witness: I have my working papers, yes.

The Master: I think when Mr. Chambers gets through with Mr. Maltbie, Judge Ransom, you better go over those working sheets with him.

Q. Interest and taxes during construction, Mr. Maltbie. Are you able to say what would be a fair and reasonable amount to allow this company for that?

A. I have made an estimate of interest and taxes during construction, practically upon the same basis as the estimate for organization, legal, general and preliminary expenses. That is, I have undertaken to estimate the amount which might reasonably have been charged for interest and taxes during construction up to August 1st, 1904, and then have taken the amounts actually shown by the books of the company as charged to a fixed capital account for interest and taxes during construction since 1904. The books do not show the amount allowed for interest and taxes during construction segregated from any other items prior to 1904, just as they do not show the amounts separate allowed for organization, legal and general expenses prior to 1904.

By the Master:

Q. Coming back for a minute to this working capital, was there not an actual working capital of the company of more than $70,000?

A. Well, $70,000 is for 1920. Not for the periods which I have examined. I did not go through all of them, because I do not believe in estimating working capital that way; because——

Q. Well, you include receivables, do you not? You include the inventory on hand, do you not?

1917 A. I take materials and supplies on hand, yes.

Q. My recollection is that that aggregated $140,000 odd?

A. Yes, but you have to take off—Well, I would not confirm the $140,000, because I do not recall the figures; but you have to take off from that the accounts payable and the current liabilities. It is unfair to take the current assets and not——

Q. If I do not take off the current assets and current liabilities, then the figure is low; then I have to increase it to this $140,000?

A. If you do take it off?

Q. No, if I do not; if I do not agree with you about taking it off?

A. Well, your Honor, I do not know of any way of putting working capital in that will stand the test of the decisions in the courts, to take off the current assets and not take off the current liabilities, because here are the decisions——

Q. I am not concerned with decisions now, but one practical proposition.

A. Let us take it on the ground of reasonableness, then.

Q. Yes.

A. You buy a barge of oil, we will say, it costs you $10,000. When it comes over there it goes into your materials and supplies account at $10,000, does it not?

Q. That is correct.

A. And it appears in your assets under materials and supplies $10,000. Now, you have not paid for that, you have 30 days to pay for it. You have not spent a cent, and the only thing you have got is what? You have on one side of your materials and sup-
1918 plies account an asset of $10,000, you have a liability on the other side to the oil company for $10,000, to accounts payable, haven't you?

Q. Right.

A. You have not provided any working capital, though.

Q. Yes, but you ought to have working capital with which to pay that bill: isn't that so?

A. You do not need to have it until 30 days are up.

Q. But you have to figure on having it sooner or later?

A. Sure. You have to have it in 30 days.

Mr. Ransom: And that is a continuing matter.

The Witness: Yes, but there is 30 days. If you bought all your materials and supplies as this company does, if you bought all materials and supplies on 30 days' time, you do not need to provide any working capital for that for the 30 days. If you take an extreme case, just for an illustration, suppose a man was running a store and he bought all of his supplies on 90 days' time, to take an extreme case—he did not have to pay a cent for his materials and supplies before 90 days. Suppose he sells for cash day by day and he has such a business that he can turn over his entire product in 60 days. That man does not have to provide a cent of working capital, because before the 90 days are up he has all his money in again. So that the time on which the materials and supplies are purchased has a material and very important effect upon the amount of working capital to be
1919 provided and, consequently, if you do not consider the accounts payable and the bills payable on the other side, you are neglecting that entire question of whether it is bought on cash, on delivery, or whether it is bought on 30, 60 or 90 days' time.

The in one reason why I do not—while I always look at those items to see what the balance sheets show, I do not consider it is the infallible way of doing it. Furthermore, if you subtract your accounts payable and your bills payable, they may represent capital expenditures and have nothing to do with working capital. So that it would be unfair to deduct them in case they do. On the other hand, your assets as represented by cash may be cash ac-

cumulated to pay interest on dividends when they accrue—to pay interest on bonds when interest accrues, or to pay dividends. Well, you do not have to provide working capital to pay the dividends, nor dividends to pay the interest holders their interest. That is not supposed to be paid until it is earned and paid in.

The Master: In the Consolidated case I allowed 20 cents, did I not?

Mr. Ransom: Yes.

Mr. Cummings: Mr. Little's testimony.

By the Master:

Q. That was more than you testified to in this case?

A. Yes.

Q. In this case your figure happens to be about 20 cents?

A. No, it does not happen to be 20 cents. The Consolidated case was an estirely different case.

1920 Q. What do you mean it does not have to be 20 cents in this case?

A. Well, I object to the term "happens to be."

Q. What I mean is your figure does represent, as it happens, based upon the quantity sold, 20 cents?

A. It works out about 20 cents. I would rather use the words "works out," rather than "happens to be." It works out at about 20 cents a thousand. But the two cases are entirely different.

Q. You think this company is entitled to more than the other one, the Consolidated?

A. I do. More in cents per thousand cubic feet of gas sold, if you are going to use that as the basis.

Q. How much more?

A. Well, I have forgotten what my figure works out in the Consolidated case, but the amounts I believe to be correct, and I have not changed my opinion, even though the Master did not accept the figures.

The Master: Proceed.

By Mr. Chambers:

Q. You do not work out your figures for working capital on cents per thousand?

The Master: He has already explained all that, Mr. Chambers. Go on to something else.

Mr. Chambers: The question up was that I offered this in evidence.

The Master: The objections are overruled. I understand Mr. Ransom objected to it.

Mr. Ransom: Why, that was offered quite a while ago and marked.

1921 The Master: You pressed an objection and I overruled it.

Mr. Chambers: Oh, I was on interest and taxes during construction, that was it.

The Master: Yes.

Q. With reference to interest and taxes during construction, Mr. Maltbie, will you please give what is a fair and reasonable amount to be allowed for interest and taxes during construction?

The Master: In your opinion.

Mr. Chambers: In your opinion.

Mr. Ransom: Objected to on the grounds previously indicated, the entire lack of qualifications of this witness to express an opinion. Taxes are not a matter of opinion, taxes are a matter of fact.

The Master: Overruled.

Mr. Ransom: Exception.

A. On the basis which I have stated and on the basis of the amount of fixed capital as shown in the exhibits placed in evidence through Mr. Hine this morning—that is, the amount of fixed capital in 1904—also upon the basis of the cost of land, as shown by the company's exhibits, I have estimated an amount up to 1904 of $5,000. There were no charges for interest and taxes during construction, as shown by the books of the company, from 1904 to near the end of 1915. Near the end of 1915 there is an item, as shown by an exhibit placed in evidence this morning, Defendants' Exhibit A-93, of $402.97. I have rounded it off and called it $500, and estimate for the period from 1915 to 1918 $5,500. In 1919 the books of the company show a charge of $1,152.32, as indicated by Complainant's Exhibit A-93, for interest on money borrowed from the Consolidated Gas Company, and that shows the
1922 dates when it was paid. Rounding off the amounts I get as an average amount for 1919 $6,000, and as of December 31st, 1919, $6,700.

Q. Should there be any allowance for omissions and contingencies, Mr. Maltbie?

Mr. Ransom: Objected to.

The Master: What is that? What do you mean should there be?

Mr. Chambers: Should there be any allowance made in this case.

The Master: Objection sustained. I do not want Mr. Maltbie to come here and say they should or should not allow anything; I will take his opinion on it.

Q. Did you make allowance for omissions and contingencies?

The Master: Objection sustained.

Q. In your opinion should there be any sum allowed in the rate base for omissions and contingencies?

Mr. Ransom: Same objection.

The Master: Is there any claim for omissions and contingencies?

Mr. Ransom: There is for the reproduction of the property, of course. In reproducing the property, of course, there is an item of omissions and contingencies.

The Master: Simply on a reproduction basis?

Mr. Ransom: On a production basis.

The Master: I will take his answer.
Mr. Cummings: It is in Colonel Miller's table.
The Master: That is on a reproduction cost basis. That is not what Mr. Maltbie has testified to. Go ahead, I will take his
1923 answer.
Mr. Ransom: Exception.
The Master: No, I think I will sustain his objection unless you say in arriving at a reproduction cost whether there should be any allowance for omissions and contingencies. I will sustain the objection, Mr. Chambers, unless you frame your question to meet the testimony of Mr. Miller on reproduction cost.

Q. Are the omissions and contingencies reflected in the cost which Mr. Hine used in his figures?

Mr. Ransom: Objected to as incompetent.
The Master: Objection sustained.
Mr. Ransom: The witness certainly cannot testify to that.
Mr. Cummings: Here it is (handing Master book).
Mr. Ransom: That is reproduction as of 1904, yes.
The Master: Reproduction as of 1904. Mr. Miller's testimony was entirely upon the question of reproduction. On that particular item of reproduction you show me, Mr. Cummings, Mr. Miller's testimony was not entirely satisfactory anyhow, but I am going to limit Mr. Maltbie's testimony to the matter of reproduction cost.
Mr. Cummings: I am glad to hear that.

Q. Basing the rate base on cost, Mr. Maltbie, should anything be allowed for omissions and contingencies in this case?

Mr. Ransom: Objected to.
The Master: Objection sustained. I will not let you ask it unless you meet Mr. Miller's testimony on reproduction cost.
1924 Mr. Miller's testimony, to which Mr. Cummings has directed my attention, was the reproduction cost as——
Mr. Ransom: He estimated at that time the property had cost and would cost to reproduce——
The Master: At that time.
Mr. Ransom: Yes, had cost and would cost to reproduce at that time so much money.
The Master: Yes. Do you get the point, Mr. Maltbie?
The Witness: Yes.
The Master: I will let you ask that question—in arriving at a figure for reproducing the property new in 1904, or any other time, would you allow, or should there be in your opinion included, an item for omissions and contingencies?
Mr. Chambers: I do not want to ask that.
The Master: I will ask it.
Mr. Chambers: I object to it.
The Master: Overruled.
Mr. Chambers: Exception.
The Witness: Well, in order to answer that question I should have to have more facts than I have.

The Master: I would like to see Mr. Miller's statement there (taking paper).

The Witness: Whether there is anything to be allowed for omissions depends on the carefulness with which the inventory has been prepared.

The Master: Precisely.

1925 Mr. Ransom: There are certain kinds that have not anything to do with the inventory.

By the Master:

Q. Colonel Miller in his Exhibit 96 placed a figure of $320,350 as one of a series of figures for reproducing the property—in 1904, and in that figure to which I have referred he included a number of things, Preliminary organization and development expense, you say there should be some allowance for that?

A. Yes.

Q. Cost of financing the enterprise?

A. I am coming to that later.

Q. Interest and taxes, you say there should be an allowance for that?

A. Yes.

Q. Administration, legal and miscellaneous general expenses prior to operation. I gather you allow something for that?

A. Yes.

Q. Engineering, superintendence and general contractors' expense and profit?

A. Mr. Hine has covered engineering and superintendence.

Q. Well, I gather you agree that something ought to be allowed for that?

A. For engineering and superintendence, yes.

Q. Coordination of service and consolidation of companies. You are probably going to talk about that and I will pass it. Now we come to the item which he includes in this estimates of the original cost of the properties, what it would cost to produce the property: "Omissions and contingencies. Items not set forth in the accounts or included in the above indicated sum." I will permit you

1926 to answer whether if you were making up a statement of this kind you would include omissions and contingencies?

Mr. Ransom: If your Honor will look at the two classes of omissions and contingencies which there are.

The Master: On page 3.

Mr. Ransom: It is not in evidence, it is in the new one.

The Master: Oh, in his other exhibit, which was Exhibit 66, he says:

"(1) There is always a portion or percentage of the small units or items of machinery, tools, implements and other property which are invariably overlooked in the inventory, and reproduction has to be provided for, nevertheless, in any present estimate.

"(2) Small units of materials, mechanisms and supplies are lost or destroyed during construction. As to many items of materials and supplies, a larger quantity has to be delivered and paid for than could ever be checked up now in the completed structure and equipment."

Q. Would you include omissions and contingencies under any of those theories or items?

A. Not in cost, because the cost is shown by the books. You have everything in it.

Q. No, but in estimating reproduction cost?

A. In estimating reproduction cost it would depend upon the care with which the inventory had been made. In some inventories I should make a deduction for duplications rather than an addition for omissions.

Q. And in some other instances, it might be proper to allow for omissions and contingencies?

1927 A. Well, in some other cases, your Honor, some allowance might properly be made for omissions. Now, contingency item is usually covered in the unit prices which are allowed and not as a separate item, and it would depend upon the character of the work.

The Master: Well, we have had enough of that. Take the next one.

Mr. Cummings: I think it ought to be noted on the record, your Honor, that Mr. Miller's exhibit there is incorrectly labeled. It says "Cost," and it is not actual cost. It leads one to believe that it is actual cost.

The Master: That was brought out in his testimony, Mr. Cummings.

Mr. Cummings: Do you think it was?

The Master: I think I have made it clear on the record.

Mr. Ransom: As of 1904 it was not claimed to be anything else except an estimate of what it had cost up to that time?

Mr. Neumann: But that was not the way you introduced it. You led everybody to believe it was actual cost.

Mr. Cummings: Yes, actual cost.

The Master: Next question.

By Mr. Chambers:

Q. Going value, Mr. Maltbie, should there be any allowance in this case, in your opinion, for going value?

The Master: I will not take it that way, whether there should or should not be any in this case. What I want to know and what I will permit you to ask Mr. Maltbie is whether in arriving at

1928 the value of a going plant like this complainant company's, there is any element of value which should be included, representing going value, in the sense that there is expenditure to get it going right

Mr. Chambers: I do not know whether the witness can answer that question.

The Master: That is the one I will let you ask. I will put it myself.

Q. Can you answer that, Mr. Maltbie?

A. I can answer that question.

Mr. Ransom: I do not believe the witness is qualified to answer that question.

The Master: I will overrule the objection on that ground.

Mr. Ransom: Exception.

The Master: Mr. Miller has testified at length that in a company of this kind it cost money to put it on its feet, to get it going.

Mr. Ransom: That it did cost.

The Master: Yes.

Mr. Ransom: And this witness does not know, because he never had anything to do with getting a company or anything else going.

The Master: I will let him testify to that.

Mr. Neumann: But Mr. Miller did not know what this particular company paid.

The Master: I might very well rule all this out, on the grounds I indicated before, that what this company paid for the property when it got it probably included the item of going value; but I am going to let Mr. Maltbie state if he can what in his opinion a company of this kind includes for going value.

The Witness: Well, there are two lines or two methods, two general methods, of determining general value.

1929 The Master: You mean by the courts or by persons familiar with this kind of business?

The Witness: Both.

The Master: Well, I do not want what the courts do now.

Mr. Cummings: Because it has been confirmed by the court.

The Master: I do not want Mr. Maltbie to give me any legal opinion.

Mr. Cummings: No, he is not.

The Master: I have ruled against Mr. Ransom, that he can give me a layman's opinion, a practical opinion, and that is what I am willing to take.

The Witness: Well, as I say, there are two methods, two general methods, and a lot of subdivisions under each one, for determining going value. One is the accumulation of deficits below a fair rate of return, offset by excesses above a fair rate of return in later years. I have made no analysis of the history of the company, the financial history of the company, to determine whether under that rule there is such a thing as going value—that is, going value as defined by the Court of Appeals in this State.

Mr. Ransom: I move to strike that out.

The Master: I grant that motion to strike it out.

Mr. Chambers: I object to that being stricken out.

By the Master:

Q. I want to know whether a business man valuing a gas property includes any element for going value. I am not in-
1930 terested just now in what your understanding is of the Court of Appeals' opinion, Mr. Maltbie; I am trying to get your opinion as an expert familiar with gas properties and their value?

A. This is a question of equitable rate. This is not a question of what you would pay to buy the property. That all depends on how you think you would be able to manipulate the public.

Q. No.

A. This is a question of an equitable consideration.

Q. No, I will not take that. I want to know whether you have reached any conclusion, generally speaking, of the value of this property as it stands. Have you?

A. For rate making purposes.

Q. No.

A. You have got to determine the purpose.

Mr. Cummings: Yes, it is entirely different.

The Witness: You cannot fix a value without including or knowing the purpose for which you are fixing it.

Q. This is a gas company, is it not?

A. It is.

Q. And it makes gas?

A. It does.

Q. It also has a manufacturing plant?

A. Yes.

Q. Has mains and services?

A. Yes.

Q. And all the things that go to make up an operating gas plant—a distribution system. Its business is to manufacture and sell gas to consumers, isn't it?

A. Yes.

1931 Q. Have you considered at all the value of that plant as it stands?

A. For what purpose?

Q. For the purpose of making and distributing gas?

A. That is not the question.

Q. That is my question.

A. I cannot give you an opinion on the value of property without knowing the purpose for which the value is to be fixed.

Q. What do you mean? What other values might there be?

A. There is the tax value for one thing.

Q. Do you think the tax value is different from the value for rate making purposes?

A. It may be.

Q. In what respect?

A. Because the tax value has to be fixed under the laws of the State.

Q. Generally speaking, does not the law require it to be taxed at the fair value?

A. It requires certain of the property to be taxed at fair value.
Q. Which part of it?
A. The land.
Q. How about the buildings?
A. I am not familiar with the requirements as to buildings; I think that refers to real estate, however.
Q. What other kinds of value are there?
A. Value for purchase and sale, value for condemnation——
Q. So, you rather agree with what I said in the Consolidated gas?
A. I agree with some things you said in the Consolidated case.
1932 Q. In this respect?
A. Yes, I think the value for——
Q. All right. Now, we will take the value to the consumer, if I can draw that distinction rather than the one you make, value for rate making purposes. You apparently agree with me that there is a value peculiar to the fact that it has a value to the consumer who gets the gas?
A. No, that is a new idea to me; I don't comprehend that yet.
Q. You don't get that yet?
A. I don't get that yet.

Mr. Deegan: That is unheard of.

Q. I don't quite understand where you draw the line about a value for rate making purposes. What kind of a value is that, how do you fix that value?
A. That is a value which is to be determined largely upon equitable ground, practically wholly upon equitable ground, and under the decisions that have been laid down by the courts, there isn't any question about that.
Q. Do the courts do more than say the fair value of the property at the time the rate is fixed?
A. No, but they do not always tell you exactly how to get at it, as to the details.
Q. But generally the rule as you understand it is that the rate must be based upon the fair value of the property at the time of the fixing of the rate?
A. Yes.
Q. Do you know what the fair value of this property is now, assuming that this is the time we are to fix the rate?
1933 A. Not for the entire property, I have undertaken only to handle certain parts of it.
Q. In arriving at your figure would you, as an expert appraiser of gas properties for that purpose, include any value for going value, any amount for going value?
A. I cannot answer the question as to the deficit method, but excluding that method, and taking into account the property as a going concern and on the basis which Mr. Hine has appraised the property on, the property as a continuing concern, and the basis of an allowance for working capital, for preliminary and development expense, interest and taxes during construction, I do not believe any further sum should be added for going value, in this case particu-

larly, in view of the fact that certain expenditures which are of the nature of canvassing and soliciting and advertising, and things of that sort, to get business and to keep it, are charged as an operating expense, and have been charged as an operating expense not only since the Public Service Commission established the system of accounts, but before that time. If you are going to take the operating expense as a basis for fixing the rate, or determining the question which is before you, there ought not to be anything added in the value of the property for those expenditures, or for the value created by those expenditures which you have once allowed in the operating expense.

Mr. Ransom: He still has not answered your question. In reproducing the property as of 1914, or any other date——

The Master: I think Judge Ransom is right about that.

1934 Eliminate from your mind, for the minute, Mr. Maltbie, how these books were kept, if you were asked to give your opinion what a plant like this could be reproduced for today, doing the business which it does today, wouldn't you necessarily have to include something for going value on either theory?

Mr. Chambers: I object to that.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Witness: You have got to allow something for the expenses of that kind, getting the business and keeping the business, not only getting the business but keeping the business.

Q. On either one of those theories or methods of calculation?

A. You have to allow for it either in operating expense or in the value of the property. I believe personally that those expenses ought to be put in operating expense, and ought to be allowed for there, because if you were to attempt to determine in the case of any expenditure whether it was really a capital expenditure or an operating expense, that is, if you had a bill for advertising, for instance, or if you had a canvasser out, and you wanted to determine how that expense should be charged, how much of it should go to capital and how much of it should go to operating expense, you would have such a difficult problem of practical solution that everybody as a matter of fact puts it in the operating expense. There is where it goes, there is where it belongs.

Mr. Ransom: After the preliminary period is over?

1935 The Witness: No, during the entire period.

Q. If it is not put into operating expense it should be added to the capital account?

A. If it is not in one place it should be in the other. I am firmly of the opinion that it should go in operating expense, and by putting it there you are fair to the company.

The Master: Next question.

By Mr. Chambers:

Q. Now, cost of financing?

A. Cost of financing is an item to be taken care of in the rate of return, and should not be added to the value of the property.

The Master: But if it is not included in the rate of return, it costs money to finance the company at the outset, doesn't it?

The Witness: It always costs something to finance a company.

The Master: You say that the consumer ought to pay for it somewhere, somehow?

The Witness: Yes.

The Master: And if it is not included in the rate of return it must be included in the value of the property?

The Witness: Or as an operating expense.

The Master: Next question.

Q. Depreciation, Mr. Maltbie, what is meant by accrued depreciation?

A. I understand depreciation to be the loss in worth or value due to all causes, such as wear and tear, decay, inadequacy, obsolescence. Accrued depreciation is the total amount of that loss in worth or value up to a definite date. Annual depreciation is the amount of loss in worth or value which accumulates in that one year.

1936 Q. What do you understand to be meant by "deferred maintenance?"

A. Deferred maintenance consists of the expenditures necessary to maintain the property in first class operating condition, but the actual outlay of which has been deferred beyond the reasonable time for making it.

Q. Is depreciation limited to deferred maintenance?

A. In my opinion it is not.

Q. In determining the fair value for rate making purposes, should accrued depreciation be deducted from cost new, whether actual cost or reproduction cost is used, in your opinion?

Mr. Ransom: I object to that as unfair, and not within the province of the witness.

The Master: Objection sustained. I will allow the witness to state whether in arriving at a fair value of the property of the complainant company at this time there should be a deduction, in his opinion, for depreciation.

Mr. Chambers: Exception.

Mr. Ransom: I object to that question, and take an exception.

A. In my opinion there should be.

The Master: A deduction from what?

The Witness: On whatever basis you use. If it is a cost basis a deduction from cost; if it is a reproduction basis, then a deduction from reproduction. Depreciation is a fact, it does not depend on what you paid for the property.

The Master: Suppose the Court, in the person of the Master, is

able to determine the fair value of the property irrespective of
1937 depreciation, its present condition, you would not deduct depreciation also, would you?

The Witness: I don't believe he can do it, with all due respect.

The Master: I want to make it perfectly clear that if I can find that this property which Mr. Hine has testified, is in good condition, that it produces a certain amount of gas, and has a certain amount of mains, and from other proof in the case, I can find that the fair value of that property is $4.00 or $5.00 or $6.00 per thousand cubic feet of gas sold, I don't take depreciation, do I?

The Witness: I think you do. The value of a thing, whether it is a gas plant or any other item of property, unless you are talking about a painting on the wall, or at the present time, unless you are talking about a bottle of whiskey, everything that we are practically dealing with these days, has a value dependent upon the amount of service which there is in it to render, and its value decreases as the amount of remaining service that it can render decreases.

The Master: But if the consumer gets a thousand cubic feet of gas, there was certainly used in the making and distribution of that thousand cubic feet of gas a certain amount of plant and distribution system, wasn't there?

The Witness: Yes.

The Master: And that plant and distribution system irrespective of its condition, is worth X cents or dollars to the consumer, isn't it?

1938 The Witness: I don't know how you can determine X cents or dollars to the consumer in that way.

The Master: Go ahead.

Q. Is such deduction, speaking of deduction for accrued depreciation, to be limited in your opinion to deferred maintenance?

Mr. Ransom: I object to that as not within the province of the witness.

The Master: He has already answered that, he said no.

Mr. Chambers: Not in just that way.

A. No.

Q. In determining the amount to be deducted for depreciation what factors should be included in your opinion?

Mr. Ransom: I object to that as not within the province of this witness, and not within his qualifications.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. All the factors that I have mentioned, that is, wear and tear, decay, obsolescence, inadequacy, and any other special factor which may happen to exist because of the special circumstances of the case.

By the Master:

Q. What do you understand by a gas plant being in good condition, and having been well maintained?

A. A property which was properly designed, properly built, and has been maintained up to good first-class operating condition.

Q. So that its usefulness has not been impaired?

1939 A. So that its present usefulness has not been impaired. Of course you understand that with many kinds of apparatus it is impracticable to keep it up to that efficiency that it had shortly after it was installed, when it got to working properly; but I am talking now about first-class operating condition, when it is kept as near to that point as maintenance and repairs can practically do it.

Mr. Ransom: I move to strike out the answer of the witness. The Witness has no knowledge of the efficiency of gas apparatus, or of any such matters.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. Wouldn't you say, Mr. Maltbie that the substitution of a newer piece of apparatus may tend to increase the efficiency of the plant over what it was planned or designed for originally?

A. You mean a new one of the same kind?

Q. Or, perhaps, a little improved type of some part, or something of that sort?

A. Of course the substitution of improved apparatus is going all the time, and the substitution of an improved piece of apparatus would tend to increase the efficiency of the plant.

Q. Based on your experience, such as you have had, and as to which you have testified, taking a gas plant, generally speaking, when a part is worn out they will substitute the best part they can find for it, wouldn't they, ordinarily?

A. Ordinarily. Of course there are exceptions, but ordinarily they would.

Q. Your experience has been that in a plant like this, where it has been kept in good condition, they will get the best part

1940 they can, the best part that is sold at that time? They will not take an old thing if they can get a better one?

A. Usually, no.

Q. Am I not right in drawing the inference that a plant like this plant, on which a great deal of money was spent in 1915 and 1916, and which the witness Hine has testified was kept in good operating condition, is practically as good as it was some years ago?

A. Its momentary usefulness may be as great as it was a number of years ago, in fact, it may be turning out for the moment a larger amount of gas per unit of labor and materials put into it than it was during years ago; but that in my opinion does not determine the question, or does not say that the value of that plant is either its cost new or its reproduction new.

Q. But for the minute, taking this case that you have just discussed, this plant that is doing as good or better work than it did ten years ago, is worth just as much to the consumer, isn't it?

A. Yes, this pair of shoes that I am wearing are giving me better service than when I bought them, because they are adjusted to my feet, but I would not give now the new value of those shoes.

Q. You have to fix a rate as of this time. Now, as of this minute, the consumer is getting this value from this plant?

A. Yes.

Recess until 2 P. M.

1941 Afternoon Session.

MILO R. MALTBIE resumed:

By Mr. Chambers:

Q. Mr. Maltbie, you are familiar, are you, with the term "Observed Depreciation?"

A. I am.

Q. What is meant by "Observed Depreciation?"

A. It usually means the almost equivalent of deferred maintenance, or what would be necessary to make the plant as good as new, or as nearly as good as new as it can be made by the expenditure of certain moneys.

Q. Should the amount of depreciation be limited, in your opinion, or the amount of depreciation which is to be deducted, should it be limited to observed depreciation?

Mr. Ransom: Objected to on the grounds indicated this morning.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. It should not.

Q. In your opinion, Mr. Maltbie, is there no depreciation where the property is being maintained at 100 per cent efficiency, or is rendering efficient service?

Mr. Ransom: That is objected to as incompetent, and a question of law which the witness is not qualified to pass upon.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. In my opinion there is depreciation notwithstanding the fact that it can be maintained at 100 per cent efficiency or as near to first-class operating condition as it is practical to maintain.

1942 Q. In your opinion is each unit of the property of a gas company decreasing in value from year to year?

Mr. Ransom: That is objected to.

The Master: What do you mean by "Each unit?"

Mr. Chambers: Say a generator set, holders.

Mr. Ransom: That is objected to; what kind of value?

Mr. Chambers: Every individual thing.

Mr. Ransom: There is this artful play on value all the while. They first use it to mean one thing and then another.

(Question repeated.)

The Master: Decreasing in what kind of value.

Mr. Chambers: In its useful value, fair value.

The Master: For rate making purposes?
Mr. Chambers: Yes.
The Master: Objection overruled.
Mr. Ransom: Exception.

A. With the possible exception of land each item of property is decreasing in value.

By the Master.

Q. No matter how much it would cost to reproduce it?
A. No matter how much it would cost to reproduce it.
Q. No matter if the market price of material and labor were such that to reproduce it new, and to charge off depreciation from that reproduction cost on any theory that you have suggested, you still say it had depreciated in value?
1943 A. I should say that there was a depreciation in value.
Q. I cannot understand that, Mr. Maltbie. If you take a plant that costs $100,000 to build ten years ago, you state that that depreciated in value down to this time, and you say that in spite of the fact that it might cost $200,000 to rebuild that plant today, and if you charged off 50 per cent for depreciation, assuming that is all you would charge off, that you would go back to the original $100,000, you would still say it depreciated in value?
A. I do.
Q. Well, explain that. How can a thing be worth less than $100,000 if you admit it is worth $100,000?
A. You start out with the implied assumption that reproduction cost at present day prices is the measure of value for rate making purposes, which I do not believe is a measure of value.
Q. I am not asking for your opinion on a question of law. I am asking about the value of a building, or machinery—I have assumed that ten years ago it cost and was worth $100,000, that it has depreciated as much as 50 per cent in ten years, and that to reproduce that today, charging off from the reproduction cost the 50 per cent that I have assumed, it would still bring you back to $100,000, why is it not worth $100,000 for rate making or any other purposes?
A. Because I do not believe that reproduction cost at the present time, reproduction cost less depreciation on that basis, is a proper measure of value.
Q. But assume now that you are wrong about your law and we are talking now only about value, would you still say that
1944 the property that I have described and to which I have referred is not worth as much as it was when it was built?
A. Of course, if you make that assumption that I am wrong as to the proper standard, and that reproduction cost is a proper measure——
Q. Yes?
A. Then of course it would be reproduction cost less depreciation.
Q. And if that result was as much or more than the original cost, there has been no depreciation, has there?

A. No, I would not say that. I would then say that the original cost has nothing to do with the value of the property.

Q. Why am I not right in my statement that there is no depreciated value?

A. Because depreciation, and decrease in value, is a fact, and whether you take original cost as the starting point, or whether you take reproduction cost as the starting point, there is that decrease.

Q. Let us look at it again. In 1910 I put up manufacturing building at a cost of $100,000. I will include machinery in order to bring it down to say a fair average of five per cent on the whole building and machinery. Now, in 1911 the cost of reproducing such a building and such machinery has gone up ten per cent. Would you say that that building and machinery was worth less in 1911 than it was in 1910?

A. If you are taking reproduction cost as the basis——

Q. Yes.

A. I should say that that is worth more, if I understand your figures, because your price has gone up ten per cent and your
1945 depreciation is five per cent, so it would leave an increase of five per cent.

Q. Then there would not be any depreciation in the value of that building?

A. Yes, there would be depreciation, but it would be depreciation off reproduction cost.

Q. No, but the building would be worth, the building and its contents would be worth as much in 1911 as in 1910, in fact a little more?

A. Yes.

Q. Then it has not depreciated in value in that sense?

A. I should say that it was depreciated in value but it has not been enough to offset the increase in labor and material, so that the net result is that the value, if you take reproduction cost is five per cent more than the actual cost.

Q. The net result is that the property is worth more than it was the year before?

A. I would not put it that way, but I should say, the net value of the property is five per cent more than the cost.

The Master: All right, go ahead.

By Mr. Chambers:

Q. Assuming that each of the units of a property is decreasing in value can the whole property have a value equal to its cost new in your opinion?

Mr. Ransom: I object to that.

The Master: Objection sustained; it is argumentative.

Mr. Chambers: Exception.

Q. Assuming for the moment that there is no accrued depreciation, should the company be allowed a return upon the
1946 property constructed out of the depreciation reserves?

Mr. Ransom: I object to that.
The Master: Objection sustained.
Mr. Chambers: Exception.

Q. To what item should depreciation be applied, in your opinion?

Mr. Ransom: I object to that.
The Master: Objection sustained.
Mr. Chambers: Exception; you allowed that in the Consolidated
se.
The Master: I would have allowed it here if you had not already
vered it. Mr. Maltbie has fully explained it.

Q. Does the labor cost of property depreciate?

Mr. Ransom: I object to that.
The Master: Objection sustained on the ground that it is fully
vered.
Mr. Chambers: Exception; that is all.
The Master: You want to reserve cross examination?
Mr. Ransom: I am afraid I will have to.
The Master: All right.
Mr. Ransom: When can we get at those papers?
The Master: How are you fixed this afternoon?
The Witness: I made that engagement for three o'clock.
The Master: Will you be through by four?
The Witness: I would rather do it before; I do not know how
g this conference will take.
The Master: Who are you going to have go over it with him?
Mr. Ransom: Mr. Teele.
47 The Master: Can't you do it right away?
Mr. Ransom: Go right down to your office?
The Witness: Yes.
The Master: Anything else; is that all the proof you have this
ernoon?
Mr. Chambers: That is all I am going to have today or any time
t I know of.
The Master: That is what I want to get at.
Mr. Chambers: I want to see about that first; there may be some
re documentary evidence.
The Master: I think perhaps you better make it until after he
through with that appointment; arrange that with Mr. Maltbie.
Mr. Ransom: Four o'clock?
The Witness: I do not think I will be through. I think we will
bably be the rest of the afternoon.
The Master: Then do it this evening.
The Witness: I will take it up the first thing in the morning.
The Master: I wish you would do it this evening for my personal
venience. My time is getting very short and this is practically
last week I have got.
The Witness: I am in town yet.
The Master: I will be in town probably until the early part of
, but I am officially on my vacation then. Why not have Mr.

Teele go right down with Mr. Maltbie and do what he can until three o'clock.

In order that there may be no misunderstanding on this record, my recollection is that you have not challenged the books, except under your general challenge that they were not properly proven; is that true?

Mr. Chambers: Let us hear what Mr. Neumann has to say about the proof.

Mr. Neumann: We say that the books for the year 1919 show abnormality in many respects over other years. We have submitted tables to you showing that, showing accounts that usually ran along uniformly for years at a certain figure, have suddenly increased in the year 1912 to three or four times that figure with no reasonable explanation of it by the complainant.

Now, in addition to that, take for instance the year 1919, we contend that they have charged up in that particular year the entire rate-making expenditures in this case, $15,000.

Mr. Ransom: We have not started on that.

The Master: You have not challenged the amount of fuel used per thousand cubic feet.

Mr. Neumann: We have challenged the amount of fuel and all that by their statistical records which contradict the witness Woods and the witness Spear in the figures that they gave. For instance, the witness Woods gave 37 pounds of generator coal; in the Consolidated he testified to 32½, and the operating figures for this company of that year show 34, and in other years contrasted with it it shows less.

The Master: I understand that. What I am getting at is this; take for instance the Teele exhibit showing actual results of operation in 1919. That shows a certain quantity of coal oil and other material used. I do not understand that that has been challenged in any way, except the inference to be drawn. For instance, that statement shows that their distribution expense was 31 or 32 cents a thousand cubic feet.

Mr. Neumann: Which is higher than in other years.

The Master: Higher than in other years; that includes that legal expense item.

Mr. Neumann: Yes.

The Master: Except as you criticize and challenge some of the items, the general results shown by Mr. Teele, you do not challenge, do you?

Mr. Neumann: I do not know what you mean by general result. The general result we have contrasted with other years and we have shown that they are abnormally high in the year 1919.

Now, take for instance, there is absolutely unexplained on this record, the daily record of manufacture, which contains the amount of coal and oil used day by day and at the end of the month there is an adjusted figure in some instances as high as 2,000 gallons of oil a month, added to what they used every day.

Now, if the daily record is correct, why was it necessary to add 2,000 gallons at the end of the month?

The Master: There was an explanation of that.

Mr. Neumann: There was not. The explanation was that that was an adjusted figure that was given to them by the Standard Oil Company and they accepted it without question. The witness Morrison testified to that very fully.

1950 There is something that they have absolutely left unexplained, and that is that they had 16,000 gallons more of oil than their entire capacity showed. They must have had it swimming all over the plant. The attempted explanation was that the oil was probably in the pipe that ran from the dock to the oil tank, and the witness Morrison knocked that into a cocked hat by saying that the oil was not measured until it reached the tank.

Now, then, there is another one that your Honor called attention to and that was that there was an error in the underlying dollar that found its way right into the journal, where 200,000 pounds of coal dust had been overstated as used. Now, that is not a small item, that is a large item.

Mr. Ransom: The readjustment of that shows——

Mr. Neumann: I have heard all about readjustment, but it has not been shown.

Mr. Ransom: The books show that.

Mr. Neumann: The books do not show it. You take your statistical data, we put it in for ever year that we could get from 1909 to 1919 and it absolutely and flatfootedly contradicts both your expenditures for this year and Woods' hypothetical testimony.

The Master: Let me ask you, Judge, while I have it in mind. What proof is there in this case other than the proof produced by the defendants on the actual cost of the property including franchise rates to your company?

Mr. Ransom: You mean the cost to this company?

The Master: Yes.

1951 Mr. Ransom: The only proof which has thus far been offered by the complainant is the Miller tabulation which showed two things. In the first place, the book cost of all tangible property since 1904, August 1st, and in the second place, the testimony of Mr. Miller as to the estimated cost of the property which there was in 1904 that is still in existence and in use; that is, he testified that the property in existence in 1904 and still in use, his estimated cost to the company as of that time, the reproduction cost and his estimate of what it had cost the company, was a certain figure. The complainant had not as yet offered proof of the cost to the company, the amount which the company paid, in 1904, for the property which it at that time acquired.

The Master: There was proof that certain securities were issued for it.

Mr. Neumann: There was no proof of that, quite the contrary. A witness was allowed to testify that they authorized one million dollars' worth of securities.

The Master: The books show.

Mr. Neumann: No. The way to have proven that was by the minutes of the Board of Directors. We showed that there are such

minutes. We called for their production, they have not been produced. There is no evidence upon that point upon which the Master can make any findings. I will say right now, if there is any finding made on that it will be like Mohammed's coffin, suspended in the air.

The Master: This is what bothers me. Assuming now that there is proof that certain bonds of a certain par value were issued,

1952 whether that represents the cost; in other words, whether I have got to assume that the par value of the stock and the bonds issued for it——

Mr. Neumann: That is what you will have to do; you will have to assume it.

Mr. Ransom: It is exactly on that question that the testimony of Colonel Miller became pertinent, because he offered testimony which was received showing the estimated cost of such of the property as was acquired at that time, as is still in existence.

The Master: Estimated value?

Mr. Ransom: Estimated cost.

Mr. Cummings: I thought his was reproduction cost.

Mr. Ransom: Of course, any estimate of cost is necessarily an estimate of reproduction cost.

Might I just say a word that I started to say when I was interrupted. The complainant in this case, of course has stood upon its direct case, upon the proof which it had offered, as to the present value of the property, based upon the cost to reproduce new.

The Master: Was there proof offered of the cost to reproduce the franchises?

Mr. Ransom: Well, of course, the Miller exhibit in that respect related to the tangible property and the so-called non-distributed structural cost in connection with the tangible property.

Mr. Neumann: I understood Mr. Miller especially excluded franchises from reproduction cost.

The Master: What I am trying to get at is, what basis have I for valuing franchises?

1953 Mr. Neumann: None at all.

The Master: I am asking Judge Ransom something, Mr. Neumann.

Mr. Ransom: I take it that from all of the evidence in this case, the testimony of Col. Miller which related to that point, the evidence shown by the books, the evidence as to the acquisition of the property in 1904 and what was paid therefor, the judgment of the Board of Directors as to the value to be put upon those so-called intangibles—it is not a simple question, it is not a matter which has been adjudicated as was the situation as to the value of the franchises and rights in the Consolidated case.

The Master: That is what bothers me.

Mr. Ransom: I am fully aware that it is a difficult question.

The Master: Now, Mr. Neumann, what is it that is on your mind?

Mr. Neumann: Are you through?

Mr. Ransom: I have not yet started.

The Master: Let me see what is on Mr. Neumann's mind.

Mr. Ransom: Let me clear up the point I was discussing when I

was interrupted several times, namely, that we stand on the present value of the property. The defendants have now put in proof of what they call original cost of property. I have not had an opportunity yet to go over the statements which were put in in that respect, but I assume that we may desire to do in this case as we did in the Consolidated case, that is, they having put in proof of what they regard as the original cost of the property and having stood upon that as a basis, we in so far as they are either erroneous or
1954 incomplete shall endeavor to show that.

The Master: What have you got there?

Mr. Neumann: Your Honor will recall on July 31, 1904, there was a write-up of $600,000. They hoisted the flag down on one company. The good faith of that transaction was attacked at the very beginning. This is a case of one company selling to itself some property, because Mr. Spear testified that there was not a stick of property added to the company in 1904, and yet over night $600,000 is added, and that item is put in the franchise account, and here the exhibit shows that the Board of Directors and the officials of the company are identical in each case.

Now, if they think that that will stand as a bona fide transaction, why, it is something that no court will follow them on.

It is absolutely water of the worst kind.

The Master: But this is quite explainable to me—the same Board of Directors. It is quite possible that the New York & Queens, having bought all of the property from the Newtown & Flushing, concluded to continue the organization of the Newtown & Flushing and put their officers into the New York & Queens for that reason.

Mr. Neumann: And pay $500,000 for it? The officers and directors show there were no new interests came into the company, it is the same old crowd, and it shows that they paid to themselves $600,000. They have pulled down one flag and hoisted another, stuck in $600,000 in the franchise account, and now claim a rate base based on that pure water.

1955 Mr. Ransom: It does not show that there were no different interests at all.

Mr. Neumann: You will have to show that to the Court.

Mr. Ransom: Let me talk for a moment.

Mr. Neumann: Where you show that the officers and directors were the same, you will have some difficulty explaining there were new interests. If you were able to prove it, the minutes of August, 1904, would be the best evidence, and the fact that you have not put them in evidence, although we called for them, is the best proof of that fact.

The Master: Let Judge Ransom talk, will you?

Mr. Ransom: I take it it is true that the directors for a very short time were the same or nearly the same. I do not know whether they were exactly the same.

The Master: They were identical, apparently.

Mr. Neumann: They were the same in all of those reports.

The Master: I ruled out reports prior to 1914, didn't I?

Mr. Neumann: 1904.

The Master: Yes, 1904.

Mr. Neumann: And it was too bad, because they were competent evidence.

Mr. Cummings: Yes, your Honor.

Mr. Neumann: You ruled them out before that.

Mr. Ransom: Just a moment, please. You took that report of the predecessor company.

The Master: Made by your company.

Mr. Ransom: Not made by our company, not made by the New York & Queens.

1956 The Master: Yes, it was. The Newtown & Flushing Gas Company, by New York & Queens Gas Company.

Mr. Ransom: But verified by the Newtown & Flushing Company, not sworn to by any person in behalf of the New York & Queens Company. No officer of the New York & Queens Gas Company made the report, no officer of the New York & Queens Gas Company certified to its correctness.

Mr. Neumann: Mr. Cummings offered these.

Mr. Cummings: We offer in evidence the report of the Newtown & Flushing Gas Company to the State Board of Tax Commissioners of the State of New York, for the year ending June 30, 1903, having been marked Defendants' Exhibit A-89 for Identification.

The Master: Let me see it (taking paper).

Mr. Ransom: That is objected to on the grounds indicated with respect to the offer of the 1904 report of the Newtown & Flushing Gas Company, on the ground it is in no way probative, competent or binding as against this complainant company. The theory of law or the theory of fact on which reports were made up by the predecessor company, or made up by any company under the law as it stood in 1903, was not competent or binding upon this complainant or prejudicial to the right of this complainant and its investors to a fair return at this time. Under the decision of the Court of Appeals in the State of New York in the Holmes Electric Company case a few days ago, even if it were a report of the New York & Queens Company for the present time it would not have such effect.

1957 Mr. Neumann: We have the reports here down to 1899. I would like to call your Honor's attention to this—that in the merger documents that the complainant itself offered, the very first exhibits, they show that this company had developed as a result of mergers of successive companies, the College Point Gas Company, the Flushing Gas Company and the Long Island Illuminating Company, and the Newtown & Flushing Company, until eventually the company became the New York & Queens Gas Company. We submit that they must take the good with the bad, they cannot take the property without taking the declarations against interest that are made by the predecessor companies.

Mr. Ransom: The predecessor companies were owned and controlled by men in no way connected with the complainant company.

Mr. Neumann: Yes, but the difficulty is that the Board of Directors are the same all the way through.

Mr. Ransom: Not through those other companies that you have mentioned. There was for a time, following the formation of the New York & Queens Gas Company, the same list of directors as of the Newtown & Flushing Company.

Mr. Neumann: Here is the year 1902. Frank Tilford, Henry Wilson, Harry Snyder, and Charles Thomas. They are the same men.

Mr. Ransom: Of which company? The Newtown & Flushing.

Mr. Neumann: Yes.

Mr. Cummings: Irrespective of that, any statement made by the predecessor company would be binding upon its successor anyway, no matter who the officers were.

1958 Mr. Ransom: We have offered proof in this case of the property which the company now has; we have offered proof of its present value. There also has been brought out in connection with the cross-examination of some of complainant's witnesses, and on the defendants' case, proof of what the property now in existence and in use costs. The question of what companies prior to 1904 reported to the State Tax Commission as to their then officers, under the laws as then constituted, is not in issue in this case.

Mr. Neumann: We have even gone to the extent of showing that you issued $66,000 worth of securities without proper authority. You may twist it as you want, but that is the fact, that in the year 1909 you issued $66,000 worth of securities without proper authority.

Mr. Cummings: He says present value, your Honor. That is the mooted value here.

Mr. Neumann: Present value? He means reproduction cost.

Mr. Cummings: Yes, whether it is cost of reproduction new, cost of reproduction less depreciation, or what it is. There are all kinds of values. The present value is the problem here—what does constitute present value?

Mr. Ransom: The Commission can hardly raise the question now, that that issue of bonds subsequent to the organization of the Commission, for capital purposes, authorized and required prior to the formation of the Commission, was in any respect a non-compliance with the Public Service Commission's law. It was passed on by counsel, it was probably passed on by the Commission. There 1959 is not the slightest doubt about what has taken place in regard to the attitude of the Commission toward this company, and if there had been any violation of the Public Service Commission's law, with respect to the issuance of securities by this company it would have been dealt with by the Commission.

Mr. Neumann: But I do not see how you can get away from it.

The Master: Was there not some evidence in this case that at the time of the merger, so-called the New York & Queens owned all the stock of the Newtown & Flushing? Was there not a recital to that effect?

Mr. Ransom: It had to be so; it was the only way that they could do it.

Mr. Vilas: Under the merger statute it had to be so.

Mr. Neumann: Why, they owned everything.

Mr. Vilas: The resolution recites it.

The Master: That is what I thought. So that prior to June 30th, 1904, the Newtown & Flushing Company, according to the reports filed by the New York & Queens for the Newtown & Flushing, carried the property at $600,000 less than the merged company carried it for. Isn't that so?

Mr. Neumann: On the 1st of August, yes.

The Master: On the 1st of August.

Mr. Neumann: Yes.

Mr. Ransom: Of course, some time prior to the 1st of August the New York & Queens had of necessity acquired all the capital stock of the Newtown & Flushing Gas Company, otherwise there could not have been a merger under the statute.

1960 The Master: And the New York & Queens owned nothing else?

Mr. Cummings: No.

Mr. Neumann: No, Mr. Spear testified to that very fully.

Mr. Cummings: Yes, Mr. Spear testified to that.

Mr. Ransom: Well, Mr. Spear's testimony in that respect speaks for itself.

The Witness: Where in this 1944 June 30th report does it give the value of the property?

Mr. Neumann: 1904?

The Master: Yes.

Mr. Tobin: Schedule E.

Mr. Ransom: Mr. Maltbie says values for the purpose of reports to the State Tax Commissioners is something different from any other kind of value.

Mr. Neumann: There is something you may be interested in, in looking at that note there, too.

Mr. Cummings: That is beside the question here.

Mr. Ransom: Under the law as it stood at that time and for two or three years after that reports of this kind were under the decisions of courts and the rulings of the board and advice of counsel made on the basis of what we may call the second-hand or scrap values. That is supposing the plant was dismantled and the units of apparatus sold.

Mr. Cummings: Scrap value?

Mr. Ransom: Which is a very different thing.

Mr. Neumann: Perhaps you would like to explain on the
1961 record how they came to put in $600,000 in the franchise account overnight.

The Master: I do not see where it is in these reports.

Mr. Neumann: It is in the exhibit which we put in of the book figures.

The Master: That is what I want. What did the Newtown & Flushing carry franchises at?

Mr. Neumann: Here, I will give it to you in a moment. They are those figures that you said were not useful—that Mr. Cohen prepared (indicating to Master).

The Master: Well, they are not especially useful. It is the books themselves. What I would like to know is how much did the Newtown & Flushing carry the franchises at in 1904?

Mr. Neumann: We have it somewhere in these exhibits, if I can get it out for you. There is the exhibit (handing Master). That is the one you want to look at. That is what the Newtown & Flushing carried it at.

The Master: Where is the franchise?

Mr. Neumann: If you get the book we could get it for you in a minute. It is in one of these exhibits.

Mr. Cummings: There is a certain way of proving the value of a franchise, your Honor.

The Master: $169,437, that is the way it has been carried for years.

Mr. Neumann: No, over here it is 303. Here it opens up the next day $1,037,000, the very next day, under Franchises and Good Will. That is July 31, 1904, and this in August 1st.

Mr. Ransom: Where is your plant account in this AA-4, Schedule 1?

1962 Mr. Neumann: Why, the witnesses explained the whole thing to us. The Master asked me a question and I have answered it. He has asked me at what they carry the franchise, and I have shown him.

Mr. Ransom: Where is the plant in that—what he calls the assets side? There is real estate, mains and meters, meter connections and services, tools and implements, but in that statement of the Newtown & Flushing Company, 1900 to 1904, they have not shown any plant account.

Mr. Neumann: Yes, there is no doubt about it. I will show you what the detail is.

Mr. Ransom: No, you are speaking about after August 1, 1904. Of course, the plant is in since 1904, but my point is that it is not in your assets statement of the Newtown & Flushing company.

Mr. Neumann: We will stand on the record that we have made.

Mr. Ransom: Or fall.

Mr. Neumann: It is in here, I am satisfied of that.

Mr. Cummings: Your Honor, there is a certain way of proving the value of the franchise, and there is no such proof in this case—none whatever.

Mr. Ransom: Here is a company that was operating a gas plant, a gas manufacturing system, and the defendants put in an assets statement of the Newtown & Flushing Company that does not show any plant at all.

Mr. Neumann: And I say that we have put in an exhibit that does show the plant. But you had the witness here under cross-examination to prove these statements; if that was so, why didn't you bring it out?

1963 Mr. Ransom: That is the reason I say the New York & Flushing books are not binding on this complainant, because they are absurd on their face, that the company supplying gas to a great many consumers should be put down, even by your repre-

sentatives, as not having any gas plant. Obviously the most important element in a gas manufacturing and distributing system was left out.

Mr. Cummings: They forgot the plant, did they?

Mr. Ransom: No, when they acquired the property, of course they put in the plant.

Mr. Neumann: They acquired the plant and everything else.

Mr. Ransom: Yes, and put it in the books as they ought to do. If your accountants had their way, this company would not have had any plant on its books yet.

The Master: This Exhibit Y has a heading "Franchises, Good Will, Etc.," carried at 469.

Mr. Ransom: Yes.

The Master: That statement does not show any plant account.

Mr. Ransom: No plant account.

The Master: Exhibit A-8 likewise has an item Franchises, Good Will, Etc., $1,037,000. Following that "Other Fixed Capital," $365,000.

Mr. Ransom: Yes.

The Master: Do you say that your plant account is in that item "Franchises, Good Will, Etc." on Exhibit A-8?

Mr. Ransom: Well, as shown by the note which has been for many years filed with the Public Service Commission, and as shown by Col. Miller's testimony, there were substantial costs of the
1964 plant account that were included in that $1,037,000 item, and the best proof of that is that various of these withdrawals or retirements or debits and credits, as they highly and euphoniously call them, are debits made against that $1,037,000.

Mr. Neumann: If what Judge Ransom says is true, it is susceptible of proof and they ought to prove it.

Mr. Ransom: We do not need to prove it when you proved it.

Mr. Neumann: We will rest on our exhibits as we have entered them.

Mr. Ransom: I am only saying you charged against that $1,037,000 retirements and physical property appurtenant to plant, showing that it was included in it. Of course, the situation at that time was a very unfortunate one, but it was not due to any one now connected with the company, it was not within the control of any of this company's present investors. But the facts are pretty clear in spite of the way it was handled, from an accounting point of view.

Mr. Neumann: If you are con-ent to rest on the record of your exhibits, I am content to rest on our exhibits, knowing what they show; and you cannot distort them or twist them.

Mr. Ransom: I shall always be content to rest when I rest.

The Master: I have before me now an offer of this exhibit for identification.

Mr. Cummings: Yes.

Mr. Ransom: I have an objection to it, on the grounds stated in considerable detail.

Mr. Cummings: I think they are all competent, every one of them.

1965 Mr. Ransom: It is not competent on any issue here. If every company which enters into the public utility field or any other field is chargeable with every tax report that has ever been made by any of its predecessors, or any company which has been merged into companies of which it becomes a part, why, it is new law to me.

Mr. Cummings: That is the law, that certain statements in their reports, of course, are binding on their successors. There cannot be any question about that.

Mr. Ransom: Suppose a report in 1900 had said the Newtown & Flushing had no property, would that be binding on the present investors?

The Master: I had not though- at all of permitting this exhibit in as binding this company with relation to any figures reported in those years. The only question in my mind is whether I ought not get into the record the fact that for the year prior to 1904 the directors of the Newtown & Flushing were the same as those reported in 1904.

Mr. Ransom: That is not a basis for admitting the entire report.

The Master: No, I will not admit the entire report. That I have concluded on.

Mr. Ransom: If your Honor states that the reports do show that, I will admit it for the purposes of this case.

The Master: Then I will sustain the objection to the offer as made. As I understand it, Judge Ransom agrees, upon looking at the report and the fact so appears, and he admits, that during the year ending June 30, 1903, the directors of the Newtown & Flushing
1966 Gas Company were Frank Tilford, Henry R. Wilson, Harrison E. Gawtry, Lewis B. Gawtry and Thomas W. Stevens, and the officers of the company in that year were President Frank Tilford, Vice-President Henry R. Wilson, Secretary Harry L. Snyder, Treasurer Harry L. Snyder, and General Manager Charles Thomas.

Mr. Neumann: I take an exception to the qualified admission of the exhibit into evidence.

The Master: I did not permit the exhibit in evidence at all. I sustain an objection to it.

Mr. Neumann: I take an exception.

The Master: But Judge Ransom, meeting the point that was in my mind, has stipulated on the record the fact that these gentlemen named were directors and these other men named were the officers in 1903. So that in 1903 and in the period ending June 30, 1904, the directors of the Newtown & Flushing were substantially the same; with one exception, I think, of Mr. Gawtry.

Mr. Neumann: They were the same.

The Master: There was one exception.

Mr. Neumann: No, they were the same.

The Master: Stevens was the change.

Mr. Neumann: Yes, that was in 1903.

The Master: Yes.

Mr. Neumann: But in 1904 they were identical, as they were in

1905, of the New York & Queens. I show you the New York & Queens

The Master: Yes, there are four directors in 1904 and 1905 of the New York & Queens—Frank Tilford, Wilson, Harrison
1967 and Gawtry, and Louis B. Gawtry. Stevens was dropped.

Mr. Neumann: Now, those are the same in 1904.

The Master: Yes, and in 1903 the same except that Stevens was there in 1903.

Mr. Neumann: Yes. Does your Honor want to see 1906, 1907 and 1908?

The Master: No, that was enough for what I had in mind. The company's officers and directors were the same as the Newtown & Flushing. This company owned all the stock of the Newtown & Flushing before the merger. Is it claimed by the complainant that upon that merger the New York & Queens set up these properties at a higher value and issued stock for it, in addition to what had appeared on the books prior to the merger, and leaving aside now the question as to whether other items are included?

Mr. Ransom: The position of the complainant is that immediately preceding August, 1904, and the month of July of 1904, the complainant company having acquired all of the stock and all of the bonds of the Newtown & Flushing Company, and having at that time acquired the property of the Newtown & Flushing Company, what was done and what was paid for it was in good faith, representing the judgment of the directors.

Mr. Neumann: Where is the proof of that?

The Master: Mr. Neumann, please do not interrupt.

Mr. Ransom (continuing): That the property acquired at that time was reasonably worth at least what was paid for it, and
1968 was reasonably worth what was set up on the books of the company.

Mr. Neumann: Where is the proof of that here? There is no proof of that here.

The Master: There is no proof in the record, as I recall it, as to what the New York & Queens Gas Company paid for the securities of the Newtown & Flushing. Is there?

Mr. Ransom: The book entries.

The Master: What?

Mr. Ransom: The book entries show it, do they not?

The Master: No.

Mr. Neumann: Showing $600,000 worth of water.

The Master: No, that was on the merger. The stock of the Newtown & Flushing, the securities of the Newtown & Flushing, were purchased by the New York & Queens some time prior to the merger.

Mr. Cummings: Yes.

Mr. Ransom: And what was paid for that is shown by the book entries, which are in evidence—the balance sheets.

Mr. Cummings: That would not show the stock purchased.

Mr. Ransom: It does show the stock purchased.

The Master: I do not recall that it shows the stock purchased.

Mr. Neumann: Certainly not.

The Master: My recollection is that it shows the merger entries.

Mr. Neumann: Tell me how you are going to get away from the fact that in this report of 1901 Mr. Thomas himself
1969 reported that the market value of the stock was 90, not even par, and here you have paid $600,000 more than what it was worth.

The Master: Wait a minute, I want to get this clear in my mind and get Judge Ransom's attitude about it, as to what the record shows. Assume, Judge Ransom, that the New York & Queens bought all of the securities of the Flushing plant, we will say, from the Newtown & Flushing, for a half million dollars, so that it owned all of those securities prior to the merger.

Mr. Ransom: As a matter of fact, it acquired the stock of $600,000 and the outstanding bonds of $650,000.

The Master: Where does that appear?

Mr. Neumann: That is taken out of the air.

Mr. Ransom: That is shown in the books, shown also by Defendants' Exhibit A-8, taken from the ledgers of the company, Schedule 2-A of Exhibit A-8. That is what the New York & Queens Gas Company paid for the stock and bonds which it acquired.

Mr. Neumann: Where is there any proof of that? That ought to be proved beyond a reasonable doubt.

Mr. Ransom: The proof in that respect is not as complete as it will be, for the reason that I have stated—the complainant did not stand on its direct proof, on the proof of what this property had cost this company; we presented *our* proof on the direct case on the theory of what the United States Supreme Court meant when it said that the company was entitled to a return upon the value of its property at the time that it used in the public service.

1970 The Master: Well, have you not passed over rather lightly the sentence that appears in the Willcox case—"Where, however, it appears that the value of the property has become abnormal now, so that the consumer on that basis would be required to pay an excessive price for gas, that some other rule must be adopted?"

Mr. Ransom: In 1909 there was that phrase in the opinion in the Willcox case, which seemed to recognize on the part of the courts that the value as of a given time might be high and hence would not be absolutely controlling. Rate making law was then, unfortunately, in its infancy. The matter has been very much more clearly discussed in recent cases.

The Master: Do you think it has grown up to adult age now?

Mr. Neumann: Do you think you have any decisions——

Mr. Ransom: Just let me answer the Master's question. I think that the Court has made substantial progress. I think that the decision in the Minnesota case and the like has clarified it somewhat. No one has a right to say with certainty that the Court has clarified the whole subject; I think the Court has established beyond peradventure that it is the present value, the value at the time of use, that is controlling. Of course, here in this case you have proof quite aside from the books, quite aside from its reproduction cost, that for a plant of this size, operating in a territory of this size, the necessary

investment is approximately $2,000,000. That is, in order to erect and maintain and provide a manufacturing and distributing
1971 system of this kind an outlay of approximately $2,000,000 of investment is required.

The Master: Let me ask you this. Assume now that the New York & Queens bought all of the securities of the Newtown & Flushing for a million dollars—and that figure has no relation to any proof in the case at all.

Mr. Ransom: I understand.

The Master: There was not any reason why on August 1st, 1904, there was an necessity for a merger, was there?

Mr. Vilas: Oh, yes.

Mr. Ransom: I say the situation was one which under the statute called for a merger.

The Master: Oh, right. Now assume that a merger was necessary, the fact remained that that property cost the New York & Queens a million dollars, did it not?

Mr. Ransom: I should think so.

The Master: What?

Mr. Ransom: I should think so.

Mr. Neumann: This is all pure assumption.

The Master: The mere fact that they saw fit to issue a million and a half securities on the merger would not change the cost of the property to them, once I find that they paid a million dollars for the property by getting all the securities prior thereto, would it?

Mr. Ransom: I do not see that that has any parallel with this case at all, because what is set up here was precisely what they paid; that is, this is not a case where they paid a million and set up a million and a half. They paid a million and they set up a million.

1972 Mr. Neumann: To whom did they pay it? They paid it to themselves.

The Master: In other words, your contention is that they paid for all of the securities of the Newtown & Flushing Company to the people who owned those securities, their securities aggregating $600,000 of stock and some $600,000 odd of bonds; is that right?

Mr. Ransom: Yes.

The Master: Let us assume that that is satisfactorily established in the record. Is it your contention that I have got to take that issue of securities at par, as indicating the cost to the company?

Mr. Ransom: I think it becomes a matter to be determined in the light of all the circumstances that have been developed. Of course, the judgment of the directors would not be controlling upon this court.

The Master: As to value.

Mr. Ransom: As to value.

The Master: No, I am talking about the price paid—the price, whether it was worth more or less. The par value of the securities paid was $1,200,000, approximately. That $1,200,000 approximately represented precisely the same property as they got.

Mr. Ransom: It represented their judgment as to what the property was worth.

The Master: Yes.

Mr. Neumann: No, I do not think that follows at all.

The Master: I do not think you catch my point—if Mr. Neumann will keep quiet.

Mr. Neumann: I do not want an atmosphere created at the end of this case that we are acquiescing in it, because we are not.

1973 Mr. Ransom: Oh, we are not at the end of this case yet.

The Master: I simply brought up this discussion because I found we would have a few minutes and I want to finish it while I am here; because when we finish it I will be pretty badly rushed. What I am trying to get at is this: Assuming now that I find as a fact that the New York & Queens Gas Company acquired all of the securities of the Newtown & Flushing Company at sometime prior to August 1st, 1904, and that the purchase price therefor, the consideration therefor, was $1,200,000 odd of the securities of the New York & Queens Gas Company——

Mr. Ransom: $1,250,000.

The Master: Now, I found as a fact that the consideration paid by the complainant company for the Newtown & Flushing Company and its assets was $1,250,000 par value of securities. Now, suppose I want to find one step further, that the price paid in money at that time, as bearing upon the value, was X dollars, do you say that I must take the par value of these securities, or determine what those securities were worth in the market at that time, as indicating the consideration in money rather than in securities?

Mr. Ransom: Do I understand your question to be that in determining the amount of money or the amount of consideration that was paid for the property acquired——

The Master: In money.

Mr. Ransom: Whether you would be bound by the par value of the securities or whether you would be bound by the market price of the securities, or by something else?

1974 The Master: Yes. How am I to find, if I think it necessary to find, what was the cost of the Flushing plant to your company in the terms of dollars, how can I get at it, assuming now that I found that the consideration was in fact those stocks and bonds?

Mr. Ransom: I think that should be determined from all of the circumstances developed with reference to the transaction at that time.

The Master: You see in the Consolidated case, to interrupt you, the Court said that that was the price that was ratified practically by the State by acquiescing, and all the rest of it, and I had no trouble. Now, in this case, if you had paid as a consideration a carload of apples I could easily have found what the market price was for a carload of apples at that time, and could have given what that represented in dollars. Or, if you had paid it in United States bonds, or some other marketable security, I could have told how much in money that represented. Now, how am I to determine in dollars what those stocks and bonds represent?

Mr. Ransom: I think you would have to determine it—the same kind of question is continuously determined in the business world.

It is a matter of determining from all of the circumstances, and such proof as can in fact be produced.

The Master: What those securities were worth?

Mr. Ransom: What the money value represented by those securities was.

The Master: Now, you say that that report is 90——

1975 Mr. Neumann: Thomas, in his report says that the stock was sold for 90, the Newtown & Flushing stock; that there were only a few private sales.

Mr. Ransom: When?

Mr. Neumann: Right there in his report.

The Master: Does it say anything about what the New York & Queens Gas Company stock was?

Mr. Neumann: No. How are you going to find that this was a bona fide transaction, with the same officers and directors, is more than I can understand.

Mr. Ransom: It may still be bona fide.

Mr. Neumann: In a case where you are required to prove it beyond any reasonable doubt——

The Master: It was the New York & Queens, it says no market value, but a few private sales were made at 90.

Mr. Neumann: I think the other one is here, too, at the same price, I am not sure. Yes, here it is. Evidently the stocks of both companies were on a parity, 90.

The Master: There was no market for the bonds, but a few private sales at 90.

Mr. Neumann: How are you going to get away from the proposition that this is a sale made by the same people and the same interests to the same people and the same interests is more than I can understand. How can you show that that is a bona fide sale?

The Master: In a case of that kind is required, just as Judge Greenbaum said in the Kings County case, to scrutinize the thing with the greatest care.

Mr. Ransom: That is why I have said to this Master that 1976 I have felt that while the par value of the stock is not controlling, he should scrutinize it carefully in the light of all the circumstances. I think that with such scrutiny, and with an examination of all the facts which have been brought out, that a conclusion should be reached, that the value was—the consideration expressed in terms of dollars—was equivalent to the par value of the stock.

Mr. Neumann: And just as soon as the Master does that you are going to get an abortive judgment that won't do you any good.

The Master: Mr. Chambers, have you anything else?

Mr. Chambers: I haven't anything else.

Mr. Tobin: I would like to offer in evidence complaint filed with the State Tax Department against the Special Franchise assessment in the years 1917, 1918, 1919 and 1920. That complaint for 1920 was filed with the Tax Department, December 15, 1919. For the Special Franchise assessment of 1919, the complaint was filed with the Tax Department on December 11, 1918. As concerns the Special Franchise assessment of 1917, the complaint was filed with the Tax Department on January 10, 1917.

Mr. Ransom: I object to that offer on the ground that they have no bearing on the issues of this case, because the Special Franchise Tax is of course based on a theory in connection with gross and net earnings, and of course when the gross earnings are less than the operating expenses, as in the 1920 complaint shows the effect is a diminishing of the franchise value.

1977 The Master: I think they are all in the same form.

Mr. Tobin: They are all in the same form.

Mr. Ransom: Of course it is only a matter of degree. They all show that the gross and net earnings of the company having been destroyed by the action of the public authorities as represented by the legislature, there is, of course created a situation under which the Special Franchise tax which would otherwise be assessed cannot with propriety be assessed.

Mr. Neumann: I understand the rule to be in rate making cases that franchises are of no value for rate making purposes anyway.

Mr. Ransom: Counsel fails to distinguish between the value of franchises and rights for rate making purposes, and this anomalous thing that we have in New York called the basis of the Special Franchise assessment, which is predicated in part upon the earnings of the company.

Mr. Tobin: But you can't get away from the fact that you have the two elements, you have the tangible property in the streets, which is one element, and you have the intangible property.

The Master: I will sustain the objection.

Mr. Tobin: If your Honor please, this is proper evidence in this respect: These complaints are proper evidence of what the company said its franchises were worth, and also as to what they said the tangible property in the streets was worth. They are admissions against interest——

The Master: No. I think these complaints as Judge Ransom points out, have relation to a particular rule of law applicable

1978 to the assessment for franchise purposes.

Mr. Tobin: You have the two elements that go to make up this property, the tangible property and the intangible property. They made complaint as to the intangibles, and say it is too high, but they surely cannot deny what the value of their property is in the street.

The Master: For taxing purposes the value of the property in the street may be nothing.

Mr. Ransom: That is not in here.

The Master: I will sustain the objection.

Mr. Tobin: We are surely permitted to put them in evidence as admissions against interest. You asked only a short time ago what the franchises were worth, and we are trying to prove what they are worth.

The Master: Objection sustained.

Mr. Tobin: Exception.

Adjourned to Tuesday, June 22, 1920, at 9:30 A. M.

Last Complainant's Exhibit 104.
Last Defendants' Exhibit A-112.

1979 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 22, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

BENJAMIN COHEN recalled.

Cross-examination.

By Mr. Vilas:

Q. Take your Schedule No. 14, Mr. Cohen. You have undertaken to classify expenditures shown on the books for engineering and superintendence into three classifications, have you not?

A. I grouped that under three headings.

Q. And that is your grouping?

A. That is my grouping.

Q. Not the books?

A. My grouping, taken from the indications on the bill, as to the groupings into which it would fall.

The Master: What groupings?

The Witness: Douglaston Extension, Flushing Works, and other items that I could not group.

1980 Q. You did not find any such division in the account?

A. No, sir.

Q. And in that table, under the heading which you call, "Particulars," you have put down what?

A. I have put down the detail of the charge, condensed as much as I could condense it, taken from the bills or other sources where I could find them.

Q. Then it is your own summary of what the bills or other underlying papers show?

A. It is my condensation of the reading of the bill. If a bill was very lengthy I condensed it, taking out the gist of the bill.

Q. And what you show in the column headed "Particulars" is not found on the books?

A. The books contain no detail of these charges; the details are all given on the bills.

Q. And it is the detail on these bills which you have condensed into the column headed "Particulars?"

A. That is correct.

Q. Now, take the first item of $1,408.48 entitled "Services of engineers and superintendents on construction projects to 7/31/16," what project or classification other than Flushing Works or Douglaston Extension did you find that belonged to?

A. The bill did not state. That is the reason I put it in the last column, where I have unclassi*l*-ed items. I did not attempt to interpret the meaning of any of these items. I simply took the bills as they were and put them into these groups.

Q. To what construction project prior to July 31st, 1916, could that item have belonged other than to the works?

1981 Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. That is something for the officers of the company to explain, not our accountant. We took these figures from the books.

Mr. Vilas: You did not take this classification from the books.

Mr. Neumann: Well, the company's officers must explain that. They are under three columns——

Mr. Vilas: We cannot explain what he undertakes to do.

Mr. Neumann: We could not explain what projects they belonged to, it is for the company to explain, and not us.

The Master: Well, Mr. Cohen has classified them. I will overrule the objection.

Mr. Neumann: Exception.

A. I found this bill read—I believe that is the way I have it here, "Services of engineers and superintendents on construction projects to 7/31/16." I found nothing on the bill to indicate whether it applies to the Douglas- Extension, to the Flushing Works, or any other particular construction, so I did not attempt to read into the bill anything which I did not find on it, and so I put it in the last column.

Q. You found no charges to Douglaston Extension prior to 1919 or 1918, did you?

A. The exhibits reads for itself; you can see that.

Q. Can you answer that question?

Mr. Neumann: I object to that.

The Master: These things are so utterly unimportant that I would not waste time objecting, Mr. Neumann. It is cross-
1982 examination.

Mr. Neumann: I know, but it kind of puts a wrong light on the thing.

Mr. Vilas: The witness has put a kind of wrong light on the thing.

Mr. Neumann: We took the books as we found them.

Mr. Vilas: We don't know where these tables lead, your Honor.

Mr. Neumann: Perhaps you would like to explain what that $5,000 was to Jackson.

Q. So as not to spend too much time on one item, take the third item, "Services of engineers and superintendents on construction projects, manufacturing and holder plant 8 31 16 to 12 31 16, $1,938.51?"

Mr. Neumann: Now, if the Court please—

Mr. Vilas: I have not finished my question.

Mr. Neumann: You will find that the journal folio is given right on the exhibit, where that entry is taken from. It is absolutely useless cross examination.

Mr. Vilas: May I finish my question?

Q. That you have shown in the column headed "other." What manufacturing and holder plants did you have in mind when you put that in the column headed "other" instead of under the Flushing Works?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The witness has stated that he does not know, that he has simply taken it from the books and the bills. It is for
1983 the company to explain it, not for us.

The Master: Well, this is argument, isn't it?

Mr. Neumann: What?

The Master: This is really argument. It does not go to the competency or relevancy of the question.

Mr. Neumann: Why, the exhibit shows the books and the folio from which it was taken.

The Master: What is the question?

(Question read.)

The Master: You don't have to ask that. What is the point?

Mr. Vilas: He classifies something for the manufacturing and holder plant, when it is perfectly plain there is but one, and it could be nothing but the Flushing Works. I don't know why he classifies it over here, or what use is to be made of these classifications.

The Master: What is the importance of this exhibit anyhow? What is it intended to prove or disprove, or to show?

The Witness: It does show practically the overhead in connection with the construction.

The Master: Do you say it is too much?

The Witness: I am not saying that.

Mr. Neumann: Perhaps they would like to explain what that $5,000 item is to Jackson.

The Witness: What I tried to show here were the charges for overhead on the Douglaston Extension.

Q. You were seeking to get the overhead on the Douglaston Extension?

A. No, I was not.

1984 The Master: Wasn't that what you just said?

The Witness: I had not finished my answer before I was interrupted. I was trying to show the overhead on the Douglaston Extension, and the overhead on all the other plants where I could classify it.

The Master: For what purpose?

The Witness: So we could get the overhead on this particular plant for Mr. Maltbie's analysis of the fixed capital account. Furthermore, there are charges in here like this $5,000 for D. C. and W. B. Jackson, which we wanted to bring out.

The Master: Why do you want to bring that out?

Mr. Neumann: The reason we want to bring that out, we want the company to explain it. Why shouldn't the company explain what they paid $5,000 for?

The Master: I think I understand this when I read it. They paid for a survey of production and distribution systems of the company, its operating methods and territory served, for the purpose of ascertaining what changes should be made to increase the service to large industrial consumers.

Mr. Neumann: And with all the services of the Consolidated at their hands, and paying the Consolidated from time to time, they have got to go outside and pay $5,000 to some man to survey their plant.

The Master: Who is D. C. and W. B. Jackson?

Mr. Neumann: I don't know.

1985 The Master: You don't want me to understand that the mere fact that there is a $5,000 item would cause suspicion in my mind?

Mr. Neumann: I think the company should be required at least to show what that $5,000 was spent for.

Mr. Vilas: This exhibit shows what it was spent for.

The Witness: May I continue my answer for a moment?

The Master: Yes.

The Witness: Furthermore, we wanted to bring out an item like this $500 item below that. There is no detail on the bill. It says special service, Gas Works.

Q. Is that why you classified it under "Other" instead of under Flushing Works?

A. Because I found nothing on the receipt to indicate where it is to go to.

Mr. Neumann: Where would you want it classified?

Q. When a charge is made for special services at Gas Works, wouldn't you deduce therefrom that it was probably at the Flushing Gas Works?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and to say the least, a most violent assumption.

The Master: Objection overruled.

A. I refrained purposely, in accordance with what I understood to be the policy in court here, from making my interpretation of any of these items. I followed the items through just the way the bills read.

Q. And when it said, "Gas Works," and did not say, "Flushing Works," you put it under that column headed, "Other"?

1986 A. If I found nothing to indicate what it was I put it under the column, "Other."

The Master: In other words, that did not indicate anything to you where it said, "Gas Works"?

The Witness: I did not try to interpret it.

Mr. Ransom: The company has only one gas works. Even the witness ought to have known that.

Q. Take the item of April 30, 1919, "Services of Engineers, Draftsmen and so forth, April, 1919, Douglaston Matters, $2.91; Flushing Appraisal, $111.89; Boiler Feed W. H. $31.89." Now, this "Boiler Feed W. H." you classified under "Other." Why did you do that?

A. I did not try to ascertain whether the boiler feed water heater was in any particular place, for the same reason I explained before.

Q. You thought it might be out on the distributing system somewhere?

The Master: I think you have asked enough to indicate the line on which this paper has been prepared.

Q. Take your Table No. 15, are you now prepared to say that the title of that account is as it appears on the books?

A. I am prepared to say now that I took the title of the account from Mr. Miller's exhibit, which he has entitled, "Cost of Miscellaneous Items to extent separately shown by books," and in which he calls this item, "Office Development of Douglaston Extension." In other words, that is his interpretation of the account, which I took from this exhibit.

Q. You took it from him and not from the books?

1987 A. Not from the books.

Q. Take the two items found together near the middle of this table, $6.00, L. Wiggins, paid from petty cash, and $7.80, petty cash payment to R. Hirshfield; did you take those from the vouchers or did you take them from the books, or from what source did you get them?

A. Those were taken from the books. Naturally the Journal entries do not show any detail, and we had to go to the vouchers or bills in order to get the details.

The Master: What is the purpose of the exhibit? The exhibit Mr. Vilas is now talking about?

The Witness: This is an analysis of the account which they call "Douglaston Development."

The Master: What was the point of that paper, what do you want to show by it?

Mr. Neumann: Objected to on the ground that it is incompetent, irrelevant and immaterial.

The Master: Then I will ask you. He is your witness. What was the purpose of this?

Mr. Neumann: Mr. Miller put in a table somewhat like this, this is to match it.

The Master: All right, go on.

Q. Do you say that you went to the vouchers or did you go back of the Journal?

A. We went back of the Journal. In connection with this I want to say that the last day I was up to Fifteenth Street I did not have the books up there, and I called up the Queens office, and read off every item on this sheet to Mr. Foy, who is the bookkeeper there, who Mr. Spear put on the 'phone when I called up, and he
1988 checked me up over the telephone on every item on there, to save me a trip out there, and to enable me to get here on time.

The Master: Have you had any trouble at all in getting access to the books or vouchers of this company?

The Witness: I found no trouble.

The Master: Perfectly free access was given to you?

The Witness: Of course at times they need the books over there.

The Master: But there isn't any complaint on your part as to the facilities?

The Witness: I personally have none.

The Master: I asked that question, Mr. Neumann, so as to get it on the record that there was nothing thrown in the way of your accountants. I think this Complainant Company is entitled to have a finding on that, if that is the fact.

The Witness: With the exception, I want to state here that I have asked—there are about five or six of my letters in which I asked for information that they never even answered, but the material covered by the question in those letters has been asked for under a subpœna by Mr. Neumann.

Mr. Neumann: That was that notice to produce. That notice to produce was based upon Mr. Cohen's statement to me that they would not give him these books.

The Master: Oh, I remember. They were all produced in court.

Mr. Neumann: Yes. The difficulty with that was that we wanted to make an analysis of it before hand, and we were refused,
1989 and that is why I had the books brought into court.

The Master: You did get a chance to analyze them then, didn't you?

The Witness: I never saw them.

Mr. Ransom: Mr. Frank had the Flushing and Newtown books.

Mr. Neumann: What is the use of talking about Mr. Frank, when you know Mr. Frank left the Commission?

Mr. Ransom: In February and March, 1919.

The Witness: That is not what I asked for.

Q. I show you petty cash receipts Nos. 711 and 712. Are those the items that are referred to in this table that we are talking about?

A. I have never seen these, but I presume they are.

Q. What is No. 711 charged to?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial; the paper speaks for itself.

A. I found that it is not always an indication that the account appearing on the slip is what they charged it to.

Mr. Vilas: I ask for an answer to my question.

Mr. Neumann: If the Court pleases, I think the proper way to cross-examine this witness would be to produce the book here to show that this item is not in the books.

Mr. Vilas: I asked a perfectly plain question.

The Master: You mean on the face of the voucher what is it charged to?

1990 Mr. Neumann: That is different.

The Master: The face of the voucher directs that it be charged to Suspense, does it?

The Witness: Yes. Let me explain—here is the point about the Suspense Account. Many of the items are charged to Suspense initially, and perhaps two or three days later they are taken out of Suspense and thrown into the account that I have here.

The Master: Is that what happened to this particular item?

The Witness: Undoubtedly.

Q. That is what you assume happened?

The Master: Undoubtedly, but did it?

The Witness: It did, for the simple reason that I have this right here, I took this right from the Ledger, and I have this item here.

Q. Take under 712.

A. It was charged to Sundry Debtors. That is the same case. We found that a petty cash payment was made to Hirschfield. Prior to making the cash payment to Hirschfield they credited Hirschfield and charged this account. It is merely a cancellation of a cash entry, that is all it amounts to.

Q. I show you petty cash vouchers 740 and 761. Did you ever see those?

A. I stated I have not seen any of them. I simply checked it back over the telephone.

Q. How much is No. 740, the first one I show you?

A. $5.00.

Q. What does it appear to represent?

The Master: I think we are wasting time.

1991 A. It appears to represent Douglaston Development.

Q. What is the second one?

A. $8.80.

Q. That also is Douglaston, isn't it?

Mr. Neumann: By that you mean it appears on the initials that it is charged to that account.

The Master: Mr. Vilas, do you contend that these items are not in the books that this witness states they are in?

Mr. Vilas: I contend he has made up a faulty calculation, because he has not gone to the vouchers.

Mr. Neumann: Do you contend that these items are not in the books, in the account he says?

Mr. Vilas: The total of these vouchers is the same as Nos. 711 and 712.

The Master: $13.80, yes.

Mr. Vilas: And these two are $6.00, and $7.80.

The Master: What is the point?

Mr. Vilas: The point is, he has put two items in this statement that do not belong there. He simply made a mistake.

The Witness: I can answer that question very readily. I called up Mr. Foy, your own bookkeeper——

The Master: Well, Mr. Foy may have made a mistake. Are you able to say now, when you find that these vouchers, Nos. 711 and 712 aggregate $13.80, and vouchers 740 and 761 aggregate $13.80, which ones are referred to in that item?

1992 The Witness: No, I could not say that.

Mr. Neumann: If the Court please, there is another item of $13.80, November 25, 1918.

The Master: All I want Mr. Cohen to say whether it is possible that that entry covers 740 and 761 instead of 711 and 712. What is the date of it?

The Witness: September 2d.

The Master: But the entry in the book is of what date, the journal entry?

The Witness: The journal entry is, the date is September 2nd, I believe, would be the journal entry here.

The Master: How do you claim there can be any misunderstanding about that, Mr. Vilas?

Mr. Vilas: Well, it is perfectly plain.

The Master: If the journal refers to September 2nd——

Mr. Vilas: I don't know how he got this. He has got two charges in there that do not belong in the Douglaston Extension. His amount may be correct. He has got two vouchers that do not belong there, and a result that is pretty certain to happen when you check over the telephone.

Mr. Neumann: Well, why don't you get your books here and show it?

The Master: Have you got these two items in the Douglaston Extension?

Mr. Vilas: Yes. They are coincidences. He happened to get the two items and added them up and made his balance.

The Master: See if you can add it up and check it.

1993 The Witness: It would be pretty hard to state. For instance, there is an item of $22.02 miscellaneous cash payments.

The Master: On what date?

The Witness: November 26th.

The Master: Well, these are in September.

The Witness: That has nothing to do with it, because the payments may not have been made until later on.

The Master: Petty cash payments.

The Witness: Petty cash payments.

The Master: May have been made two months after the event?

The Witness: Well, why not? Here are these two slips we just had, one of them is charged to sundry debtors and afterwards it is paid by petty cash.

The Master: All right. I think I understand that.

Q. Well, Mr. Cohen, did you check all of this table 15 over the telephone?

The Master: Yes, he has said so.

The Witness: I told you that I tried to get the New York & Queens Ledger over, and I was told that in order to close up their month that therefore it would be impossible for them to bring it over, and we agreed that they could read the items over the telephone to me, which they did. Now, if your bookkeeper either intentionally or unintentionally made a mistake——

The Master (interrupting): I think it would have been very much more useful if the defendants had taken Mr. Teele's exhibit and had directly challenged particular items on that exhibit,
1994 showing where those books were wrong or those figures were wrong, instead of preparing other tables matching these tables.

Mr. Ransom: And then explain their errors by saying they got it over the telephone.

The Master: Yes, and then it means the complainant has to come back——

Mr. Neumann (interrupting): What do you mean by "their errors?"

The Master: Talk to me, Mr. Neumann. We don't want any more newspaper publicity here, not that it was your fault, but I am going to avoid it hereafter. If you will just address your remarks to me, and Mr. Chambers will when he has anything to say, we will avoid any personal conflict.

You see, here is the situation. Mr. Telle comes in with a tabulation showing expenditures, then your accountants go out and make other tabulations in another form. Well, I am not able to match them up, in a way I am simply making the statement now because it is too late to go back and change anything in this case, but there are five or six more cases that all of you men will have to try out, and I think if your accountant will take the tables or tabulations offered by the complainant, analyze them and point out where they are wrong and where there should be readjustments made in those accounts, that you will give the Master a good deal more assistance than he gets by this kind of testimony.

Mr. Neumann: Yes.

The Master: I suggest that, because I know that your atti-
1995 tude has been rather an attitude of co-operation than otherwise, and I am simply suggesting it to you as working out, I think, in a great deal better form than you are getting now.

Mr. Neumann: That would be true, probably, if they would give us sufficient time to get these tables in advance. I am not talking about this case, but I have in mind another case that we are going to trial on the 29th——

The Master (interrupting): The 29th of this month?

Mr. Neumann: Yes.

The Master: What case is that?

Mr. Neumann: The New York & Richmond. I suggested there to the counsel for the complainan——

The Master (interrupting): You are not in that?

Mr. Ransom: No, I am not in that.

Mr. Neumann (continuing): That he ought to give us those tables, and he said, "Why, to allow you to tear them to pieces? I guess not."

The Master: That is what they are for.

Mr. Neumann: That is exactly what I said.

The Master: Counsel for complain-t in this case and in the Consolidated case did offer their tables long in advance. I think one learns, of course, as you get more and more into these cases—I took the Consolidated record as it came in, because I was not familiar enough with the kind of case to make any suggestions, and I took these as they came along because I felt that I could probably
1996 follow them very easily, but I can see now where it will be very much better. I understand you are in the Brooklyn Union case, aren't you?

Mr. Neumann: Yes.

The Master: You are not in that, are you, Mr. Ransom?

Mr. Ransom: My office is.

The Master: Well, I understood from Judge Mayer last night that the Brooklyn Union case does no- go on until September.

Mr. Neumann: September 8th.

The Master: Well, now, if they get these tab-/s well in advance of the hearing, they ought to be in a position to introduce before the Master in that case the points of contact, challenging particular items that are in dispute, so that they can get on. And then you have these five or six other subsidiary Consolidated cases where you men are counsel, and I will tell you now that if I am Master in those cases I shall insist upon the defendants not preparing a new set of tables which I have got to match up and try to arrange a puzzle card, but to directly point out the items as to which there is dispute. Now, of course, it is true those cases won't come on until next September either, next fall, some time——

Mr. Ransom: Well, I am not so sure of that.

The Master: I am.

Mr. Neumann: I might say this to the Master, not in criticism of Mr. Teele——

The Master (interrupting): Especially if you get an injunction, you won't be worried about it.

1997 Mr. Ransom: It depends on the injunction. If we get less than $1.25 we will have to shove them.

Mr. Neumann: I might say this, that Mr. Teele's statements give you the summarization without any detail.

The Master: Well, don't let us get into that now. Go ahead. Is there anything else, Mr. Vilas.

Mr. Vilas: I would like to call Mr. Maltbie now.

Mr. Chambers: I want to ask Mr. Maltbie one question which will be decisive of the whole case, I think.

MILO R. MALTBIE recalled:

Direct examination.

By Mr. Chambers:

Q. Mr. Maltbie, in your opinion, would it be a fair way to determine the fair value of a gas-making plant or gas-making property, to base it upon so many dollars per thousand cubic feet of gas sold by that company?

A. It would not, in determining the value that way. You might work out——

Mr. Ransom (interrupting): Just a moment. I object to the question as not within the province of this witness to answer.

The Master: I will take it.

Mr. Ransom: Exception.

Q. Why, Mr. Maltbie?

A. You might work out, as a result, after you have determined the value of the property, its equivalent in dollars per thousand
1998 cubic feet of gas sold, but it would not be proper to reverse the process and state the number of dollars per thousand cubic feet of gas sold in the first instance as the value of the property.

By the Master

Q. You are just working around in a circle. Why not?

A. Why not? Because you can't determine actually the value of the property by establishing so many dollars per thousand cubic feet of gas sold.

Q. Why not?

A. Because it can't be done that way.

Q. Well, why not?

A. The value per thousand cubic feet of gas sold varies greatly from plant to plant, and you don't know what that value is for any specific plant before you have gone through it in detail.

Q. But if a man needs a thousand cubic feet of gas, it requires a certain manufacturing plant to produce it?

A. It requires more manufacturing plant relatively to produce it in a small plant than it does in a large plant.

Q. Yes, but it requires manufacturing plant?

A. It certainly does.

Q. It requires a distribution system?

A. Yes it does.

Q. Where there is a large plant with a very large consumption, the thousand cubic foot unit is lower than in a smaller plant with a smaller consumption?

A. All other things being equal, it would be.

Q. Yes. You take Manhattan Island, for the purpose of argument only, it may be $4?

A. It may be, yes.

1999 Q. And assuming for the purpose of the discussion, and only assuming the figure for that purpose, that on Manhattan Island, where there are a great many consumers per mile of main, where the consumption is very high, and $4 represents the fair value of the property, the same property in a territory like the Flushing territory would be worth more, wouldn't it?

A. It probably would be worth more, but not more than four dollars.

Q. What?

A. Not worth more than $4.

Q. Why not?

A. Because $4 is a high figure.

Q. Well, irrespective of the figure, it would be worth more in the territory like Flushing than it would be in a territory like Manhattan?

A. Generally speaking, yes.

The Master: That is all?

Mr. Chambers: That is all.

Cross-examination.

By Mr. Ransom:

Q. Have you with you your working papers from which you computed your figures on working capital, Exhibit A-112?

A. I have my working papers.

Q. What elements did you take into consideration in arriving at the various figures you have set down opposite the years 1904 to 1920, both inclusive?

The Master: What exhibit is that?

Mr. Ransom: Table 40.

The Master: I mean what do those figures relate to, working capital?

Mr. Ransom: Yes.

2000 A. In the first place I ascertained the facts regarding the general conditions of the company as to the reading of meters.

Q. What elements did you take into consideration?

The Master: I thought Mr. Maltbie was telling us.

Mr. Ransom: I did not ask him yet what he did.

The Master: Well, just state the elements.

A. I ascertained what the general practice of the company was as to the reading of meters, the collection of bills, the time that elapsed between the reading of meters and the payment of bills, the periods that the company had within which the company had to pay for its supplies, the amount of weekly payments for labor in production expenses, the amount of supplies on hand as shown at the end of

each year back to 1904 or 1905, I took into account the accounts receivable, sundry consumers particularly, that is the amount of accounts receivable for gas sold; the relation to the monthly bills for gas sold, the amount of cash which the company had had on hand as shown by its balance sheets; operating expenses as shown by exhibits in evidence, and there may have been a few other things that I considered, but those are the principal things.

The Master: May I interrupt just to go back to a question a moment. You said, as I understood you, Mr. Maltbie, that the cost when analyzed back to the thousand cubic feet of plant, including distribution system, for a territory like Flushing would be more than in a territory like Manhattan?

The Witness: Ordinarily, yes.

2001 The Master: Can you tell me about how much more, what percentage more, 10, 15 or 20 per cent more?

The Witness: No, I cannot; it varies.

The Master: It varies a great deal. Well, what makes it vary?

The Witness: Well, it is not only the density of operation, but it is the relation of the peak load to the average during the year. It is a question of the character of the plant in the making of gas, whether it is all water gas or all coal gas or both.

The Master: How would that matter?

The Witness: Because with the water gas plants you have got a more flexible unit; you can crowd it and overcrowd it.

The Master: Well, this is a water gas plant we are talking about, isn't it, at Flushing?

The Witness: I believe so.

The Master: Well, now, compare a water gas plant with a water gas plant on Manhattan, and, assuming the same general character of plant, and assume further the same general character of average demand, with the peak load; I would like to get your judgment, taking as nearly as possible the same kind of a plant, worked on the same general condition in Manhattan as over in Flushing.

The Witness: Well, it is pretty hard, your Honor, because in Manhattan you have got sub-surface conditions on the other side that are worse than any city that I know of or know anything about, with the possible exception of Boston, and that runs up the cost of main-laying considerably.

2002 The Master: So that the cost per mile for that reason would be higher on that item in Manhattan than in Flushing?

The Witness: Yes, very much higher.

The Master: Yet you say, taking it as a whole, it would be higher in Flushing than in Manhattan?

The Witness: Yes, taking it as a whole, I think so.

The Master: I was trying to get, if I could, your judgment as to how much higher. Giving you what is in my mind, Mr. Miller, I think it was, said that this plant per thousand cubic feet of gas sold was worth, in his opinion, between $3.00 and $6.00, I think he said, per thousand cubic feet of gas sold. That would be about from 25 to 50 per cent more than my finding in the Consolidated case. I was trying to get your opinion with reference to it.

Mr. Ransom: I object to the question, as the witness hasn't any qualifications for passing upon that kind of a matter.

The Master: I want to get his opinion for what it may be worth anyhow.

The Witness: Take the two cities of Albany and Utica, very close together, and very similar plants and under the same management; yet, when you go to work it out, there is quite a little difference in the cost per thousand cubic feet of gas sold.

The Master: Caused by what?

The Witness: Caused by various factors, any one of which affect it, and some affect it one way and some another. Utica is a
2003 flat city, hasn't the difficulties as to laying of mains that Albany has. On the other hand, Albany has a denser consumption of service on the mains than Utica, so that the various factors work one way and another, and it is almost impossible to tell in advance how they are going to work out until you have gone through the work in detail.

The Master: But you know this Flushing plant, don't you?

The Witness: Only in a general way.

The Master: By that you mean you don't know the character of the neighborhood and territory?

The Witness: Oh, I have been through that territory, yes.

The Master: Do you know the character of the streets in which the mains are laid?

The Witness: Yes, generally speaking: I have gone through Flushing.

The Master: You have seen the plant?

The Witness: I have been by it; I never was in it.

The Master: And you do not feel that you could give me any information as to how much more the Flushing plant is worth per thousand cubic feet than Manhattan?

The Witness: No, I could not do it.

The Master: All right, go ahead.

By Mr. Ransom:

Q. In connection with your item of materials and supplies for each of those years, you obtained your information from Defendants' Exhibit A-10?

A. In part.

Q. From what other source do you claim that you obtained
2004 information as to the amount of materials and supplies on hand from 1901 to 1920, other than A-10?

A. I think that is the only source I utilized as showing the amount of materials on hand.

Q. The amount which you allowed for materials and supplies as shown in your working papers varies substantially from the amounts of materials and supplies for the respective years shown on Exhibit A-10, does it not?

A. In certain cases it varies substantially from the amounts used.

Q. Well, now, Exhibit A-10 shows for 1904, for example, materials and supplies on hand $13,260.09?

A. On one date it shows that. My figures are the average for the year.

Q. What amount did you estimate for materials and supplies for 1904 in making up your working capital?

A. Well, the preliminary figure I used was $10,000. I rounded off the results and raised them at the end, but that is the figure that I used.

Q. That is the figure you put in your working papers?

A. That is the figure in my working papers, yes.

Q. Do you know what amount of materials and supplies the company had on hand on any other date in 1904 than that shown in Defendants' Exhibit A-10?

A. I do not.

Q. You did not examine?

A. I did not. Some years my figures are more and some years they are less than shown in Exhibit A-10.

Q. Well, on what basis, in 1904, did you reduce by over
2005 $3,000 the figures shown on the date which the defendants' experts selected to show the 1904 materials and supplies?

A. In the first place, in 1910 you only had $10,000——

Q. (Interrupting.) I am not asking about 1910.

A. I am giving you my reasons. You want to know the reasons, and I am giving them?

Q. Well, about 1904?

A. Yes. Well, I am giving the reasons.

Q. But about 1910?

A. Well, that is—no. I said nothing about 1910.

Q. What year then?

A. I spoke of 1905. In the first place, on August 1, 1905, you only had on hand about $10,000 in materials.

Q. And in 1906?

A. Just a moment.

Mr. Chambers (interrupting): If the Master please, you said I should address my remarks to you. Suppose counsel permits the witness to answer the question, particularly when he calls for reasons.

Mr. Ransom: Counsel for the complainant is endeavoring to get the witness' answer.

The Master: Read the questions and answers referred to.

The questions and answers were read by the reporter.

The Master: You see, Mr. Chambers, very frequently counsel believe that the witness has reached a period and has finished his answer, and promptly proceeds to ask another question. I frequently do, believing the witness has finished, when, as a matter of fact, the witness has not completed his answer; then you jump right
2006 in and immediately start a row upon the theory that there is an unfinished answer, that the witness has not been permitted to finish his answer.

Mr. Chambers: No, I did not start a row. He discovered——

The Master (interrupting): If Mr. Maltbie has not finished that

previous answer, I am going to let him finish it, that is all there is to it. Have you finished, Mr. Maltbie?

The Witness: No; the stenographer did not read the question that was interrupted.

The Master: Read the question.

The question and answer referred to were read by the reporter.

The Master: I thought he answered that question.

Mr. Chambers: No; there comes a time when he discovers the witness had not completed the answer, and then he starts to run a footrace with him and cuts him off.

The Master: I thought he had finished.

The Witness: No, I have not.

The Master: Now, if Mr. Maltbie says he had not finished, I will let him go back and finish it.

Mr. Chambers: He hardly began.

The Master: I will tell you that I thought he had finished his answer, and I may be just as mistaken as you claim Judge Ransom is. Now, Mr. Maltbie, finish your answer.

The Witness: In the second place, I took into account the operating expenses and the materials used in 1904 and 1905 and later years; the amount of gas made in 1904 in relation to later years, and also examined the details of the materials and supplies in
2007 1904, and noticed that the coal was about $3,000 higher than in the next year and in subsequent years when more gas was made, consequently I took the average of $10,000 for the year 1904 as fair and reasonable for the amount of materials and supplies.

Q. You took a figure of $10,000 for 1906?

A. I did.

Q. In spite of the fact that Defendants' Exhibit A-10 showed materials and supplies of $23,413.69?

A. On one date it shows that.

Q. On the date which your experts selected?

A. Not that my experts selected. On the date given in this exhibit and on the date for your balance sheets, as shown in Exhibits Y, A-8 and A-9.

Q. You took the same figure of $10,000 for 1906 that you took for 1905, although there was upwards of $4,000 more of coal alone in 1906?

A. On one date in 1906 there was—that is, August 1st there was about $4,000 more than there was on one date in 1905.

Q. And you do not know how much there was during the winter of those years when coal was to a larger extent used?

A. Well, of course there was a larger amount of coal used ordinarily in the winter months than in the summer months.

Q. And gas oil, too?

A. Yes.

Q. And you have taken, or had some one for the defense take, or some one for the defense has made up, an Exhibit A-10 based upon the quantity of coal and oil and other supplies on hand on

2008 the first day of August, and you have used that as your basis for whittling down?

A. I have not.

Mr. Chambers: I object to the words "whittling down." It is stale—it is a stale phrase.

Q. You have used the item of $10,000 for the years 1904 to 1908?

A. I did.

Q. Inclusive—didn't you?

A. I did. Subject, as I say, to the fact that after adding those figures together there were a number of items that I increased and rounded off.

Q. In spite of the fact that in 1906 the total shown by the defendants' own exhibit was $23,000 and for 1907 was $19,694.77, and for 1908 was $12,922.88?

A. No, your statement of facts is not correct according to the exhibit. You are comparing different dates now?

Q. Well, on December 31st. For some reason the defendants' Exhibit in 1908 switched to December.

A. I understand the date of closing your books switched.

Q. And the figure is $12,922.88 at that time?

A. On December 31, 1908, that is the figure. On August 1st it is about $9,500.

Q. $9,576.61?

A. Right. And you will notice that in later years, even in December, the amount of material and supplies on hand fell below $11,000. But it is around $11,000.

Q. Let us see. In 1909, $11,928.61.

A. Right.

Q. In 1910, $17,707.89?

A. Right.

2009 Q. In 1911, $10,631.59?

A. And I allowed $14,000 in that year.

Q. Well, we will come to that in a moment.

Mr. Chambers: We are to it.

Q. In what years do you claim it fell below $10,000?

A. I said around $10,000. It fell below $11,000 or $12,000.

Q. In one year. In 1911 it was $10,631; in 1912, $16,008.43; in 1913, $17,628.91.

A. 1915, $11,591.35.

Q. No, that is 1914.

A. 1914.

Q. 1915, $12,694.10?

A. Right.

Q. 1916, $16,216.34; 1917, $25,139.83; 1918, $42,465.25; 1919, $39,375.13.

A. Right.

Q. In 1909, why did you raise the amount of materials and

supplies to $12,000 when according to the defendants' Exhibit A-10 it decreased from $12,922.88 to $11,928.61?

A. In the first place, the amount of materials and supplies on hand on any one date is not an index necessarily of the average amount of materials and supplies required during the year, which is the thing which must be considered in working capital. In the second place, the amount of working capital ordinarily needed must have relation to the amount of gas that is sold and the way you collect your bills. In the third place, this allowance is for working and construction capital and must have a relation to the amount of work done. So taking into account all those factors, I raised the amount in 1906 from $10,000 of the previous year to $12,-
2010 000 in 1909, notwithstanding the fact that that is more, slightly, than the company had on hand on December 31, 1909.

Q. Then in 1910, although the defendants' own Exhibit A-10 showed $17,707.89, you allowed only $13,000?

A. On one date; on one date only.

Q. What did they have on any other date?

A. I cannot tell you.

Q. You did not examine?

A. But if you take the average for the end of 1909 and the average at the end of 1910, you would get something around $15,000.

By the Master:

Q. You do not get the average at the end of the year, Mr. Maltbie.

A. Sir?

Q. You do not get the average at the end of the year?

A. No. I say if you averaged the amount at the end of the previous year and the amount at the end of the following year, you would get about $15,000.

Q. Yes, but suppose it developed that the amount of material on hand at the end of the year was the lowest amount in the course of the year; would that be fair then?

A. No, I don't think it would, and it would not ordinarily be the case.

Q. Have you made any analysis of that to determine that fact?

A. In a general way I have.

Q. With respect to working capital, Mr. Maltbie, would you say that a company situated such as this Queens Company is in Flushing, with the character of business and the volume of business
2011 it did, required a larger working capital per thousand cubic feet than the Consolidated?

A. In cents per thousand cubic feet of gas sold?

Q. Yes.

A. I should say it required more.

Q. How much more?

A. Well, of course, my opinion of so much more would be obtained by comparing this figure with the Consolidated figure, and I do not recall what the Consolidated figure worked out in cents per

thousand cubic feet of gas sold. But I have tried to make them up on the same basis, that is, allowing for the difference in different factors and the difference in conditions between the two companies.

By Mr. Ransom:

Q. You say that you varied the amounts of actual material and supplies on hand as shown by Defendants' Exhibit A-10 according to the amount of gas sold by the company in the different years?

A. No, I said that was one of the factors to keep in mind. It is one of the things that I had before me when I determined the amount.

Q. How much gas did the company sell in 1909?

A. 149,496.9 M cubic feet. I am reading from Defendants' Exhibit A-12.

Q. What, in 1908?

A. Well, the calendar year is not given on those exhibits. You will have to approximate it by taking the five months that are given and taking 7 12ths of the year which ends July 31st.

Q. What figure did you take in your calculations?

A. Well, I split it up that way.

2012 Q. What figure did you get as a result?

A. I do not remember the figure, but it would be—(witness makes calculation)—well, that would give approximately 130,000 to 135,000 M cubic feet in twelve months.

Q. How much?

A. 130 to 135.

Q. How about 1910?

A. That figure on Defendants' Exhibit A-12 is 168,664.8 M cubic feet.

The Master: As against what in 1909?

The Witness: Against in round numbers 146,500. As a counterbalancing factor there is this, that as between 1909 and 1919, for instance, the percentage of gas unpaid for at the end of the year, or at the end of the month, in relation to the amount of sales during that month, improved; so that the time that they had to carry working capital decreased in 1909 to 1918 very materially.

Q. From what exhibit are you taking your figures as to the amount of gas sold?

By the Master:

Q. Well, in arriving at a figure for working capital the court cannot possibly arrive at an absolutely accurate figure in the sense that a figure can be demonstrated to be the figure that they will need, can it?

A. No, it is a matter of judgment.

Q. It has got to be an approximation?

A. Yes, it is a matter of judgment.

Q. It may be more or less than the figure you reach and may be more or less than the figure Mr. Miller gets?

A. Why, of course.

Q. In other words, the Court has got to view it from every
2013 angle. One business man may feel that he ought to have more than another; isn't that so, Mr. Maltbie?

A. Oh, certainly.

Q. Some business men feel that they ought to have more working capital and other business men want to work on a closer margin of working capital?

A. Yes.

Q. So whatever figure I report in this case is simply my judgment of what ought to be enough.

A. Yes, there is not any well recognized rule which takes into account all the factors and which gives you a mathematical result that is absolutely accurate.

Q. That is what I mean.

A. Yes, it is a matter of judgment.

By Mr. Ransom:

Q. According to Defendants' Exhibit A-12 in 1911 the total sales of the company were 184,000,000 plus cubic feet?

A. That is correct.

Q. In 1913 they were 220,000,000 plus cubic feet?

A. That is correct.

Q. How did you apply or use those figures, as to the amount of gas sold, so as to reach the conclusion that there was the same amount of materials and supplies required in 1911, 1912 and 1913, in face of the fact that in those years the amount of materials and supplies actually on hand had increased 70 per cent?

A. On certain dates it had increased, but the principal offsetting consideration to the increase in the amount of gas sold is the fact that in 1913 the relationship of the amount of money due
2014 from consumers was materially less in relation to the amount of sales in December, as compared with any preceding year, and that goes to offset what, considered by itself—that is, the increase in sales—would require, namely, an increase in materials and supplies on hand. That is, the increase in sales alone would require a larger amount of working capital, but that is offset by the improvement to which I referred, which lessened the amount of working capital.

By the Master:

Q. Let me ask you this, Mr. Maltbie. What was the material on hand December 31, 1918?

A. All materials and supplies, December 31, 1913, $42,465.25.

Q. And December 31, 1919?

A. $39,375.13.

Q. So that in both years it approximated about $40,000, did it not, roughly?

A. Yes.

Q. Would you say that was too much to have on hand?

A. No, I think under the conditions that existed in those years, that was about a reasonable amount.

Q. Did you start with that figure?

A. Did I what?

Q. Start in arriving at your working capital figure with that amount of $40,000?

A. I used in 1919 for materials and supplies $40,000, and 1920, $35,000.

Q. Why less in 1920?

A. Because the Douglaston Extension was made in 1919 and that would require more working capital, and, generally speaking, companies are not making extensions. I do not know of any material amount of construction work to be done this year.

2015 Q. But in 1918 they were not doing any material amount of construction work at Douglaston?

A. But that was the war year.

Q. We are still in the war year, are we not?

A. To some extent, but not as to the uncertainty of supplies. You will recall, your Honor, that in the Fall of 1918 and the beginning of 1919 conditions as to coal were very uncertain, and that is reflected by the fact that December 31st, 1918, they had coal on hand to the extent of $27,203.90 and the preceding year about $10,000, and the following year about $13,500.

Q. But you do not want to intimate that the coal condition has settled to the point where they ought not to carry as large a supply of coal as they can get, do you?

A. Well, I do not know as to how large a supply they could get. I should say that the conditions at present do not require the carrying of such a large amount of coal as they did in the winter of 1918 and 1919.

Q. Do you think the coal conditions have improved?

A. I think the coal conditions, as far as carrying a supply and the fear that the supply may be cut off, are better now than they were in that winter.

Q. Mr. Maltbie, I, of course, do not know the first thing about it except what witnesses tell me here, but I do read the newspapers. I do read the newspapers, and sometimes the newspapers do accurately report facts.

Mr. Chambers: Unless they are inspired.

Q. (Continued.) Have you any information at all with reference to the articles I have read in the newspapers within the last

2016 few weeks, that because of the shortage of cars, there is apt to be a tremendous difficulty and a real problem for coal users this fall and winter?

A. Well, of course, I have not made a careful and detailed investigation of that subject. The only information I have on that is the general talk that I have with coal men whenever I run across them and in other cases at the present time. Of course, it is a problem just now that I have to keep in touch with in these other cases all the time.

Q. How about these official statements being given out daily as to the difficulties which will be encountered this fall and winter in getting an adequate supply of coal, and the advice given to the public to put in their coal if they can get it?

A. My opinion about that, your Honor, is that it is put out to a considerable extent to stimulate purchase and storage of coal this summer. I think they have over-exaggerated what is likely to happen this fall and winter.

Q. The Government officials are doing that, are they?

A. I think so, and wisely so.

Q. You do not think there will be any real trouble?

A. No; I think there will be real trouble; there has been real trouble for several winters now.

Q. Well, let us pass to the materials for a minute. You add to this $35,000 for 1920 and approximately $40,000 for the year before what, for any other item?

A. I add $20,000 in 1919 for operating expenses which they must advance before they get the money back from consumers.

Q. How do you get at that figure? What is the weekly payroll?

2017 A. That is the very thing I was going to turn to first. If I remember rightly it is about $1,500. Yes, $1,500.

The Master: I hope you do not mind my asking this, because I want to get a picture in my mind as to how Mr. Maltbie got at these figures.

The Witness: $1,500.

Q. A week?

A. A week.

Q. And you arrive at your $20,000 how?

Mr. Ransom: May I just ask you where you get the idea it is $1,500 a week?

The Witness: Mr. Cohen gave me that figure.

The Master: What do you say the books show, Judge Ransom?

Mr. Ransom: $2,000.

The Master: $2,000 a week?

Mr. Ransom: Yes.

The Master: How did you get at your $20,000?

Mr. Ransom: And the refund of deposits and petty cash payments will bring it up to about $2,600 a week.

The Master: What is that?

Mr. Ransom: I say the refund of deposits and petty cash payments bring it up to $2,600 a week.

The Master: According to the books in evidence?

Mr. Ransom: Yes.

The Master: That is your contention?

Mr. Ransom: Yes.

The Master: I would like to have Mr. Maltbie tell me how he gets that $20,000 figure.

2018 The Witness: Taking this $1,500 I at first multiply it by 6 as the maximum period—that is 6 weeks in which the com-

pany would have to carry these payrolls before they would get the money back from consumers. That gives me about——

Q. About $9,000.

A. That gives me about $9,000. The monthly payroll as given to me by Mr. Cohen from the company's records was $750 a month, and I took——

Q. Just let me interrupt a moment. Does that agree with the books?

A. Well, wait just a moment. He gave me a figure of from $650 to $800 a month and I took $750.

Mr. Ransom: $750 is about right, I think.

The Witness: That I took for half a month, inasmuch as the monthly payrolls are paid at the end, after the person renders his service, and not in advance, which would give about $500. That would give me $9,500. Then I made an analysis of the materials and supplies that are used and charged in the operating expenses for production and transmission and distribution and commercial, and I included some rent which they paid and other operating expenses, and I found that they had a figure, a weekly figure, for those, of about $4,700. I took that at two weeks, because they buy their supplies on thirty days' time, and two weeks more would bring it up to the six weeks. That would give me $9,500 and that would give $19,000, which I rounded off to $20,000.

The Master: In order that I may get this clear in my 2019 mind, are there any other items that you claim Mr. Maltbie should have included in the working capital—not as to whether he took the correct figures or the correct period, but whether there is any other item he should have considered?

The Witness: Well, I took cash.

Q. Cash on hand?

A. Yes.

Q. How much is that?

A. In 1919. That is $20,000.

Mr. Ransom: Where do you get the idea that the monthly payrolls are at the end of the month?

The Witness: Why, that is the general practice of paying men monthly.

The Master: Well, just one moment, Judge Ransom. The question I have in my mind now is this, Judge, and this is what I want to get clear. Mr. Maltbie says in arriving at the working capital figure he took this amount for materials and supplies on hand, for materials and supplies going into production.

The Witness: And the wages.

The Master: And the wages, the weekly wages and the monthly salaries and the cash on hand. Now, those are generally the items, are they not?

The Witness: Those are the three items.

The Master: What I want to get from you, Judge, is whether there is any class of items he has omitted at all in these calculations?

Mr. Ransom: Well, he has entirely omitted accounts receivable and he has omitted gas furnished, but not yet billed, except to the extent that in some backhanded way it may be partly included in this operation expenses advanced or whatever he calls that.

2020 Q. Have you included Accounts Receivable?

A. No. Accounts Receivable are represented here by the operating expenses advanced; that is the cause of the accounts receivable. That is the materials and supplies and the wages that are paid to make the gas which has been furnished, which is billed to consumers.

Q. What was the amount of the receivables?

A. At the end of 1919 the accounts receivable for sundry consumers—that is, the gas that is supplied—is $17,033.72.

Q. How about the gas supplied but not metered or billed; what do you do with that?

A. Well, I have taken that into account when I allow six weeks' supply. That is the month and then the two or three weeks more.

By Mr. Ransom

Q. How much of this $20,000 had been billed—do you regard as having billed, so that it shows in the Accounts Receivable, and how much not?

A. Well, I do not know whether I can answer that question, but I should say that one-tenth of the sales for 1919, that being taken as about the average for the year, would give $25,000. I did not state that correctly: One-tenth of the sales for the year as a general thing represents the consumption during December, and comparing that with the amount of accounts receivable on hand at the end of the year, one gets one-tenth of sales at $25,800 for 1919, and the accounts receivable were as I just said, $17,000.

Mr. Ransom: To answer your Honor's question, you can see the contrast between what the witness has done and what we claim. He has an item Materials and Supplies $35,000, we have a

2021 claim of $60,000. He has an item of cash $15,000, our figure is $50,000. This is as of the present time. Our accounts receivable item is $35,000 and gas furnished to consumers but not yet billed $20,000, makes a total of $55,000, against which he has $20,000. In other words, his total figure is $70,000 and our total figure is $165,000.

The Witness: Yes, I looked your figures over and I notice that you put in more materials and supplies than you had on hand in December, and the amount is supposed to be the maximum, and you include more cash on hand. The amount of cash I allowed on hand is an amount slightly in excess of the amount your balance sheet shows you had on hand.

Mr. Ransom: Colonel Miller testified, of course, the company did not have enough of materials and supplies, and the coal situation and the oil situation has been disclosed.

By the Master.

Q. As I understand it, Mr. Maltbie, on December 31, 1919, the company had on hand approximately $40,000 of materials and supplies?

Mr. Ransom: $39,375.

A. Right.

Q. They approximately had $20,000 of cash in office and bank?

A. No, they had on hand at the end of 1919 $41,337.88, as shown by Defendants' Exhibit A-9.

The Master: And the receivables you said were seventeen thousand and something?

The Witness: Right.

Q. Well, that $41,637.88, then there is a cashier fund of $500?

2022 A. Well, $42,000. When I get within $500 of this amount, it is pretty good.

The Master: Well, I won't get within $500 of what it ought to be, I am sure.

Q. And Liberty Bonds, which are the equivalent of cash, $2,200?

A. Do they want the consumers to pay for the Liberty Bonds they bought out of patriotism?

The Master: Don't get into an argument. Gas furnished to consumers but not yet billed, that has got to be an estimate. Taking the basis of the complainant's estimate of working capital, if the accounts receivable are only $17,000 at the end of the year, the gas furnished to consumers but not billed could not be as much as $20,000, could it?

Mr. Ransom: The accounts receivable amounts to $17,033.72 for sundry consumers and sundry debtors $13,839.38.

The Master: What is sundry debtors?

Mr. Ransom: Gas appliances and rental appliances.

The Master: Gas furnished to consumers, according to your figures, would be about two-thirds of the receivables wouldn't it? That would be about the proportion, Mr. Maltbie?

The Witness: No, I would say it would be a little more than that.

The Master: A little more than two-thirds?

The Witness: Yes.

The Master: So that the receivables, if that is $17,000, you think perhaps the gas furnished but not billed would be as much as $14,000?

2023 The Witness: Possibly.

Mr. Ransom: Well, the receivables are more than $17,000.

The Master: Receivables for gas furnished is only $17,000.

Mr. Ransom: Receivables for gas, yes.

The Master: So, on the basis for receivables for gas, then the gas furnished but not yet billed ought to be perhaps $14,000?

Mr. Ransom: Accounts receivable, sundry creditors, is $17,033.72. For consumers other than gas, it is $13,839.38.

The Master: But the item of gas furnished to consumers but not yet billed has relation to the $17,000 and not the $13,000. Now, taking your basis of calculation, Mr. Maltbie, this gas furnished but not billed would be about $14,000 as against $17,000?

Mr. Ransom: I would not think it had relation even to the accounts receivable from sundry consumers. It has relation to the amount of the month's business. It is about two-thirds, I think of the month's business.

The Master: What do you claim is a month's business, about $30,000?

Mr. Ransom: About $30,000, yes.

The Witness: There is one thing I want to call your attention to. You are including now prepayment meters. There is 25 to 30 per cent of this gas sold through prepayment meters, and if anything, they collect a little more at the end of the month than they have actually supplied, so there could not be any gas supplied to prepayment meters but not billed.

2024 Mr. Ransom: There is gas supplied to prepayment meters but not collected. The money is in the coin box of the machine, and you could not, as one of the cross-examining counsel the other day suggested, collect from these prepayment meters every day, because the number of men required to make the collections would amount to more than the amount taken from the coin box.

The Witness: This applies to three-quarters of the gas sold instead of the entire amount of gas sold.

The Master: I probably have it in my mind so I can reach a conclusion that will not satisfy anybody.

The Witness: I would say this about the sundry debtors—I have not included or deducted from the amount of working capital otherwise obtained anything in regard to the money obtained from the consumers who rent appliances and pay in advance. I considered that would offset any amount due under sundry consumers for that amount. There is no working capital needed for that, generally speaking, although they might book the amount that is due. That is the reason I have not taken into account accounts receivable from sundry debtors.

Q. How much of the rental of appliances did you in your calculation figure was paid in advance? Not the second or third year?

A. No, as I understand it, they get it promptly the first year, because they won't put it in until they get it, but the second and third year they do not collect it very promptly, and there is quite an

2025 amount of bills due from consumers for the rental of appliances because they do not collect the money as fast as does the Consolidated Gas Company.

Q. What part of the gas sold by this company did you figure was sold through prepayment meters?

A. Twenty-five to thirty per cent.

Q. Where did you get that figure?

A. Those figures will be found by taking the figures in Defendant's Exhibit A-11 and Exhibit A-12. We will take 1919 as just an illustration. The prepayment sales were 78,255 M cubic feet, and the entire amount of gas sold was 336,241 M cubic feet. That is not quite twenty-five per cent in that case. In 1918 the total sales amounted to 327,585 M cubic feet, and prepayments amounted to 81,266 M cubic feet. That is almost exactly one-quarter there. And, so on. It is thirty per cent in some of the earlier years.

Q. You say it is between twenty and twenty-five per cent?

A. No, I said for this entire period, from twenty-five to thirty per cent. It may fall a little below twenty-five, but those are round figures.

Q. Well, it was nearer twenty than twenty-five in 1919?

A. No, I would not say so.

The Master: How much do you allow for working capital?

The Witness: In 1919, $80,000; in 1920, $70,000.

Q. Now, in this second column on your working papers, what you call Operating Expenses Advanced, under that heading you included Cost of Materials used for two weeks?

A. Yes.

2026 Q. What materials?

A. Coal and oil are the principal ones, and materials used for repairs. There are sundry supplies, but generally speaking, coal and oil are the big items.

Q. Where did you get your figures for the cost of these materials?

A. I took the operating expenses in dollars.

Q. And divided it into a two-weeks' period?

A. And got two weeks period out of the total yearly cost. In round figures I took—well, I divided by 50 and multiplied by 2, a shade in your favor, but that is all.

Q. On what basis did you select two weeks, why two weeks instead of some other period?

A. Well, the first thing I did to get that period, I compared your accounts receivable from Sundry Consumers, that is for gas sold, with one-tenth of the annual sales, and I found that that comparison showed that the bills on the average for gas were paid from about 14, 15, to 20 days after the bill was rendered, that is, at the present time. Going backwards, in 1909 it was a much longer period. It was over two months, as I recall, at that time, instead of six weeks.

Q. Then you didn't allow anything for gas furnished but not yet billed, that is, you did not take that into the basis of your calculation?

A. Well, not specifically.

Q. Or in any way?

A. Yes, as a general consideration I did.

Q. How?

A. Because a great many of these things like your prepayment meters, that is only one month for twenty-five per cent, it is

2027 not over a month unless it is because of your own fault in not going around to read the meters every month, but I have

taken six weeks on the entire amount, which is four weeks on twenty-five to thirty per cent, to offset the six weeks on others, and also to offset particularly the amount of gas furnished but not billed.

Q. Why did you compute the cost of weekly labor for six weeks, and the cost of monthly payrolls for only two weeks?

A. Well, the weekly payrolls are paid at the end of each week, and in six weeks there would be six weeks which had been paid at the end of six weeks. In a month they would have made one monthly—they have got one month's services before the payment is made, and taking six months as a basis, they have to carry that monthly payment two weeks before the cash came in.

The Master: But if they paid the monthly wages twice a month, or four times a month, it would change it?

The Witness: Slightly, but that is only $500 or $600.

The Master: But it would change it?

The Witness: It would. You remember, of course, that I got $19,000 and rounded it up to $20,000, so if you doubled it you would not get over the $20,000 I allowed.

The Master: I suppose I will have to do some rounding up myself.

Q. Take your figure of $4,000 for what you call operating expense advanced for your 1904 working capital, can you divide that up between the three elements of cost of material used for two weeks, cost of labor for five or six weeks——

A. No, I didn't work it out in detail.

2028 Q. Or cost of monthly payrolls for two weeks?

A. No.

Q. As to any of these years you cannot give the division or the proportions of these three items?

A. No. I worked it out, as I have said, for the last years, and then made a pro rata decrease with the other factors in mind.

Q. Take 1919, can you give the details and proportions of those items in that year?

A. That is what I am speaking about. That is the year for which I have given $1,500.

The Master: But you could not work it out the way Judge Ransom says?

The Witness: I thought I had worked it out

Mr. Neumann: Yes, that is what he said.

Q. Have you used the same proportion in all the years?

A. Practically so, yes. The monthly payrolls are not an important element, and they might have been thrown in and treated on a weekly basis, it would not have made any change in the figures.

The Master: Judge Ransom, why isn't it fair to take as working capital for the purposes of this case, the amount of material and supplies you had on hand December 31, 1919; cash on hand; receivables, Sundry Debtors' receivables; and $20,000 for gas furnished but not billed.

Mr. Ransom: That would be true if this company was operating under what might be called ordinary conditions, or if the conditions reflected as of the end of the year 1919 were in your judgment typical conditions so far as the quantity of cash, or
2029 the quantity of materials and supplies on hand are concerned.

There are three factors that you have got to take into account. In the first place, with respect to materials, conditions are adverse, especially as to the principal item of coal. The quantities are low. In the second place, this company has been ham-strung by this inadequate rate, and it has been having to get along from pillar to post. It is not a fair, adequate working figure, it is not the kind of a figure which the officers of this company, or of any company, would want to try to get along on if they were having to deal with a condition over a period of years. The situation in that respect becomes this: They lack the necessary funds, they are hamstrung by a rate, they cannot get the necessary funds, the rate does not yield them. Consequently, they are on an inadequate cash basis. They cannot get coal both because of the lack of money and because of the lack of coal.

The Master: The item of $20,000, being about two-thirds of a month's supply of gas, is not subject to these variations?

Mr. Ransom: I think not.

The Master: Assuming that I follow your theory of arriving at working capital, the $13,000 for Sundry Debtors' receivables is not subject to these variations?

Mr. Ransom: No.

The Master: The $17,000 for gas receivables is not subject to these variations?

Mr. Ransom: Well, you have the two figures reversed.

2030 The Master: No, I have not. Now, those three items are not subject to these variations.

Mr. Ransom: Not at all.

The Master: The $41,000 cash on hand you think ought to be more?

Mr. Ransom: I think that was an inadequate item.

The Master: And the $40,000 of materials on hand you think is too small?

Mr. Ransom: Under ordinary conditions it would be.

The Master: It was not at any time prior to 1919.

Mr. Ransom: The thing you have got to take into account, of course, is that materials and supplies cost very much more now. While the amount of money shown in the immediately previous years, or in the years back of that, going back to any time when the volume of sales was very much smaller than they are now, there is the question of the amount of money reflected by a given quantity of coal, and of course so many dollars in coal now does not represent anything like the supply of coal that same number of dollars would have represented in any previous year.

The Master: Are you going to call any other witness on this question in rebuttal on working capital?

Mr. Ransom: I may have to on questions that are strictly rebuttal.

The Master: Well, go ahead. I think I know what I want to do about it.

2031 Q. I have already called your attention to the large increase in sales from 1911 to 1913, and the fact that you made no increase of materials and supplies in spite of that increase in sales. Going to the second column with respect to these same years in which sales increased so largely, I find that you have put what you call operating expenses advanced as follows: 1911, $11,000; 1912, $12,000; 1913, $10,000; and then $10,000 for a number of years thereafter, in spite of the continuance of a sharp rate of increase in sales?

A. Precisely, and I explained that once before by saying that in 1912, or in 1913, the relation of accounts receivable to the total sales in December had very greatly changed. Consequently there was not the same need for working capital for 1912 that there was before.

Q. How greatly changed?

Mr. Chambers: He has been all over that once.

A. In 1912, as shown by your balance sheets, the amount due from Sundry Consumers was in round figures $17,300; in 1915, it was $14,800, notwithstanding the fact that your sales had greatly increased.

The Master: Why don't you get a more accurate result, Mr. Maltbie, by working on the other theory, taking the receivables, gas sold but not billed, cash on hand, and the materials and supplies that ought fairly to be on hand from time to time, instead of working it the way you do?

The Witness: In the first place, accounts receivable represent not what the company has put in, but what they are charging. It
2032 covers their profits, and their reserve fund, and their taxes, and other things which do not have to be paid in advance.

Furthermore, it does not contain any allowance for the buying of bills on thirty and sixty days' credit. It goes in just the same whether they are paid in thirty or sixty days, or whether they are paid by spot cash. Now, to make allowance for those two important items, in my opinion you have got to work it out the other way.

The Master: Well, that is not the universal judgment among accountants, is it?

The Witness: If you take the English accountants, who have done a great deal more work on working capital than the accountants on this side, I would say that the English practice is just as I have outlined it.

The Master: What is the American practice?

The Witness: The American practice varies. Some take the balance sheets and take the accounts payable, and the accounts receivable, and get at it that way. Others make the estimates that have been put in here. I think the estimate method, if properly applied, is the more accurate method.

The Master: Well, this company does a total volume of business in the course of a year of how much?

The Witness: In 1919, about $340,000.

The Master: In this kind of a business, doing a volume of $340,000, does not the amount of working capital bear a direct relation to the total volume of business, taking all these factors into consideration?

2033 The Witness: Well, Yes; I should say it had a direct relation to the amount of business done when you take all the factors into consideration.

The Master: Isn't it one-third, or one-quarter or one-half, or thirty per cent, or something like that?

The Witness: No, I don't think so; I don't think you can say that.

Q. On this matter of materials and supplies as of the end of 1919, do you wish to convey the impression to the Court that as of December 31, 1919, the materials and supplies account would still reflect the materials and supplies used in constructing the Douglaston Extension?

A. If I understand your question, of course it could not.

Q. It could or could not?

A. Could not, because most of the Douglaston work had been done before 1919.

The Master: Before the end of 1919?

The Witness: Yes, but the average for the year would reflect the Douglaston Extension, and that is what I am talking about.

Q. When you reject the amount of materials and supplies on hand at the end of December, 1919, you do not in any way wish to attribute that to the pendency of the Douglaston work?

A. In the first place, I have not rejected that figure, and, as a matter of fact——

Q. You have reduced it?

A. No. As a matter of fact, I allowed $40,000, which is practically the same figure; and, in the second place, that is as of December 31, and what I am talking about is the average for the year. It may be the same and it may not.

2034 Q. The amounts of cash on hand—did you use Exhibit A-8 with respect to the amounts of cash?

A. I had Exhibit A-8 before me when I made the estimate.

Q. Why, in 1913, with Defendants' Exhibit A-8 showing 18,493.85 on hand, did you put down as cash required only $9,000?

A. What year did you use?

Q. 1913.

A. Well, I will have to say again that the figures that I used are average figures for a year. December 31, 1913, shows in round figures $18,500 in cash on hand. At the end of 1912 it was $6,300 in round figures. The cash on hand ordinarily would not be alone working capital, it would be cash for the payment of interest and dividends, and that is accumulated after it is earned, not before, so that the cash on hand on any balance sheet reflects not alone the cash on hand for working capital or for construction work alone, but the cash on hand for various other purposes for which it is not necessary to provide working capital.

Q. Did you in any way ascertain what the average cash on hand was during 1913?

A. No.

Q. How did you get your average, as you call it?

A. Well, I placed before me all the figures shown on the balance sheet, the amount of money year by year, to which I applied in this case a percentage of 5, and then also figures showing the amount of construction work done in this year, and from those figures I reached the figures which I gave to Mr. Teele and which you have doubtless had before you, that is, the cash figures for year to year.

2035 Q. Well, the cash figure for 1913 was $18,493.85. The cash figure for the following year was $17,313.36; and the following year it was $30,678.95?

A. What year $30,000?

Q. 1915. How did you get your figures of $9,000 and $10,000 for those years?

A. Why don't you read some of the figures where they are below the allowance I made, as well as the ones that are above?

Q. I haven't yet found any.

A. Have you looked these all through?

Q. I hope I have.

A. And you haven't found any?

The Master: In 1912 Mr. Maltbie says only $6,300.

Q. As of the year, the end of the year 1912.

A. Yes, that is what you were talking about.

Q. I am asking as of 1913 and 1914, how you get $9,000 and $10,000, how you figure an average?

A. Because I thought with all of these figures before me, the facts to which you have referred before me, that that was the reasonable amount for the average for the year.

Q. Take 1915, the amount shown by the defendants' exhibit is $30,678?

A. Yes.

Q. And the figure at the end of the preceding year was $17,000 plus; and at the end of the succeeding year it was practically $17,000. Yet, in some way you average it to get $10,000?

A. And at the end of 1917 it was $14,000. Coming down to the end of 1913, it was $13,300; in 1919 it jumps to $41,690. Then doesn't that show you that these figures taken by themselves

2036 cannot be an evidence of the amount of cash reasonably needed for working capital alone?

Q. But you did not average it?

A. Oh, no, I do not believe in averaging.

Q. You have entirely left out the item of Liberty Bonds held in lieu of cash.

A. I have left out Liberty Bonds.

Mr. Chambers: Of course you left it out.

The Witness: Yes, purposely.

Mr. Chambers: Your Honor is not going to allow any return on Liberty Bonds, are you?

The Master: I don't know.

Q. After you had set down these three figures, what you call materials and supplies, and what you call operating expenses advanced, and such cash as you allowed this company, in the fourth column of your working papers you added to those together?

A. I did.

Q. And then in the fifth column you put down some other figure?

A. Yes. That in the fifth column is the figure I allowed, which is equal to or more than the figures to which you have referred in the fourth column.

Q. What did you add to the total?

A. Well, as I say, as I said at the beginning, I went through these figures and then rounded them off.

Q. What additional element did you consider in increasing in some years, and not increasing in others, the amount which you show in the fourth column?

A. Nothing specially.

2037 Q. What investigation, if any, did you personally make as to the method of reading meters, the rendering of bills?

A. I personally made no investigation. The facts were supplied to me.

Q. By whom?

A. Mr. Cohen, and some of the facts in the record.

Q. What amount of time did you assume or compute to elapse between the reading of the meters and the rendering of bills?

A. Two or three days, but that would be all covered in any event, whether that figure is wrong or not, it would be all covered by the comparison of the monthly bills with the accounts receivable for gas sold. There is a cost check there.

Q. What time did you compute as elapsing between the furnishing of the gas by the company and the payment thereof by the consumer?

A. As I stated, the monthly bill would be from 15 to 20 days on gas by the company and the consumer's payment thereof?

Q. What time did you figure elapses between the furnishing of gas by the company and the consumers payment therefor?

A. Well, the gas furnished the first day right after the meter was read before payment was made, would be furnished 45 to 50 days, and gas furnished the last day just before the meter is read would be furnished from 15 to 20 days, varying times.

Q. Well, you did not make any calculation from the bills to ascertain the accuracy of that 15 or 20 day period?

A. No, I made it from a far better figure, that is a figure on the total accounts receivable with the month's sales.

2038 The Master: You stated in answer to the question I put to you before, Mr. Maltbie, that it was not fair to take the $17,000, for instance of receivables for gas furnished because it included a profit. Suppose it did not include a profit?

The Witness: Well, I also mentioned the reserve fund which they set up, which did not need to be set up in advance.

The Master: Well, suppose as a fact that the price at which gas is sold, namely, $1.00 in Flushing, is no more than it cost them to make the gas, why am I not on safe ground in taking the $17,000 as a basis for working capital?

The Witness: You mean without including taxes or reserve? You would have to exclude those, because they are not provided for.

The Master: Without including reserve?

The Witness: Or taxes.

The Master: You were talking about 3 cents per thousand for replacement.

The Witness: I think they set up 3 cents, yes, or whatever is the amount. Well, I think comparing that figure with the relative figure that I have used, if anything it is a little less than the figures that I have used. Operating expenses advanced, you see, amounted to $20,000 in my figure, which would be comparable with $17,000. I have not made that comparison until this moment.

The Master: You don't bring that $13,000 in at all?

The Witness: No, because I have disregarded upon the other side their rentals for appliances paid in advance, which should
2039 be deducted from the working capital, because they have so much money upon which they do not have to pay any return, they get it in advance at the time when they have to pay operating expenses, and that ought to be deducted. One thing offsets the other.

By Mr. Ransom:

Q. Well, where in your calculations of working capital have you made any provision for the increased cost of materials and supplies?

A. What do you mean?

Q. Well, you recognize that materials and supplies used in gas making have substantially increased in cost during this period?

A. Oh, certainly. That is in operating expenses advanced, partially, and partially in materials and supplies, which have gone up from 15—materials and supplies have gone up from $15,000 in 1916 to $40,000 in 1919. Part of that is—well, I should say a large part of that is due to the increase in the price of material.

The Master: How much of that $40,000 is coal, about $20,000?

The Witness: About $14,000 or $13,000 is coal.

The Master: Coal?

The Witness: Yes.

The Master: Well, that is——

The Witness: You see, they have an unusually large amount that year for pipes and specials.

The Master: How much for oil?

The Witness: Oil is about $8,000.

The Master: $13,000 worth of coal is not very much to carry, is it?

2040 The Witness: I do not think it is under the conditions; no; I do not think it is high.

The Master: Rather low, isn't it?

The Witness: I think if anything it is a little low.

Q. Now, you have allowed for 1918 materials and supplies, $35,000; 1919, $40,000, and 1920, $35,000, materials and supplies?

A. That is right.

Q. How much did the output increase in that time, or the sales?

A. The sales in 1918 were 326,000 M cubic feet; 1919, 336,000 M cubic feet, 10,000 M in two years. I do not know what they would be in 1920.

Q. Assuming that these computations are correct——

A. (Interrupting.) That is 3 per cent increase.

Q. In 1909 your allowance for working capital was 20.5 cents per thousand cubic feet of gas sold; in 1914 it was 17 cents per thousand cubic feet of gas sold, and in 1919 22.3 cents per thousand cubic feet of gas sold.

The Master: How many thousand cubic feet of gas were sold in 1919?

Mr. Ransom: 336,000 M cubic feet.

The Master: 336,000?

The Witness: Yes. I presume your figures are correct. I have not worked them out.

Q. Do you think that covers the increase in the cost of labor and materials during those years?

A. I think it covers the increased cost of labor and material and all other factors, some of which go to offset it. I should ex-
2041 pect the differences of that sort per thousand cubic feet of gas sold, in view of what I know of the facts.

Q. Will you produce your working papers on your working capital?

A. I have my working papers here.

Q. I would like to see them. I would like to have that sheet that gives your items for each of the years?

A. Do you want to put it in evidence?

Q. I have called for its production. I wish to see it.

A. Yes (handing paper).

Mr. Chambers: Now, did you invoke the rule, that if he——

The Master: Just hand it to the other side.

Mr. Chambers: Well, that puts it in evidence, according to his rule.

The Witness: There is no one here who has seen that before, your Honor. I don't know whether that is the one you are asking for or not.

Q. Is this the one you showed Mr. Teele?

A. Oh, I showed him that among others.

Q. Well, where is the one you showed him?

A. I showed him that among others.

Q. Where is the one that you gave him to copy as giving your figures?

A. I read off the figures to him and he took them down; he did not copy them. I read the figures.

Q. From this?

A. Yes, from that.

Mr. Ransom: The trouble is, if I put this in evidence I would want to photograph it.

2042 The Witness: Well, you can photograph it. I think it is a good thing to have in evidence.

Mr. Ransom: I offer it in evidence.

Paper marked Complainant's Exhibit No. 105.

Q. You have known that various gas companies in this State, in this region, have had very great difficulty in getting coal lately?

A. Why, I have general knowledge that they have had difficulty in getting coal.

Q. Have you heard of any gas companies in this State suspending within the past week or so because of inability to get coal?

A. I know of none.

Q. You have not heard of the suspension of the Geneseo Company last week on account of inability to obtain coal at all?

A. I have not.

Q. Have you any working papers showing how you arrived at the amount of $10,000 for organization, legal and general expenses; that is organization and legal expenses, I take it, up to 1904, that was, wasn't it?

A. Why, I have got nothing but one paper.

The Master: Are we all through with working capital?

Mr. Ransom: I think so, for the present.

The Master: Well, do you expect to put in anything else?

Mr. Ransom: I may have to ask just three or four questions in rebuttal.

The Master: All right.

The Witness: I haven't any details of that figure, if that is what you want to know.

2043 Q. Did you make any computation of any kind to determine what had been or in your opinion ought to have been the expenses of this character incurred prior to 1904?

A. I made no computation, no.

Q. In arriving at this item of $10,000, did you apply a percentage?

A. I did not.

Q. How did you get that figure, if at all?

A. I got it all right.

Q. Well, how?

The Master: I hope you didn't get it where you got that land figure that I quizzed you about—out of the air.

Mr. Ransom: I did not want to ask him that.

A. This is an item which has been included in a number of case in which I have testified, and I have been over a number of com panies——

Q. You mean this $10,000 figure?

A. No, this item.

Q. This kind of an item?

A. This heading; these kinds of expenses. And I have recentl been over about, I should say, a dozen companies up the State o organization, legal and general expenses connected with the forma tion of the company.

The Master: The lawyers up-State do not charge the fees we d down here. It doesn't cost them as much to live up there.

The Witness: Well, this company might go up-State and get o ganized, and it would not cost as much.

The Master: I stand by the union down here. I can't hel that.

2044 The Witness: And with these facts in mind, and wit other general experiences in allowances in other cases, why I fixed the figure at $10,000.

Q. Is this account based on a computation you made in the ca of those companies up the State?

A. No. As I say, I had before me their actual costs, no one which by the way exceeded $5,000.

Q. You mean you found, on a personal examination of their book certain items charged to this?

A. No; sworn investigations that had been made of their book

Q. Made by whom?

A. By the agents of the Public Service Commission of the Secon District, with the help of the companies.

Q That is, you found certain items charged to these accounts o their books?

A. No, found certain items charged to various accounts which ha been gathered together.

Q. Which you gathered together and attributed to this?

A. Not which I gathered together; which had been gathered t gether.

Q. Which you gathered together and attributed to this?

A. Not which I gathered together; which had been gathered t gether.

Q. By whom?

A. By the representatives of the Public Service Commission of th Second District and the companies' officials.

Q. It was not anything that you yourself did?

A. No.

2045 Q. Or anything which you directed or had anything to with?

A. Except in two companies, those items were checked by the a countant representing me and found to be substantially correct.

Q. Did the Public Service Commission for the Second District ca

these items which you thought they found in some books, organization, legal and general expenses?

Mr. Chambers: I object to that as being quite outside of the matters in litigation here.

The Master: Overruled; I think it is proper on cross examination.

Mr. Chambers: What the Public Service Commission of the Second District did?

The Master: I think it is proper cross examination on what this witness has testified to.

Mr. Chambers: Exception.

A. Those were the items in those accounts covering these similar headings.

Q. That isn't an answer to the question. Do they put this title on the items which you think they found in the books which you think they examined?

Mr. Chambers: Same objection, being speculative and vague and indefinite.

The Master: Same ruling.

Mr. Chambers: Exception.

Mr. Cummings: Ask him a clear question and maybe he can answer.

The Master: Mr. Cummings, the rule of addressing the Master and not counsel on the other side applies to you as well as to other counsel.

2046 Mr. Cummings: I ask the Master to have him do it.

The Master: The Master declines.

The Witness: The terms in the report of the representatives of the Public Service Commission did not use exactly the same words that I have used here.

Q. What did they use?

A. But they are practically synonymous.

Mr. Ransom: I move to strike out "practically synonymous."

A. As I recall, it was "organization and general expenses."

Q. Have you the reports here from which you took that information?

A. I have not.

Q. In what form were those reports?

A. They were reports of the Division of Capitalization of the Commission, as I recall it.

Q. That is the same bureau of the up-State Commission corresponding to Dr. Weber's bureau of the Commission for the first District?

A. They are organized somewhat differently. They have a separate division of capitalization, separate from the accounts and statistics division.

Q. On the basis of what you found in those reports, you made up a figure for the New York & Queens Company?

A. What I found in those reports and all the other things to which I have referred, I made up a figure of $10,000.

Q. You cannot give any details or subdivisions of it?

A. No, I made no details.

Q. Did you personally make any investigation of the books
2047 to determine whether expenses were incurred during the period subsequent to August 1st, 1904, on account of organization and legal or similar expenses?

A. I am not entirely sure what you mean by similar expenses but I went over the balance sheets and went over the account and went over with Mr. Hine what items he had included there. I am not sure but those items relating to the Douglaston Extension might be called general expenses, but Mr. Hine allowed them in his figures, so of course I did not put them in here. They certainly would not be organization expenses, but they could be general and legal.

Q. The balance sheets show the captions of accounts?

A. They show certain captions of accounts.

Q. You did not go to the accounts?

A. No, I did not go to the accounts.

Q. Now, you testified on page 2331 of the mimeograph record to an amount of $5,000 interest and taxes during construction up to 1904. Upon what basis did you arrive at this figure?

A. Yes, up to 1915.

Recess until 4 o'clock P. M.

Afternoon Session.

MILO R. MALTBIE resumed the stand.

Cross-examination.

By Mr. Ransom (continued):

Q. When we adjourned I had asked you with respect to the amount of $5,000 interest and taxes during construction,
2048 which you said, "I have estimated amounts up to 1904 to $5,000." Have you any working papers showing your computations, if you made any as to this item?

A. Yes.

Q. Is this estimate based upon a percentage?

A. Well, I made some figures, before arriving at the final figure of $5,000, involving percentage figures.

Q. Is it based upon a percentage?

A. Involves percentage figures.

Q. Well, what percentage is this estimate based on?

A. I found from the tables placed in evidence by Mr. Hine that——

Q. Upon what percentage?

A. If you will let me finish I will show you.

Mr. Tobin: Let him answer.

The Master: Go ahead, Mr. Maltbie.

The Witness: Upon the tables prepared by Mr. Hine and placed in evidence I found that the tangible property up to 1904 of this company had cost upwards of $300,000. To that figure I applied a ratio of 1¼ per cent, which I arrived at in this way: I took an average construction period of six months for this property and an interest rate at 6 per cent, which upon the whole amount, for one-half the time—that is, one-half of six months, or three months—would give a percentage of 1¼. 1¼ per cent of $300,000 is $3,750. Then from that I reached a conclusion that the maximum amount would be $5,000, including such taxes as should be included on the taxable property of the company.

Q. You figured that as of 1904 the plant, works and distrib-
2049 uting system of this company would be built, rebuilt, or reproduced in six months?

A. No. I estimated the average construction of this company's property up to 1904, as such a plant would be developed ordinarily, not having the exact facts for what happened or what they paid for interest during construction prior to 1904, and that the average construction period would be six months.

Q. You never built a gas plant?

A. No.

Q. Prior to 1904 or at any other time?

A. No.

Q. You never had anything to do with the construction of a gas plant?

A. Not directly. A great many of the expenditures, of course, for additions and betterments were made while I was a member of the Public Service Commission.

Q. You never had any responsibility as an executive or other official of a company for construction of properties of this kind?

A. No.

Q. You never had anything to do with the financing of an enterprise of this kind?

A. Not of a gas company.

Q. You never operated it?

A. No.

Q. Where did you get that 1¼ per cent?

A. One-half of six months is three months, or a quarter of the year, and ¼ of 6 per cent is 1¼ per cent.

Q. It is?

A. Yes. 1½ per cent. I will correct myself. That would make the figure, instead of $3,750, $4,500, or $500 less than I allowed.

2050 Q. Where did you get the figure for the taxable property as of 1904 as $300,000?

A. From the exhibits which Mr. Hine placed in evidence.

Q. Which ones?

A. Table 20, which is Defendant's Exhibit A-105, shows the cost of fixed capital as of August 1st, 1904, was $285,406.

The Master: You said something over $300,000?

The Witness: Something less than $300,000. Oh, any allowance for working capital would bring it up to about $300,000.

Q. That should be allowed there?

A. No, I put it down. I do not think interest during construction should be allowed on working capital, but you wanted to know what I had in my notes.

Q. How about land?

A. No, the Minnesota rate case decision says not.

Q. You would not allow either interest or taxes during construction upon any part of the land?

A. Well, that depends on how——

The Master: I am not taking your testimony, Mr. Maltbie, as a lawyer; nor am I taking your expert testimony as to the law.

Mr. Cummings: We are not offering it for that.

The Master: But Mr. Maltbie is apparently testifying to what his construction of the law is, and I do not want it; and it has no place in this record.

Mr. Tobin: If the Master please, he simply referred to that case, that is all.

2051 The Master: I shall strike out his reference to the Minnesota rate decision.

Mr. Cummings: He may be familiar with it.

The Master: I do not care how familiar Mr. Maltbie is with the decisions of the Court. No witness is competent to testify here as to what the law is, as to what rules shall be applicable to the facts in this case. I have taken Mr. Maltbie's opinion, as to the points with reference to which he has testified, as a layman, a business man, an accountant.

Mr. Ransom: He may be a layman, but I do not see how you can call him the other things.

Mr. Tobin: But, if the Master please, if you will go back and examine the record you will find that you practically accepted the testimony of Colonel Miller and allowed it to stand as it was attempted to be introduced, and when Mr. Chambers——

The Master: As to Colonel Miller's construction of any statute?

Mr. Tobin: Whether it was the construction of a statute or his own opinion, and when Mr. Chambers attempted to dissect it you said the record was sufficient in itself.

The Master: To be perfectly frank with you, Mr. Tobin, I do not know what you are talking about.

Mr. Tobin: I will give you the record and that will show for itself.

Q. This figure of Mr. Hine, reached in the method which he testified to on direct examination, did not include land?

2052 A. No. If you are going to include land at cost, interest during construction should be allowed on land, and the figure is large enough to include that, to compute 1½ per cent interest on it as well.

Q. Have you ever calculated just how much property of gas

corporations you appraised in rate cases while you were a Public Service Commissioner?

A. Have I what?

Q. Calculated just how much property of gas corporations you did appraise in rate cases while you were a Public Service Commissioner?

A. I may have.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, indefinite and vague. What do you mean by property—value or amount or size of it?

The Master: Objection overruled.

Mr. Neumann: Exception.

The Witness: I may have.

Q. There was the property of the Queensboro Gas & Electric Company?

A. Yes, sir; I think two appraisals were made of that property.

Q. That is the company operating in the Borough of Queens.

A. Yes, part of its property is in the Borough of Queens.

Q. And the Brooklyn Borough Gas Company?

A. Yes, there were two cases as to the Brooklyn Borough Gas Company, and the stock and bond issue case.

Q. And the Kings County Lighting Company?

A. Yes.

2053 Q. Were there any other cases in which you made an appraisal of the property of gas corporations within the City of New York while you were a Public Service Commissioner?

A. I think a rough approximation was made of the value of the property of the Bronx Gas & Electric Company, but I do not think—of the gas property. Yes, of the gas property of the Bronx Gas & Electric Company as well as its electric properties; but I do not think that was ever made a definite figure and used in a report or decision of the Public Service Commission. There were three or four other cases that I had just before April 1, 1915. I do not recall whether any final figures were made in those cases or not.

Q. Those were cases in which you had heard some of the testimony before your term of office expired?

A. Correct.

Q. The decisions of the Commission in those cases were made subsequently?

A. Yes, sir.

Q. You are familiar with the form in which the opinions of the Commission are published, the so-called Public Service Commission reports for the First District, Volume 2 thereof?

A. Oh, yes, in a general way.

Q. Does that set forth your opinion in the matter of the Queensboro Gas & Electric Company?

A. Oh, yes.

Mr. Ransom: I offer it in evidence.

Mr. Cummings: What is the purpose of that?

Mr. Neumann: Let us see it.

The Master: Let me see it (examines book). Much of this is immaterial to this issue, is it not?

2054 Mr. Ransom: Some of it is immaterial to this issue.

Mr. Cummings: All immaterial.

Mr. Ransom: But it covers a great many points.

The Master: Bearing upon the witness' testimony?

Mr. Ransom: Bearing upon what the witness testifies to now and as compared with what he did in an official capacity.

The Master: There are particular sections of this opinion that you say are in conflict or bear upon this?

Mr. Ransom: Well, his ruling there with respect to the necessity of ascertaining the cost to reproduce, where the records do not go back of 1902; the amount which he allowed for preliminary and development expenses as compared with his present figure. For example, in that case he allowed $263,000 for preliminary and development expenses.

Mr. Neumann: One moment, if the Court pleases. I object to the reading into the record of part of his decision.

Mr. Ransom: That is, out of a total——

Mr. Neumann: One moment, please, I am addressing the Court.

Mr. Ransom: So am I.

Mr. Neumann: Well, I have the floor, I believe. The proper way of impeaching a witness, and that is the evident intent of it, would be to confront him with that. That decision is based upon certain evidence; whether that evidence is the same as that in

2055 this case no one knows. It may be predicated upon entirely different facts.

The Master: I am inclined to agree with Mr. Neumann about that. In the Consolidated case I remember that you pointed out statements made by Mr. Maltbie.

Mr. Ransom: Or I can go over those things step by step, but I think we are entitled to—the claim has been made here that this witness in some way became an expert by listening to what other people testified to, some of whom may have been qualified, in cases before him, and on the results which he reached in those cases. The claim was made in the Consolidated case, when I pursued the other method, that I was merely taking out fragments and was not presenting the whole. I am now proposing to put before you his whole finding, his whole basis, the way he did it then as distinguished from the way in which, as a layman, he is now advising your Honor it should be done.

The Master: I am afraid I cannot take it.

Mr. Ransom: Exception. May I have it marked for identification?

Marked Complainant's Exhibit No. 108 for Identification.

Q. The Queens Borough Gas & Electric Company, the figure which you reached as representing the present value of its property——

The Master: As of what year?

Mr. Ransom: As of June 23, 1911.

Q. (continued.) Was $860,000, was it not?

Mr. Neumann: Are you finished, Judge?

I object to it on the ground it is incompetent, irrelevant
2056 and immaterial, and not the proper way of proving it.

The Master: Overruled.

Mr. Neumann: Exception.

A. If you will let me refer to the opinion I will tell you. I do not carry these figures in my mind.

Q. I will call your attention to page 576 of the opinion, in which you say: "After carefully considering all the above factors the Commission has determined"——

Mr. Neumann: One moment.

Mr. Ransom: Let me finish my question.

Mr. Neumann: I ask the Master to direct the stenographer not to take anything further; it is another way of getting into the record what the Master has ruled out.

The Master: No.

Mr. Neumann: Part of the opinion.

The Master: I did not rule out parts of the opinion. I ruled out the whole of it.

Mr. Neumann: Exception.

Q. (Continuing:) "The Commission has determined that the Queens Borough Company is entitled to earn a fair return on the following amounts: Gas plant, $860,000." Is that right?

Mr. Cummings: You ruled out the whole opinion. Are you going to let him read in every part of it?

The Master: I am going to let him read any part that will bear upon this witness' testimony and would make it useful in examining this witness. I do not quite understand, Mr. Maltbie, why you have
to read the whole opinion.

2057 The Witness: The date—I have not got to read the whole opinion, but he gave a date.

Q. The date of the adoption of the opinion.

A. That is not necessarily the date when the property was valued.

Q. Wasn't that necessarily the date as of which you and the Commission valued it?

A. It was the date of the action, not the date of the value of the property.

Q. State the date as to which you now think you may have valued it?

A. The date of that value is December 31st, 1910.

The Master: Is the value correctly stated there by Mr. Ransom?

The Witness: The amount he gave is correct.

Q. And you use the present tense on June 23, 1911, with respect to that amount, did you not, in fixing a rate for the future?

A. Well, I think so, but I would have to look at this.

Q. I just called your attention to the page on which that appears.

A. I think that is correct.

Q. May I have the opinion?

A. (Witness hands counsel.)

Q. And I might let you have this copy (handing paper). This company was selling, as found by you or as stated by you, 177,200,000 cubic feet of gas a year, calling your attention to the figures on page 581 of this official report—pages 580 and 581—"It is estimated that for the current year the consumption"——

A. You see I have not the same paging as yours. Where is that?

2058 Q. For 1911, 177,200 M (indicating).

A. That is an estimate for the year, Mr. Ransom.

Q. Well, what was the actual amount for 1910?

Mr. Cummings: I object to it, your Honor, upon the ground it is all incompetent—Mr. Maltbie's ideas and theories back ten or twelve or fifteen years ago. You have probably changed some of your ideas during the last ten years, have you not?

The Witness: Yes, I guess so.

A. I do not see that it gives the figure for 1910 in this opinion. It is probably given in the prior opinion in that case.

The Master: Wasn't the fixed capital account designed by your Commission to avoid this constant valuation and re-valuation of plants, so that you might know precisely what was invested in the plant on which the return should be had?

The Witness: Well, it was designed to show the original cost of the property that was acquired after the adoption of the uniform system of accounts.

Q. In this Queens Borough case one of the issues was the value of the property used in the gas business, was it not?

A. Yes.

Q. You found that it was impossible in that case to determine even the approximate cost of the property used in the gas business, did you not?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial.

Q. Don't you remember?

2059 Mr. Neumann: And upon the further ground that at that time there was more than one Commissioner. There were at least five at that time.

The Master: How does that come in here?

Mr. Ransom: I am just leading up to what he did there as the basis of rate making.

Mr. Cummings: It is immaterial.

A. I think we did make some investigation.

The Master: I do not think we want that.

Mr. Cummings: It is immaterial, your Honor.

The Master: I do not care what Mr. Maltbie did as Commissioner as to fixing a rate.

Mr. Neumann: He was one of five commissioners.

The Master: I am permitting you to cross-examine this witness for the purpose of showing, as you did in the Consolidated case, that he reached a conclusion that a manufacturing and distributing gas plant represented a certain amount per thousand cubic feet. I will also let you cross-examine and point out that he has expressed views contrary to what he says here as to going value, depreciation or any other particular item. I am not going to get into this record what he did as a judge or what his opinion might have been.

Q. Did you not state on one page of the pamphlet copy of your opinion in this case that it was impossible to state even an approximate figure as to the cost of the physical property?

Mr. Neumann: That is objected to upon the same grounds as before stated.

The Master: That is sustained.

Mr. Ransom: Exception.

2060 Q. Did you not state that "the present stockholders are in no way to blame for the inadequacy of the old record and the fact is stated here principally to show that the accounting records as of 1908 are all limited to determining the value of the property"?

Mr. Neumann: That is objected to on the same grounds as before stated.

The Master: Sustained.

Mr. Ransom: Exception.

Q. Did you not also state that it was evident from the above facts that the accounts of the company do not show the fair value of the property at the present time?

Mr. Neumann: It is objected to upon the same grounds as last stated.

The Master: Sustained.

Mr. Ransom: Exception.

Mr. Neumann: If the Court please, I cannot quite see how this line of inquiry impeaches this witness on what he testified to on direct.

The Master: I have sustained your objection.

Q. When you found that you could not ascertain from the records the entire cost of the physical property you took a cost of reproduction new basis, did you not?

Mr. Neumann: That is objected to upon the same grounds as last stated.

The Master: Sustained.

Mr. Ransom: Exception.

Q. In this case, Mr. Maltbie, you have allowed what you call—I will give you the exact expression—"organization, legal and general expenses," $10,000?

2061 Mr. Neumann: That is objected to unless counsel confines it to the instant case and not another case.

The Master: He is talking about the case at bar now.

A That is correct.

Q In the case of the Queens Borough Gas & Electric Company, was it not your judgment that the allowance for preliminary and development expenses should be $263,000 out of a total of $860,000?

A Will you let me see the decision?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent. The evidence in that case might have been entirely different from the evidence in this case. There is no criterion or basis of comparison.

The Master: We will find out whether there is or not.

A What was that statement?

The Master: You allowed about $200,000 for development——

Mr. Ransom: $263,000.

The Master: Out of a total of $800,000 put into the property originally?

The Witness: Well, the page which Mr. Ransom hands me——

Q I did not hand you any particular page.

A Well, you handed me an opinion in that case open to a certain page, which is Mr. Connetts estimate.

Q What did you say you allowed?

The Master: What did you find?

A For preliminary and development in the Gas Department 110,000.

2062 Q And for contractors' profit, engineering and administration and incidental overhead $136,345 in the gas department?

A And contingencies.

Q That is contractors profit?

The Master: How big a plant was that, Mr. Maltbie?

The Witness: Do you mean how large an output?

The Master: Yes.

The Witness: Well, the estimate for 1917 was——

Mr. Ransom (interrupting): 1911.

The Witness: The estimate for 1911 was about 177,000 M cubic feet.

The Master: And we have got 336,000 Ms here.

Mr. Ransom: 336,000.

The Master: And you reached the conclusion, after examining into the situation in that case, that it took about $240,000 odd to get the business going?

The Witness: No; that preliminary and development covers going concern value, which I have put in a separate estimate here entirely.

The Master: How much of that was going concern value?

The Witness: I do not think there was a separate separation of that item.

The Master: How much have you allowed altogether in this case for all of those items?

The Witness: It is hard to make that comparison.

The Master: Well, it is not over $15,000 or $20,000, is it?

2063 The Witness: This is on the basis of an estimate of cost of the property, what the company reasonably did pay or would have paid if we had the records of cost, what we would have found they paid.

The Master: Isn't that what you concluded in the Queens case?

The Witness: No, that is a reproduction cost estimate, and that includes—that was before the decision in the Kings County Lighting case.

The Master: I don't care about decisions. I am trying to find out what it would cost a gas company producing 336,000 M cubic feet of gas, to sell it, for its development and necessary expenses to get operating—legal and other expenses, organization. You have given me a figure which seems absurdly low, compared with the figure that you found in a judicial proceeding as it were, as commissioner.

The Witness: Yes.

Mr. Ransom: In the same territory?

The Witness: Same territory, and of course——

Mr. Ransom (interrupting): And a company only about half the size.

The Witness: The figures are not comparable, because the preliminary and development includes deficits in early years and does not offset against those in that case any excesses in later years.

The Master: Is there any reason why this company then is not justified in asking me to find upon the basis that you found in that case, that their business being twice as large, they are entitled

2064 to about a half a million dollars for that alone?

The Witness: Yes, I think there is.

The Master: What is it?

The Witness: Because if you are going to take the deficits in earlier years in the question of going values, you ought to take the excesses in later years, and I specifically stated in my testimony that I have not undertaken to determine in this case whether there were any deficits in earlier years. You will remember that I left that out, and stated that I left it out.

The Master: But that is only a part of this quarter of a million dollars, this going value?

The Witness: That would be a very large part.

The Master: How large a part?

The Witness: I don't know, I could not tell how much it was, without going over my working papers in that case, how much of that $110,000 was allowed for that item.

The Master: Yes, but $240,000 odd for the two items——

Mr. Ransom (interrupting): It is $136,345 for contractors' profit, administration and contingencies, and he says $110,000 for preliminary and development. I am unable to find from the record in this case or in these other cases concerning which I have interrogated

him that his allowance for preliminary and development did include going value or did include deficit.

The Witness: As to the $136,000, there isn't a single item in that case that is covered in the figures that I have given with the
2065 possible exception of administration. Contractors' profit and engineering has been covered by Mr. Hine's figures; contingencies and incidentals are covered by his figures.

The Master: Prior to 1904?

The Witness: All the way through. The only item in that $136,000 that is covered by any figures I have presented is that of administration expense.

The Master: In arriving at the value of a plant which is being used for the manufacture and distribution of gas, I have got to take into consideration all of those items, haven't I?

The Witness: You certainly have.

The Master: I don't mean as a matter of law; I mean in order to determine the value.

The Witness: You certainly have.

The Master: I have got to have in mind that they have got preliminary expenses of various kinds, that there are legal expenses in the course of organization.

The Witness: That is right.

The Master: There are organization expenses?

The Witness: That is right.

The Master: There are deficiencies at the beginning of operation?

The Witness: Yes, likely to be.

The Master: Likely to be; that there is more or less waste, I suppose, in getting the thing in shape and going?

The Witness: Well, that I included in the operating expenses.

The Master: Now, all of those things go into the ultimate value of a plant, don't they?

2066 The Witness: They do.

The Master: Now, when you come to figuring all those things out, didn't you find that the figures ran very much alike in various plants out in that section of Queens and Brooklyn?

The Witness: Well, very much alike as to the——

The Master (interrupting): Ultimate results.

The Witness: Engineering charges.

The Master: No, but as to the ultimate result of a thousand cubic feet of gas sold.

The Witness: I would not wish to say that.

Q. Didn't you use substantially the same percentages in the Queens Borough case and the Kings County Lighting case and the Brooklyn Borough case?

A. Percentages for what?

Q. Those various kinds of overhead charges?

A. Much the same, as I recall, as to the percentages, but that is only a part of the cost.

Q. But as a matter of fact this figure of $136,345, these overhead charges as you call them, was based upon general knowledge and experience, rather than upon the particular company, was it not?

A. No; general knowledge was used, but it always had reference to the particular company and the particular company's experience.

Q. Well, do you recall saying this, "There are certain expenses connected with every undertaking which are not represented by physicalical property, but which must be incurred before the plant is operated. These relate to the initial promotion of the scheme
2067 and organization of the company. Investors must be interested; lawyers and engineers must be consulted and franchises and permits must be secured. Interest and taxes during the period of construction must be paid, and if there are no earnings, they must be included as a part of the cost of the undertaking. There are also other expenses connected with the experimental and trial operation of machinery and the adjustment of various parts and so forth which antedate operation. It will be recalled that the estimates already given include simply $263,000 for engineering, supervision, contingencies, incidentals and contractors' profits."

A. Those are estimates of Mr. Connette.

Q. (Continuing reading:) "Thus no further allowance need be made under this head or these items, but it is sometimes customary to group all under one title, 'overhead charges.' Ordinarily one would expect that the company itself would have data upon which to base an estimate of a reasonable allowance for these items. In this case the company has produced no such data, and as the early records are missing, an estimate must be based upon general knowledge and experience."

A. Yes.

By the Master:

Q. Did you find there was any general knowledge or experience covering the matter?

A. Well——

Q. (Interrupting.) Or is there now?

A. Of course there is, always is.

Q. Isn't there a very definite knowledge on the part of people interested in the gas business as to what a gas plant is worth that will produce a certain quantity of gas and that is in good operating condition?

2068 A. On the basis of so much per thousand?

Q. Yes.

A. No, there is nothing but a rough "curbstone" opinion.

Q. How long has that obtained, that rough "curbstone" opinion?

A. Oh, various figures are used by various persons, and have been for some time.

Q. Well, what figures?

A. Well, they range all the way, depending on the man who makes the testimate and depending upon the plant, from two or a little over two dollars a thousand, up to, some men use, ten dollars a thousand.

Q. Have you ever studied the question?

A. Yes.

Q. What do you say is nearer the figure?

A. I say that you cannot estimate the value of a plant that way. Sometimes if you do you strike it very closely, and sometimes you miss it pretty far.

Q. Why?

A. Because there are circumstances which, merely going and looking at a plant the first time and without inventorying it, taking into account the precise conditions that exist, that mislead you, you don't know about them.

Q. What circumstances would there be, so far as the consumer is concerned, that changes the value of a plant as to him, when all that he knows about it is that he is getting a thousand cubic feet of gas? What difference does it make whether it is red brick or yellow brick, or whether the plant covers one block or two blocks, or whether it is one type of machine or another type of machine, if what it does is to produce a thousand cubic feet of gas?

2069 Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant, immaterial. I think it is a matter of common knowledge that water plants and gas plants have different valuations.

The Master: Water plants?

Mr. Neumann: Water gas and coal gas plants.

The Master: Certainly, I know that.

Mr. Chambers: I think it is objectionable and argumentative, and that the Master has a lot of questions in one.

The Witness: Well, there are a great many factors that make plants with approximately the same output have quite different values.

Q. To the consumer?

A. Yes. Value for rate making, any way, and I am talking about that.

Q. How can it be any more or less valuable to the consumer? I can understand, Mr. Maltbie, how the plant may be one that can be more economically operated than another, and in that sense is more valuable than another, and I can understand how there might be factors in a situation that would change the value of a plant for purposes other than the consumer's interest in the situation, but for the life of me I can't understand how, so far as the consumer is concerned, he is interested in whether that plant is worth, from any standpoint of valuation, $10 a thousand or $1 a thousand, if, through the years, the average ordinary operating plant can produce it at $4. What does he care what it costs? Isn't it worth $4 to the consumer or $5, whatever the figure may be?

2070 A. No, I do not think so. Just take the question, for instance, of whether you have a water gas plant without any coal gas adjunct at all.

Q. Yes.

A. That will give you one figure for plant capacity alone, plant output alone. Now, if you have a coal gas plant capable of handling, we will say, two-thirds of the output, in case you need it and yet you have a water gas plant capable practically of handling 80 per cent,

your plant value or cost per unit of gas sold, will be very much higher in the latter case than it will in the former case, and whereas you may have only $2 or $2.50 or $3 a thousand in the one case, your plant, if you have got a coal gas plant there too, will increase the cost very much more. I say it may. It all depends upon the conditions that exist.

By Mr. Ransom:

Q. Now, with respect to this plant of the Queensboro Gas & Electric Company, selling 177,200,000 cubic feet a year——

The Master: What kind of a plant is it, coal or water gas?
Mr. Ransom: Water gas.

Q. Do you recall saying this: "As to interest and taxes a very close estimate can be made, not more than eighteen months would be required to construct the plant, according to the engineers? This does not mean that the whole undertaking with all its lines was or would be built in eighteen months from the very beginning to the end, but that the equated period would not exceed a year and a half. In this case the equated period of construction would not exceed eighteen months"?

A. Yes. I have changed my opinion very much about interest and taxes during construction of the average plant since I
2071 wrote those opinions. There isn't any question but what we allowed a great deal more than was reasonably necessary and proper in those cases.

The Master: Well, since then, of course, you have got into the employ of public authorities.

The Witness: No, but we changed it in the later opinions for the Commission.

Q. You allowed $30,000 for working capital for the gas operations of this company?

A. I think that was about the figure.

Q. You determined that as of that time 8 per cent was a fair rate of return on the value of property used in the gas business?

Mr. Neumann: That is objected to.

Mr. Chambers: I object to that as being incompetent, irrelevant and immaterial. We have not interrogated Mr. Maltbie at all on the rate of return in this case.

The Master: Yes, I will sustain the objection.

Mr. Ransom: Exception. I think in connection with all the theories he has given on the subject of depreciation and reserve and the like, the question of rate of return becomes important, because as he himself said in this opinion, it is——

The Master: Don't take this. (Discussion off the record.)

The Master: Was that $800,000 to which Judge Ransom referred the value that you found for the entire manufacturing and distributing plant, or just for the manufacturing part?

The Witness: No, that was the entire plant, gas department of the company.

2072 Q. And that included $110,000 of preliminary and development expenses and $136,345 for these other overhead charges?

A. It did.

Q. Now, in this case you also determined that 15 per cent was a reasonable quantity of gas unaccounted for, did you not?

Mr. Neumann: That is objected to on the ground it is immaterial.

The Master: Objection sustained.

Mr. Ransom: I offer to show by this witness that in passing upon the question of gas unaccounted for in this Borough of Queens case, that he determined that 15 per cent was a reasonable allowance.

The Master: I will sustain the objection.

Mr. Ransom: Exception.

Mr. Chambers: Oh, that is an engineering question.

Mr. Ransom: I now offer in evidence——

The Master: Let us see if we have it clear that this Queensboro plant about which we have been talking is a plant in a territory quite similar to the plant of the New York & Queens Company.

The Witness: No, I should say it was in a territory quite different from the New York & Queens Gas Company.

The Master: In what respect?

The Witness: This supplies, so far as the property particularly in the City of New York is concerned, this Far Rockaway section, and that is entirely different from the north part of Queens or the interior of Queens.

2073 The Master: You mean by that it would cost more to put up a plant to produce 117,000 M's there than in Flushing?

The Witness: I should say so, yes.

The Master: Why?

The Witness: Because of the conditions of the soil, and furthermore the conditions of sale. This company has its maximum sale in the summertime, a very variable sale, with a great increase on hot days, a big jump, big variation, and they have got to have a plant for handling the maximum day.

By the Master:

Q. I don't quite understand your point. Does it cost any more to put up a plant in the Rockaways because the maximum load is in the summertime?

A. You have to have more plant. I don't know as it would cost any more to put in a structure, of course that would depend upon the foundations and where it is placed there. I would not say whether the structures are located out there in such a place that the foundations would be entirely different from the foundations of the buildings in the New York & Queens Gas Company, but what I had in mind principally was that they would have to have more plant in relation to output.

Q. Why, because their peak is in the summertime instead of the wintertime?

A. And it jumps very greatly because of the influx on hot days of people into Far Rockaway.

Q. What do you mean—what was the maximum value of this Far Rockaway plant?

A. I do not recall. I do not think it is in that opinion.

2074 Q. Well, it does not cost any more to lay mains, does it?

A. Well, they have got a sandy soil out there.

Q. Only in part of it?

A. What?

Q. Only in part of it, along the beach?

A. A good part of that section.

Q. You would not say there was any sandy soil on Far Rockaway?

A. I would not say there was any sandy soil on Far Rockaway?

Q. On Far Rockaway, in the main part of Far Rockaway?

A. Yes, as I recall it, it is all sand. I was through there. They don't go but a little distance below the surface before they strike sand.

Q. I thought it was pretty good soil out there?

A. I am not speaking from absolute memory, but that is my recollection.

Mr. Ransom: Doesn't it cost less to lay mains in sandy soil?

The Witness: Not if you have to reinforce the walls to keep them from caving in.

Q. Well, is it your experience that you have to reinforce the walls in sand?

A. Shoring the pit, you will in some cases.

Q. How often?

A. It depends upon the sand.

Q. Well, generally speaking, do you say they have got to sheath pile or reinforce the trench in sand?

A. I don't know, generally speaking.

Q. Have you ever operated in sand or seen buildings go up in sand?

A. I have seen the mains laid out there.

2075 Q. Have you seen construction work going on in sand, or foundations for buildings in it, ordinary trenches?

A. I do not recall any now. I may have seen them.

Q. Would you be surprised to know that in perhaps a hundred buildings that have gone up right in the sand dunes of Sea Gate and Coney Island they never thought of such a thing as sheath piling a trench, and that the sand holds absolutely firmer than any other soil you ever saw?

A. I would be surprised at that, yes. You get a little water in the sand, and it is an entirely different matter. Dry sand——

Q. I am talking about the whole locality there?

A. Yes, and you get a little below the surface in Far Rockaway and you will get water.

Q. I was startled to find that in sand you could dig down into the

sand and it will hold absolutely firm, and they never think of sheath piling, or anything else?

A. Some kinds of sands will.

Mr. Chambers: You better talk to some engineers on that thing.

The Master: I have seen it.

Mr. Chambers: I have not seen it.

The Master: You don't have any sand up in Albany?

Mr. Chambers: All our barge canalers can tell you.

The Master: They don't have any beach sand up there; we are talking about this beach sand.

Mr. Chambers: Well, it is sand.

2076 The Witness: If it is sharp sand without round corners, look out for it, if water gets in it ever.

By Mr. Ransom:

Q. Did you refer to that in this Queensboro case?

A. I don't know whether I have or not.

Q. Did you in any way indicate that the cost of a plant was greater because their maximum demand came in the summertime instead of in the winter months?

A. I do not recall whether there was anything in that opinion about that.

Q. Now, you wrote the opinion adopted by the Commission in Case 1273, involving rates of the Kings County Lighting Company, did you not?

A. I wrote an opinion in that case.

Q. The opinion adopted October 26, 1911?

A. I think so.

Q. You assigned as the total value of that company's property, as of December 31st, 1910, $2,477,579, did you not?

A. If you will let me see the opinion, I will tell you.

The Master: Does the record show how big a plant that was?

Mr. Ransom: I am getting to that next.

The Witness: Read the question.

(The question was read by the stenographer.)

Q. And the company at that time was selling 580,728,000 cubic feet of gas a year?

A. That is correct.

The Master: Where was that property?

The Witness: That is down in the Bensonhurst-Fort Hamilton section.

2077 The Master: And what kind of a plant is that, water or coal gas?

The Witness: I think that is all water gas.

Mr. Ransom: I believe that is correct. Now, in this——

The Master: Wait a minute.

By the Master:

Q. What is the character of that territory? Have you any sand property there?

A. Only in parts of it, and I do not know whether they have any mains in that part; that is the southeast part of it.

Q. What is the southeast part, down near Coney Island?

A. Yes, off towards Coney Island, where they had the golf links down there; I do not think there are any mains laid in that property. The rest of it is pretty good soil.

Q. So that so far as the laying of mains is concerned, it compares with this New York & Queens, does it?

A. I should say so, more than the Queensboro.

Q. So far as the service conditions are concerned, it compares with the New York & Queens, that is a winter colony there, you haven't the summer crowd there?

A. Not to any great extent.

Q. So that this Kings County water gas plant compares more nearly to the New York & Queens than the Queensboro plant does?

A. I should say so, yes.

Q. Is it fair to draw a comparison as to value between those two plants, the New York & Queens and this Kings County?

2078 A. Well, I would not care to express an opinion upon that without going over the property itself, or at least an inventory of the property, in each case.

By Mr. Ransom:

Q. This figure which you have given of $2,477,579, that is the value after the deduction of $415,198 of depreciation?

A. For accrued depreciation, that is correct.

Q. In that figure of $2,477,579, you allowed for contractor's profits, engineering, administration, contingencies and incidental overhead, $341,149?

A. That is correct. I may say, your Honor, just glancing at one thing here, in response to your question, the land was included in the case of the Kings County Lighting Company at $650,000, which is far in excess of the amount of land for present value of the land in the New York & Queens case. They had some valuable water front property there.

Q. That figure which I have just given for these various overhead charges is 21.8 per cent upon what you call the net cost of tangible property other than land, is it not?

A. I have not figured it out.

Q. You state in your resume of appraisal as of December 31, 1910, net cost of tangible property other than land, $1,561,628?

A. Yes.

Q. To that you add overhead, the various items I have mentioned, amounting to $341,149, which is 21.8 per cent, if I figure correctly, upon your net cost of tangible property, making a total of cost of $1,902,000——

A. Read it all, "Total of cost to reproduce new."

Q. Yes. (Continuing) $1,902,077?

A. That is correct.

2079 Q. In addition to that you allow $260,000 for what you call preliminary and development expenses?

A. Yes.

The Master: That is all excluding land?

Mr. Ransom: Thus far, yes.

The Master: Now, anything else added, excluding land?

Mr. Ransom: Then he adds $80,000 of working capital, did you not?

The Master: I don't want that.

Mr. Ransom: That is all.

The Master: The contingencies, excluding land, you figured to reproduce new, less depreciation, those three figures of $1,561,000, $341,000 and $260,000, didn't you?

The Witness: Yes, exclusive of accrued depreciation to land. Have you got working capital there?

The Master: No.

The Witness: Yes, that is correct.

The Master: With depreciation off?

The Witness: No, that is with no depreciation taken off.

The Master: That is with no depreciation. Now, you depreciated those figures how much?

The Witness: $415,198.

The Master: Those three figures?

The Witness: Well, we did not depreciate preliminary and development.

The Master: What did you depreciate?

The Witness: We depreciated the land and the——

The Master: The plant I mean how much?

The Witness: I did not mean land. We depreciated the tangible property, including the net cost of the overhead.

2089 The Master: Yes. How much?

The Witness: $415,000. So you reached the conclusion that to reproduce that plant in 1909 or 1910, whenever it was, after deducting the depreciation, its value was $1,747,000, exclusive of land?

Mr. Neumann: No, if the Master pleases, I must object to that upon the ground that it does not presuppose that there were four other commissioners sitting there, that that was the conclusion of five commissioners.

The Master: The question I asked the witness was whether it was his judgment.

Mr. Neumann: Well, he was sitting there with four other commissioners at that time, there were five commissioners.

The Master: And he wrote the opinion.

Mr. Ransom: Yes, and they adopted it.

Mr. Neumann: That may be, but that was the judgment of the five of them.

Mr. Ransom: And they adopted his opinion.

Mr. Neumann: That is all true, but I want the record to show that there were five commissioners at that time.

Mr. Ransom: Let us hope.

Mr. Neumann: In addition to that, it should also be objected to on the ground that there is nothing now to show that the evidence in that case might not be quite contrary to what the evidence was in the present and extant case.

The Master: I am not interested in that. What I am interested in is this, that Mr. Maltbie has made a study of the values of plants. He had peculiar opportunity for determining the value of plants.

2081 He was not blindly following the testimony of witnesses, he was analyzing it, he was studying it and reaching a conclusion after hearing everything that he could get. He was not bound by the ordinary rules of evidence as a Commissioner, were you, Mr. Maltbie?

The Witness: No.

The Master: You had a right to get your information wherever you could get it.

The Witness: But you must have it all in the record.

The Master: Yes, but when you got information from any source you put it in your record to make it complete, wouldn't you?

The Witness: Not always, but you must have it in the record if you used it.

The Master: Now, Mr. Maltbie, with the peculiar opportunities he had, has reached a conclusion as to the value of various plants at various places, and I believe that testimony is properly brought out on cross examination as bearing upon the testimony he has given in this case.

Mr. Neumann: Well, as a matter of fact, the commission found, if your Honor wants to take it on the physical value as they found it, $2 in the Brooklyn Borough.

Mr. Ransom: We will come to that in a moment. Now, in this——

The Witness: There is a question you asked, unanswered.

(The question referred to was read by the stenographer.)

The Witness: Exclusive of land and working capital, that figure is correct.

2082 The Master: That is for some five million cubic feet?

The Witness: For 587,000 M cubic feet. That includes, as I called attention to a moment ago, the preliminary and development, which includes the early deficits in the early years.

The Master: Well, I understood you to say that that must be taken into account in arriving at the value of the plant.

The Witness: Yes, and it may be offset by excesses above a fair rate of return in later years, and that would depend upon whether it was or not, in each case, as it came along.

By Mr. Ransom:

Q. Now, this item of $341,000 is made up to include 10 per cent for general contractor's profit and 15 per cent for engineering, incidentals, etc., is it not?

A. I think it includes those items. Those were figures made by Mr. Connette, and he included, generally speaking, 10 per cent for contractor's profits. He was the engineer who made the appraisal for the Commission.

Q. And 15 per cent for engineering, incidentals, etc.?

A. And contingencies, I think.

Q. And you said that it is improper to allow that 15 per cent?

A. I do, when you are talking costs, because your cost has got your contingencies and incidentals in it already, everything is in it. In this case again the only item which I have included in my figures which is in that $341,000 odd, is the administration expenses, which is a very small item.

2083 Q. In this Kings County Lighting case again, you figured that the equated period of construction for the purpose of figuring interest and taxes during construction, was eighteen months, subject to this change of view which you expressed?

A. As a matter of fact I think it was eighteen months, and that was based upon the opinion of the engineer for the Commission at that time. As I have said, that was a high rate at that time, and it was in my opinion, before I left the Commission, very much too high.

Q. But in this opinion in the Kings County Lighting case, you stated to similar effect that you did in the Queensboro case?

A. Yes. That was a decision made about the same time as the Queensboro case.

Q. And that the pure average was not correct, and the equated period of construction would be about eighteen months?

A. I think we said eighteen months in those early cases.

Q. And do you remember what rate of return you fixed in that case?

Mr. Neumann: Objected to.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Do you claim that you did include going value in your preliminary and development in the Kings County Lighting case?

A. To the extent of including the items to which you referred in the Queens Borough case. The decision in the Kings County Lighting Company case was practically the same as the Queensboro, made along the same lines, including the same items. To that extent it does include going concern value, or going value.

2084 Q. Well, does it include the cost of developing the business during the preliminary period?

A. To a certain extent, yes.

Q. To what extent?

A. Well, to the extent that it would be necessary to get the thing going, get the thing started.

Q. Up to the point where the business would be the exact equivalent of that of the existing plant?

A. Oh, no, no sir. We never put that in.

The Master: Who is "we."

The Witness: The Commission.

Mr. Ransom: I do not think there is any use of discussing the action of the Appellate Division on that point with this witness. I merely call your Honor's attention to the action of the Appellate Division on that point.

The Witness: Particularly as to depreciation, I suppose?

Mr. Neumann: Why not call the Master's attention to the Court of Appeals, 210 N. Y., the same case?

Mr. Ransom: I already have done that.

Q. Now, the third case that we have referred to was the Brooklyn Borough Gas Company, to whose property you assigned a total value of $1,320,000?

A. If you will let me have the opinion, I will confirm that.

Mr. Ransom: In the copy I have here of this opinion, it is incomplete. Three-quarters of the opinion is not here in this bound edition.

Mr. Neumann: Shall I send over and get one of our copies for you?

Mr. Ransom: You might do that.

Mr. Neumann: Which one do you want?

2085 Mr. Ransom: I want Volume 4 of the reports of the Commission.

Mr. Neumann: Volume 4.

Mr. Ransom: Yes.

Q. Now, Balch vs. Brooklyn Borough, which was the first Brooklyn Borough case reported in Vol. 2 of the reports of decisions of the Commission, opinion adopted August 18, 1911, you reached the conclusion that the net cost of the property other than land was $916,154?

A. Will you let me have the opinion?

Q. As of December 31, 1910?

A. The statement just above it is, "The estimates of Mr. Connette for all of the physical property, used and unused, from December 31st, 1910, were as follows," and the figure is, "Net Cost of Property other than Land, $916,154."

Q. Well, was that not also adopted by you?

A. In that case we made no valuation of the property. We found an amount below which the value could not go, and as on that amount the company was not earning a rate of return in excess of a fair amount, the complaint was dismissed.

The Master: What do you mean by that?

Mr. Ransom: May I just follow that up?

Q. On page 639 you stated, "The amount reached above (practically $1,100,000) may be called, for lack of a better term, the minimum present value of the property upon which the company is entitled to a fair return. The Commission has not decided that it is the fair value of the property. Possibly it is less than the fair value. But if the company has not and probably will not during 1911 under efficient management earned a return upon this 2086 which will warrant a reduction of the rate, there is certainly no need to proceed further and attempt to determine the fair value. It should be noted that the minimum value of $1,135,000 has been obtained by refusing to allow the claim of the company for a higher appraisal of mains and services, the value of paving

for which the company has never paid and the plant not in use in 1910 nor to be put in use during 1911." Now, in reaching that $1,135,000 as the net cost of physical property other than land, you added $202,201 for the contractor's profit, engineering, administration, contingency and incidentals, did you not?

A. No. Those are Mr. Connette's figures, which were not adopted and found as the fair value of the property in that case.

The Master: Where did you get your minimum sum?

The Witness: Well, from the figures which Mr. Connette gave, with certain changes.

Q. Then your version is that Mr. Connette reached a present value of physical property of $994,476, is that correct?

A. As I recall it, that is correct.

Q. And that is what appears on page 638?

A. Yes.

Q. Then you said to this sum there should be added, "Preliminary and development, $180,000"?

A. And working capital, $40,000.

Q. Is that correct?

A. Yes, that is what it states there.

Q. And that is what you stated there?

A. That is what it states there, and I wrote the opinion.

The Master: Wasn't that your opinion?

2087 The Witness: Well, as I said a moment ago, all we were trying to find in that case was whether on a minimum amount they got a fair return, and if they did we did not have to find a fair value in that case.

The Master: I understand that, but that was a water gas plant, wasn't it?

The Witness: Yes, that was a water gas plant.

The Master: And that was located down in Coney Island of Brooklyn Borough, wasn't it?

The Witness: Yes, it supplies Coney Island.

Mr. Ransom: Coney Island and the Sheepshead Bay district.

Mr. Neumann: Manhattan Beach also.

By the Master:

Q. And the amount of gas put out by that company then was how much?

A. In 1910 the cubic feet of gas sold is 213,817 M.

Q. 213,817 M's, and you reached the conclusion that the plant under no circumstances would be worth less than how much?

A. $1,135,000.

Q. And that included mains?

A. That included everything.

Q. So that in your judgment, from what you saw of that plan and what you could learn about that plant, under no circumstances was it worth less than that anyhow?

A. That is correct; on the basis given, of including the preliminary and development in the way that I have already described.

2088 Q. In the sum of $180,000?

A. That is correct.

By Mr. Ransom:

Q. And contractor's profit, engineering, administration, contingencies and incidentals in the sum of $202,201?

A. No, I cannot say that both items were included, because you add all of those together and it gives you a certain amount. There are certain items that are later deducted.

Q. Well, those deductions are $88,000 for gas works not in use, and $50,000 for paving not paid for by the company?

A. That is correct.

Q. And after adding to represent the additions to the new plant, $60,000.

A. Yes.

The Master: The net result was the figures that you gave me before as the minimum value?

The Witness: Yes.

Q. You said, in fact, on page 637, with respect to preliminary and development expenses, "This subject is also generally discussed in the opinion in the Queensboro case. Following the principles there outlined, it is believed a deduction of $180,000 is sufficient to cover all preliminary and development expenses, including interest and taxes during construction."

A. Yes, the same principle would apply in all of these cases up to the Kings County Lighting case, and this case to which you refer was before the decision of the Appellate Division and Court of Appeals in the Kings County Lighting case.

Q. Did you determine that in that case 11.2 per cent was a reasonable percentage of gas unaccounted for?

2089 Mr. Neumann: Objected to on the ground it is immaterial.

The Master: Objection sustained.

Mr. Ransom: Exception.

The Master: There isn't any evidence offered by the defendants in this case contradicting the testimony offered by the complainant as to what the reasonable amount of unaccounted for would be in this case.

Mr. Neumann: Well, if the Court pleases, I must except to that. We offered the actual experience of this company. We offered the statistical records showing that in the year 1919 the increase over the year 1918 was 44 per cent.

The Master: I understand that. Percentages used in that way don't mean anything to me.

Mr. Neuman: That may be, but it may somewhere.

The Master: No, it ought not to fool anybody.

Mr. Neumann: It is not intended to fool anybody, it is intended to be the actual operation of this company.

Mr. Chambers: That is what we did in the Consolidated Gas case.

Mr. Neumann: The peculiarity about all of these cases, if the Court pleases, is that here are people losing their product all the time, and nothing to show that they are making an effort to trace those loses.

Mr. Ransom: Perhaps we can get through on this Brooklyn Borough case.

Q. Have you any figures of the second Brooklyn Borough
2090 case with you? In Volume 4, page 346, of the reports of decisions of the Commission for the First District, there is set forth your opinion in the Brooklyn Borough case as to the 31st Ward of Brooklyn, on page 346. Does it not appear from that page that a fair value of the property upon which you held that the company was entitled to a fair return at that time was $1,320,000?

A. I said a moment ago from what I have here I can't check up that figure, it doesn't agree with the figure that I have.

Q. And that the cubic feet of gas sold for 1912 was 273,253,000 cubic feet?

A. I haven't any figures showing the sales of the company in those years.

The Master: Can you take up something else while you are waiting for that volume?

Mr. Ransom: I think that is all.

Mr. Neumann: It will be right over here.

The Master: Have you anything else to ask Mr. Maltbie while we are waiting?

Mr. Chambers: Yes.

Mr. Neumann: Here is the volume (handing Mr. Ransom).

Q. In the year 1912, as appears from page 346 to which I have just directed your attention, cubic feet of gas sold by the company was 273,253,000 cubic feet; is that correct?

A. In 1912?

Q. Yes.

A. Yes.

Q. The amount of allowance for working capital was $60,000?

A. That is correct.

Q. The amount allowed for preliminary and development expenses was $180,000?

A. That is correct.

2091 Q. The reproduction cost of the property, aside from land, was $1,144,043?

A. That is correct.

The Master: Is that after depreciation or before depreciation?

The Witness: That is before depreciation.

Q. The value of which you found was $107,500?

A. That is correct.

Q. The net cost of plant, mains and other physical property as of December 31st, 1912, was found by you to be $1,008,292?

A. Well, those were the figures of the engineers to the Public Service Commission.

Q. Were not those the figures which you adopted?

A. Which in the main were used. I think there were some changes in them. They were not very material.

By the Master:

Q. Do I understand, Mr. Maltbie, that the Commission has in its employ engineers capable of valuing property of this kind?

A. At the present time?

Q. Yes.

Mr. Chambers: I object on the ground that Mr. Maltbie is not there. Why not ask the Commission?

The Master: He knows the personnel of the Commission.

Mr. Neumann: I must object to that on the ground it is incompetent, irrelevant and immaterial, so far as this particular case is concerned.

The Master: Objection overruled.

Mr. Neumann: The valuation here is put in by the Attorney-General.

2092 The Master: Objection overruled.

Mr. Neumann: As has been stated by some of our engineers, co-operating with their force.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I know they have very competent electrical engineers there Whether there is any one there competent to put a final figure upon the plans I would not wish to say.

Q. It is rather remarkable that a public service commission should not have in its employ engineers capable of giving me expert valuations of gas plants, is it not?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant, immaterial and purely argumentative.

The Master: I think it is very material.

Mr. Chambers: I object to it on the ground that the Commission is not on trial today.

The Master: No, but I think it is very significant that the defendants do not produce a practical gas engineer, a man who has had to put up and operate plants and knows what it costs from actual experience, rather than Commissioner Maltbie, whose information and knowledge comes really second-hand from the expert knowledge of other people.

Mr. Neumann: I assume there are two ways of obtaining knowledge—one by your own experience, and that by the experience of others.

The Master: Yes, and I think the one who has his own experience directly—his evidence would be much more satisfactory than that of the man who gets it second-hand.

Mr. Neumann: I think the man who has judged both sides and

heard both sides testify is just as competent as a man who
2093 goes over and looks at a plant.

The Master: I think he is competent, but I say not quite so satisfactory.

Mr. Neumann: I must except to the Master's characterization.

Mr. Ransom: It is the first time in jurisprudence I ever heard the principle laid down by counsel or sustained by a judicial officer presiding that a person became qualified to testify as an expert by hearing other people testify.

Mr. Cummings: By study.

The Witness: I think Mr. Hine did the principal part of that valuation work, and Mr. Hine has testified in this valuation case.

By Mr. Ransom:

Q. To this figure of $1,008,292 which you described as the net cost of the physical property, there was added $166,609 for contractor's profits, engineering, administration, contingencies and the like; is that not correct—being column 3 of the table, and the opinion stated on page 337, Column 3, "General engineering, supervision, administration, contingencies, incidentals and a general contract's profit where customary and necessary. These figures added to net cost give the estimated cost to reproduce the existing plant in a new condition."

A. That is correct.

Q. Then after deducting depreciation you reached a figure of $954,984?

A. For the tangible property, exclusive of plant.

Q. According to page 347 of this opinion the operating expenses of the company for the year 1912, exclusive of taxes, were $123,571.89, were they not?

2094 A. Will you read that?

Q. Operating expenses for 1912, exclusive of taxes, $123,571.89?

A. Exclusive of taxes, depreciation and uncollectible bills.

Q. That figure is correct?

A. Yes.

Q. And the taxes were $14,931.65?

A. That is correct.

Mr. Ransom: That is all.

Redirect examination.

By Mr. Chambers:

Q. Mr. Maltbie, taking the cases in the order in which you were interrogated by counsel for the complainant, who was on the Commission at the time you handled that Queens Borough Gas & Electric Company case?

Mr. Ransom: Objected to as immaterial.

The Master: I think it is immaterial. I will let you show that there were three or four other commissioners.

Mr. Ransom: I will admit it?
Mr. Chambers: Why not give their names?
The Master: I do not care anything about it.
Mr. Chambers: That they were eminent men, lawyers, and so on.
The Master: I do not care anything about it.
Mr. Ransom: I will admit there were four others. This witness says that these matters were referred to him and he wrote the opinion.
Mr. Chambers: Your Honor rules that out?
The Master: Yes.
Mr. Chambers: Exception.

2095 Q. Were there other commissioners?
A. There were.
Q. Was that opinion in that case adopted by the members of the Commission?
A. It was.
Q. That was an informal proceeding, was it not, Mr. Maltbie?

Mr. Ransom: Objected to.
The Master: What do you mean by informal?
Mr. Chambers: That is what I want to know.
Mr. Ransom: The facts speak for themselves.

A. It was.
Q. What do you mean by an informal proceeding?

Mr. Ransom: Objected to as immaterial.
The Master: I will take it.
Mr. Ransom: Exception.

A. The company in that case agreed to accept the finding of the commission before such finding was made, regardless of what the finding was, and put the rate into effect for one year. As a result we did not go through the formality of taking formal proof and cross examination and everything of that sort. A great deal of it was done by conference and discussion around the table. Those hearings and conferences were always open to the public.

The Master: What case was that?
Mr. Chambers: The Queens Borough.
The Witness: That was the first Queens Borough case.

By Mr. Ransom:

Q. Was there not some testimony taken in that case?
2096 A. Some testimony was taken, and then this arrangement was made and, as I said, the formality of the proceedings and putting in evidence was dispensed with.
Q. An order was made, was it not?
A. Oh, yes, an order was made.

Mr. Chambers: Just a minute now.

By the Master:

Q. I get the impression, Mr. Maltbie, that you and the representatives of the gas company in a more informal manner than would ordinarily be found in a judicial proceeding tried to work together to get a fair value?

A. That is correct.

Q. And the result which has been spread upon the record was due to this co-operative effort to get at some value that would be agreeable all around; is that correct?

A. Well, I do not know whether they would say that it was agreeable all around, but they did agree to accept the order of the Commission before they knew what it was and before it was entered, and before we began to go into it in detail, and put the rate in effect for one year, and they did it.

Q. I suppose the limitation of the rate for one year was due to the fact that operating costs might change after a year?

A. Partially, yes.

Q. Not that the value of the property would change?

A. Not that the value of the property would change, but conditions might. They did not want to be bound indefinitely in the future.

Q. In other words, your idea was that once you fixed the valuation of the property that order remained stationary, and
2097 that the cost of operation and the expenses of producing the article and distributing it might vary and fluctuate?

A. Yes, unless some mistake had been made or some experience was found which would lead us to change our opinion as to any element of value.

By Mr. Chambers:

Q. When was that company organized; is there anything in there to show it?

The Master: I do not think that is important. How is that important?

Mr. Ransom: I object to it as immaterial.

Mr. Neumann: If your Honor please, that is quite important on the question of going value. Counsel was allowed to interrogate this witness quite fully on the question of going value.

Mr. Ransom: I will consent to have the entire opinion go in evidence.

The Master: Yes, I will allow it.

A. Well, the Queens Borough Electric Light & Power Company was incorporated on February 28, 1898. Upon May 29, 1902, the Queens Borough Gas & Electric Company was incorporated, and that was the company which was doing business at the time this case was on.

Q. Did you allow anything for going value in that case, Mr. Maltbie?

Mr. Ransom: Objected to. The opinion speaks for itself. It shows what he did.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Not as a separate item. It was included in preliminary and development.

Q. As you testified a few minutes ago?

A. As I have already testified.

2098 Q. What allowance did you make in that case for working capital, if any?

A. For the gas department $30,000.

The Master: Hasn't he already testified to that?

Mr. Chambers: No, I do not think he has.

The Witness: No.

Q. In the Kings County case the Commission was still composed of members other than yourself?

A. Yes, as long as I was on the Commission—that is, for the period covering all of these cases—there were five members of the Public Service Commission for the First District.

Q. What did you allow for going value in that case, do you remember?

A. In which case?

Q. The Kings County, which is a little farther over in that volume.

A. That is in another volume.

Q. Could you tell from this Appellate Division decision (indicating)? There it is.

A. I allowed $80,000 for working capital in the Kings County Lighting case.

By the Master:

Q. Of course, that would have to be very much more today?

A. It would be more today, yes.

Q. Much more?

A. How much?

Q. Much, I say?

A. Well, I should say appreciably more.

Q. Probably twice as much?

A. No, I would hardly say twice as much.

Q. The value of materials has gone up twice, has it not?

2099 A. Yes.

Q. Labor has gone up pretty nearly twice, has it not?

A. Yes, but the amount of cash that you would need to carry would not have gone up.

By Mr. Chambers:

Q. Do you remember what happened on the question of going value in the Court of Appeals, Mr. Maltbie, in that case?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Why?

The Master: You know just as well as I do why. Do not ask those questions.

Mr. Neumann: In this case, if the Court pleases, this witness testified that they had changed their rulings after the Court of Appeals decision, and these questions were directed as to what the Court of Appeals' decision was and what the change was.

The Master: I sustained the objection.

Q. Did you in regard to going value, Mr. Maltbie, or did the Commission, change its rulings because of anything said by the Court of Appeals in that case?

Mr. Ransom: Objected to as incompetent.

Q. (Continued:) Or what effect thereafter did the decision of the Court of Appeals have?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. I will let you ask Mr. Maltbie whether after the decision of the Court of Appeals in the Kings County case he figured going value in any other way than he had theretofore.

Mr. Neumann: Whether the Commission did.

2100 The Master: No, I do not want what the Commission did. I want his individual judgment and opinion. He is swearing to it.

Mr. Ransom: I object to that on the ground that the decision would be the best evidence and there is not any other decision.

The Master: No, what I mean is whether he arrived at any different opinion as an expert accountant. I will put it that way, as to what ought to be done about going value. Did the Court of Appeals opinion change your judgment at all in reference to it?

Mr. Chambers: No. I did not ask him that.

The Master: Or was your action thereafter in submission to the Court of Appeals decision?

Mr. Ransom: Objected to as incompetent, not within the scope of either the direct or cross examination, the witness not being qualified, and it is not a matter on which the opinion of the witness should be reflected in decisions, if at all.

The Master: I will overrule that objection. Let us get this clear.

The Witness: The Court of Appeals decision did not change my opinion as to how these things should be dealt with. I am of the same opinion now on that point that I was at that time.

By the Master:

Q. But your action as Commissioner was controlled by the opinion of the Court of Appeals?

A. Of course.

Q. That is what I want to make clear.

A. And there is this to be said about it—that the rule laid down

by the Court of Appeals as to going concern value has a great
2101 deal to be said in favor of it, as a fair method of determining an amount to be allowed. But it has not changed my opinion as to the method.

Q. That may be all right, but I am taking your testimony as an expert opinion as to the method of arriving at the value of the plant. Whatever the rules of law may be, that is something that the Courts will have to consider, having in mind the sworn testimony of a witness whom I have ruled was expert enough to testify as to how the plant should be valued, to get its value.

A. It has not changed my opinion upon it at all. As a matter of submitting the full question to the two bodies, I have made attempts to apply the Court of Appeals ruling to cases that I have had, just as I have made attempts to apply the Des Moines case to cases I have had.

Q. Well, you were bound to.

A. Certainly.

Q. After I had gotten all the evidence I can get and the opinion of experts as to what constitutes the value, and how you get at it—after all, I have got to be guided by the decision of the Courts in reaching a conclusion myself as to what the value is?

A. That is what I meant when I have tried to say a few times that making it conform to the decisions of the Courts in certain cases, I find so and so. Because, while the opinion of the United States Supreme Court is not exactly the same as the Court of Appeals in the Kings County Lighting case, yet that is one of the methods of arriving at an element to be taken into account, and I have submitted facts along those lines to the two bodies. Just as in the Minneapolis case, I made an investigation to determine
2102 whether there were any such losses in earlier years which had not been offset by excess of fair return in later years.

By Mr. Chambers:

Q. In these cases that counsel has asked you about did you allow something for depreciation?

A. We always deducted accrued depreciation in all of those cases.

The Master: From reproduction cost.

The Witness: Yes.

Mr. Chambers: That is all.

Mr. Ransom: That is all.

The Master: Are you ready to go on with Mr. Hine?

Mr. Ransom: This afternoon?

The Master: No, tomorrow?

Mr. Ransom: Yes.

Mr. Chambers: I would like to ask Mr. Maltbie one question.

The Master: Ask what you want.

Q. Mr. Maltbie, have you because you have been employed by the Attorney-General or the public authorities—has that caused you in any way to change your opinion on these various subjects?

A. Absolutely not.

Adjourned to Wednesday, June 23, 1920, at 2 P. M.

Last Complainant's Exhibit 106.
Last Defendants' Exhibit A-112.

2103 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 23, 1920

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant;
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton;
Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

WILLARD F. HINE recalled.

Cross-examination.

By Mr. Ransom:

Q. Mr. Hine, at pages 2236 and 2237 you testified you had a number of men working with you under your direction on this work in connection with this case. You named four. Were there any others?
A. I think those were all that worked on this case. Some others may have done occasional work.
Q. Well, what others?
A. I do not recall any at the present time.
Q. How many of those men spent any considerable amount of time at the Flushing works?
A. Mr. Unger and Mr. Goldthwaite spent considerable time there.
Q. Any others?
2104 A. No, sir.
Q. Mr. Goldthwaite has been in court here during the trial of this case?
A. I believe he has once or twice.
Q. Mr. Unger?
A. No.
Q. What work did you instruct them to do at the Flushing works?
A. They were checking the inventories of the Flushing works.
Q. All of the four, or merely the two?
A. The two.

Q. How old is each of those four men that you mentioned?

A. Why, I am sure I don't know. I think Mr. Goldthwaite is somewhere in the neighborhood of 32 or 33; I think Mr. Unger is—I don't know.

Q. How about the other two?

A. I do not know the ages of the others, I am sure.

Q. Well, about what, have you any idea?

A. Mr. Zientz, I would say that Zientz was somewhere in the 30's, probably, and the man working with Mr. Zientz, Mr. Rode, I haven't any idea what his age is; he is a young man.

Q. How about Mr. Unger?

A. Mr. Unger I should say is about 23 or 25, I don't know.

Q. Mr. Rode you cannot give any idea?

A. I think he is around 25, or 25 to 30.

Q. What experience has any of those four had in gas engineering?

Mr. Neumann: I object on the ground it is incompetent, irrelevant and immaterial, not within the province of this witness
2105 so to testify.

The Master: I am going to allow, or I am going to permit counsel to develop and spread on the record the fact that these two engineers to whom the witness has referred are either experienced or inexperienced, as the testimony may develop. They are young men. They may be electrical engineers or something else, and I am going to get it on the record.

Mr. Neumann: The people he is speaking of now were with the Public Service Commission.

The Master: I understand, but that don't make them any more qualified than if they were strangers.

The Witness: As to Mr. Goldthwaite, I do not believe he has had any practical gas experience. His experience has been generally electrical. Mr. Zientz has had experience in the inventory of gas properties, I know that.

Q. Has he had any experience in connection with the construction or operation of gas properties?

A. Not that I know of, except as to checking construction expenditures, and checking work that was done under construction authorization with the Commission.

Q. You mean experience in connection with the checks made by some public body?

A. Made by the Public Service Commission.

Q. He is regularly employed in the Electrical Engineer's office of the Commission?

A. I believe it is that department, yes.

2106 Q. Not in the Gas Department of the Commission?

A. He was assigned to the Gas Department for some time, something over a year, at one time.

Q. In doing what?

A. In making an inventory of the gas properties.

Q. Has any one of these four men, to your knowledge, ever had anything to do with the construction or operation of a gas works, or any part of it?

A. Not to my knowledge.

Q. How many visits have you made to the Flushing works in connection with this case?

A. In connection with this case directly one.

Q. How long did you remain then?

A. I got there in the morning and left about three o'clock.

Q. What time in the morning?

A. Some time before eleven, I believe.

Q. How much before eleven?

A. I don't know the exact time; it was around eleven.

Q. And you left about three, or before?

A. Around three o'clock.

Q. When, last, had you been at the Flushing works prior to that time?

A. It had been several years before that.

Q. How many years?

A. I could not say; I do not remember.

Q. More than five?

A. No.

Q More than three?

A. I do not remember just when it was, but I know it was not five years ago.

2107 Q. How many times would you say you had been there on these earlier occasions?

A. Four, five or six times, I cannot say, I am not sure.

Q. Can you give any idea how long you remained there any of those times?

A. No. I have gone through the plant several times, I know. As to when those were, and how long it took, I do not know.

Q. When you say you went through the plant, you mean you walked through it and looked it over generally?

A. Yes.

Q. Nothing more than that?

A. Well, I was viewing the plant, looking it over, not specifically except as to certain specific things we were interested in.

Q. Have you ever had responsibility for the output of gas of a company's system?

Mr. Tobin: Your Honor, I think the witness has previously answered this question, and I do not see any reason for repeating it.

The Master: You are breaking in while the question is being asked. I think that requires a little more definite statement.

Mr. Tobin: If the Master please, the question is surely indefinite, if nothing else.

The Master: Make it a little more definite.

Q. Well, have you ever been in charge of and responsible for the output and delivery of gas to consumers in any company?

Mr. Tobin: Now, that is objected to on the ground it is incompetent, irrelevant and immaterial. What materiality has the fact as to whether he had to deliver any output of any gas com-

2108 pany to the consumer with reference to his valuation of its property.

The Master: Overruled.
Mr. Tobin: Exception.

A. I don't know just what you would mean by that. When I was in St. Louis, and when I would be in charge of the plant on Sundays or holidays, why, I would then be responsible in the case of that plant for the gas that was sent to the holders and the condition of the holders in connection with the operation of the Station A Plant.

Q. How many plants had they in St. Louis?
A. Two manufacturing plants.
Q. Under ordinary conditions you were not in charge of either?
A. I was not in full charge of either.
Q. You never were in charge of both?
A. Except as to the output on Sundays or holidays.
Q. Then you were in charge?
A. Then I would be in charge of the A Plant, which had control over the other.
Q. You never were in charge of both—of the operations of both?
A. No, except as I have stated.
Q. On Sundays and holidays you said you had charge of the A Plant?
A. Yes, which controlled.

Mr. Tobin: If the Master please, I do not think it is fair to criss cross the witness in this manner. He has endeavored to answer the questions put by counsel, and I think counsel ought to be satisfied with the answer.
The Master: Overruled.
Mr. Tobin: Exception.

2109 Q. Well, laying aside for the moment the Laclede situation, have you anywhere else ever had charge of and been responsible for the output and delivery of gas to the consumers of a company?
A. No.
Q. What was your salary at Laclede?

Mr. Neumann: I object to that, your Honor, as incompetent, irrelevant and immaterial.
The Master: Overruled.
Mr. Neumann: Exception.
The Witness: I do not recall. I believe, when I left, somewhere around $125 or $150; thereabouts.

Q. That is a month?
A. Per month.

Mr. Neumann: Do you claim the salary has anything to do with a person's qualifications?
The Master: It indicates somewhat.
Mr. Neumann: Many high-class men cannot make money either, while other high-grade men——
The Master (interrupting): Yes, I know that, and some high-

class men like those sometimes found on the Federal bench are very inadequately paid, and yet the salaries paid by a private enterprise to an employee indicates somewhat the relative value of the work being done.

Mr. Neumann: Exception.

Q. The first time you were at Laclede your salary was $60 a month, was it not?

A. I started with that, yes.

Q. Do you wish to say now that it ever was more than $125 a month?

2110 A. No, I do not know.

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial.

The Witness: I know that I was offered more than that to stay.

Q. How much more, do you say?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

A. Double.

Mr. Neumann: Exception.

Q. Have you ever had charge of the maintenance and management of the distributing system of a gas company?

A. No.

Q. Now, your Table 11, Defendants' Exhibit A-97, what is that designed to show?

A. The cost of the apparatus and piping, that is of the gas works apparatus and piping, as of December 31, 1919, the depreciation of the same items and the cost less depreciation.

Q. With respect to each of those items of property in connection with your calculation of depreciation and of cost less depreciation, you estimated what you call the life in years of each such item of property, did you not?

A. The useful life, yes.

Q. And you also calculated and set down what you call the age in years of each such item of property?

A. Yes.

Q. And you gave to Mr. Alrich what you called the life in years and the age in years of each such item?

A. I did.

Q. Have you your working papers on those items in court?

A. I have.

2111 Q. Will you produce them so that you can refer to them?

A. Yes.

Q. Does that correctly set forth those ages and estimated lives as you gave them to Mr. Alrich (handing paper)?

A. (Examining paper.)

Q. I will take your working papers on that.

A. They are not arranged in that way. The working papers do not show the age.

Q. They do not show age?

A. No, sir; they show it in rates per year, and you have got to convert it.

Q. What did you call——

A. (Interrupting.) They show age, I beg your pardon; they do not show the estimated life in years; they show it in rate, per cent.

Q. They show a fraction, or rate per cent?

A. A rate per cent.

Q. Well, how did you call off the figures to Mr. Alrich which you gave as representing it?

A. Well, if it would be five per cent per year it would be twenty years.

The Master: He just converted it as he went along.

Q. Perhaps we best check that?

A. It will take just a few moments more. (Checking paper.) It seems to be correct.

Q. The assumed life in years and the age years set down by you and used in making these computations with respect to Table 11, which you gave to Mr. Alrich, are correctly shown on this page which you have just checked?

A. Yes. There is just one thing to be said about that life for the first and last items there. They were taken at the average
2112 for all of the other items in the group, the weighted-dollar average.

Q. That is, in respect to property installed prior to August 1, 1904?

A. And the miscellaneous items.

Q. And with respect to the miscellaneous items you depreciated them on the basis of assuming for them an average life obtained by a weighted average of the other items?

A. I applied the same rate that it would come out on the average for all of the other items actually, and that should, of course, be reduced to approximately 47 years.

Q. Well, did you know how long any of that property had been installed?

A. Well, I asked the dates on a great deal of it.

Q. I mean with respect to the property installed prior to 1904?

A. I guess I misspoke myself. I believe I said the estimated life as to the age. I did not. That was obtained in another fashion there.

Q. How did you get this forty-seven years of assumed life of the property installed prior to August 1, 1904?

A. Well, that is just what I have explained.

Q. You have not explained it yet so I understand it?

A. Well, I have applied the same rate there, that is, 2.17 per cent, which I obtained by finding the rate that resulted from the computations in connection with all of the other items except the first one and the last one. If I applied these annual percentages to the

dollars opposite each item except the first and the last in this
2113 Table 11, I would get a certain average rate for all of that property, which came out 2.17, which in other words is approximately 47 years, if you reduce it to years.

Q. Well, why did you assume twenty years of unexpired life with respect to the property installed in 1904, or installed prior to 16 years ago?

A. By taking the length of main in use at the end of each year, or whatever the period to be obtained, it was not the end of the year sometimes, in the early years, and I built up a curve showing the amount of mains in use by this company year by year since 1904 to this date, and prolonging the curve back to 1850, and on the assumption that practically all of those mains were put in during the latter years before 1904, I obtained as a minimum about 21½ years, which I used for all of that property installed prior to 1904.

Q. That is the way you computed what you assumed?

A. Just a moment——

Mr. Cummings. Let him finish.

The Witness (continuing): Then I used 20 years as the figure to be applied there as the minimum age on the average of the property installed prior to 1904 and in use on December 31, 1919. This is as of December 31, 1919.

Q. That is, that calculation made from mains was the basis on which you calculated or assumed the expired life of apparatus and piping in the works?

A. It was an estimate founded on the only data that I could obtain going back into that prior property, and in my judg-
2114 ment it would have to be even older than that at that time, very probably, considering the amount of retirements that have taken place.

Q. Well, what has such a calculation based on lengths and ages and assumptions with respect to mains got to do with water-gas sets and other apparatus in works?

A. Because that would indicate the growth of the plant at any rate, the output of the plant. There would be some relationship between the mains and the output.

Q. Well, what has expired life of mains, as you call it, got to do with a basis of estimating expired life of apparatus?

A. Well, from those figures, I do not think that they could be any less than that. That is the basis I had. It was the only data I had with respect to those prior years. In fact, I had nothing with respect to those prior years, and I built up that estimate that way, and it represented in my judgment the minimum. I assumed they were four years old, on the average, as at that date.

Q. As of what date?

A. August 1, 1904.

Q. How did you get your assumption of expired life in years for the miscellaneous items, 5.5 years?

A. That was based on the relative amounts of those expenditures in the various years, as shown in Complainant's Exhibit 96.

Q. Have you got your working papers upon which you worked out that figure of 5.5 years, the assumed expired life for the miscellaneous items?

2115 A. No. I find I have not got that. I thought I had, but I have not.

Q. Will you produce it at the next hearing?

A. I don't know whether I can. I know these were made up on scratch papers, and if it is not here it may have been mislaid.

Q. Well, you claim that you took Col. Miller's Exhibit 96, showing various purchases in the category of miscellaneous items in various years, and worked out what kind of an average for expired life?

A. Well, I just worked out a rough average on the expired life. For instance, if $10 was expended in 1910 and that would have an average then of 9½ years at the end of 1919, I would multiply that by 9½, 10 by 9½, and get 95; then if a thousand dollars was spent in 1912, I would multiply that thousand by the age of that main, and then adding together the resultant dollar years by the total of the dollars I would get an average figure representing the weighted average age of expenditures.

Q. That is without respect to what kind of property it was in the different kinds of property that made up these miscellaneous items?

A. It was, yes.

Q. Now, turning from Table 11 for a moment just to get two or three matters of information on meters and connections, you took Col. Miller's figure for the estimated cost of meters and connections up to August 1, 1904, as shown by Exhibit 96, that is meters and connections in existence then and still in existence, and you added to that the debits and credits and built up a figure down to the present time, did you not?

2116 A. Yes, I added the cost. Well, I took the cost of all property installed since that time, and added it to that figure. I did not need to take in the credits there, because of the fact that I would assume that the credits, if there were any, were on account of expenditures prior to August 1, 1904.

The Master: Well, as I understand it, you accepted Col. Miller's estimated cost as of 1904?

The Witness: I did for the property there in 1904 and still there.

The Master: Yes?

The Witness: Yes.

The Master: So you have not questioned that figure at all?

The Witness: I have not.

Q. And you added to that the meters and connections added since August 1st, 1904?

A. Yes.

The Master: So that I get this perfectly clear, because I think it is important here, if you had believed, as you looked at it, that Colonel Miller was too high or too low as of 1904 costs, estimated costs, would you have challenged it in any of your tables?

The Witness: I certainly would have challenged it, yes.

The Master: And I am correct in assuming then that Colonel Miller's statement of his estimated cost in 1904 must be accepted?

The Witness: Well, I do not know of a better figure.

Mr. Tobin: If the Master please, that is as to certain particular items that Mr. Hine took.

2117 Mr. Ransom: Practically all of them, isn't it?

The Witness: It is relating to this physical property that I have taken the figures.

The Master: It relates to certain properties estimated by Colonel Miller as having cost in 1904 a certain sum of money. That was his estimated cost in 1904.

Mr. Tobin: Physical property.

Mr. Neumann: It is only physical property, not any intangibles.

Q. Is there any physical property as to which you did not accept Colonel Miller's figure?

A. No, not referring to page 2 of Exhibit 96.

Q. Which shows the cost of plant and distribution system, exclusive of undistributed structural cost up to and as of August 1st, 1904?

A. Yes.

Q. Now, in your tabulations——

A. (Interrupting.) I think that ought to be amplified by stating that while the title on page 2 says, "Acquired by the complainant company on August 1st, 1904." I believe that the text on the other pages will show that that means "and in use at the present time?"

The Master: Yes, there is no question about that.

Mr. Ransom: The whole exhibit is "and in use as of the present time."

The Master: What I wanted to get clear, and quickly, is that I have got at least one situation where there is no conflict in their judgment that, as to the property that is now there——

Mr. Neumann (interrupting): Physical property.

2118 The Master (continuing): Physical property that is now there and was there on August 1st, 1904, Colonel Miller and Mr. Hine agree as to its estimated cost at that time.

Q. Now, in your exhibit, for the purposes of figuring depreciation and so on, you have shown meters and connections separately, have you not?

A. I have.

Q. How did you, and from what source did you split up the item of $21,595 for meters and connections, which Colonel Miller gave on page 2 of Exhibit 96 as a sum covering both?

A. I do not. That meter installation account covers nothing whatsoever except meter installation since August 1st, 1904, the installations as of 1904 being included in the meter figure, and they will be shown by Table 20, which is Exhibit A-105, where you will note that on August 1st, 1904, there is nothing in there for meter installation, that being included with the meters.

The Master: As I understand Mr. Hine, what is the figure that Colonel Miller gives for that tangible property estimated as of August 1st, 1904?

Mr. Ransom: $280,108, including land.

By the Master:

Q. As I understand your testimony, it is not that you say that was its value, but you say that it undoubtedly must have cost at least that sum when it was purchased, up to that time, is that the idea?

A. I would say that if the property that was there then is there now.

Q. That they undoubtedly paid that much for it?

2119 A. That is a fair cost, I would say.

Q. Not value?

A. A fair estimate of the cost, what it cost when it was put in.

Q. That is what I want to get clear. Now, I want to get this, that in order to get at its value, then you depreciated it?

A. Yes.

Q. What you agree with is that when it was purchased and installed, they undoubtedly spent that much money for it?

A. That is it.

Q. And when you say that in order to get at its value as of August 1st, you have to depreciate it?

A. Yes.

By Mr. Ransom:

Q. In your table 25, with respect to mains, depreciation as to mains, for example, as of 1919, you give a figure of $56,011 for the depreciation on mains up to December 31st, 1919. You have no table and no exhibit that I am able to find which gives any details of your method of computing such depreciation, if you computed it?

A. No, I do not believe there is any table that shows that I did compute it.

Q. Well, have you any working papers which show how you computed it?

A. Yes. I was never asked for those.

The Master: Have you got them here?

The Witness: Certainly.

Q. Well, let us see them.

Mr. Tobin: I suppose you take them subject to the rule, Judge Ransom.

A. (Witness hands paper.)

2120 Mr. Tobin: I think it ought to be noted that this particular paper has been taken by complainant and is being examined.

Mr. Ransom: It is.

Mr. Tobin: And its contents being made a matter of consultation with Colonel Miller.

The Master: Yes, it will be so noted.

1329

Q. On this matter of meters and connections, you say you to Colonel Miller's figure and you added to it new meters put in si August 1st, 1904?

A. All meters purchased since that date, at cost, shown by ledgers of the company.

Q. All meters purchased or all meters installed and charged capital account?

A. All charged to capital account, my understanding being t all meters are charged to capital account as purchased.

Mr. Neumann: Does counsel dispute that that is the custom of t company?

Q. How do you figure that you have given any credit to met replaced?

A. Meters replaced?

Q. Yes, you say you have not taken into account the replacem of meters since 1904, on the assumption that they relate to met that were installed prior to 1904.

A. My assumption is that Colonel Miller's figure for meters a installations is for meters and installations that were there on Aug 1st, 1904, and are still there. Now, if I add on all the meters p chased since that time I have certainly got them all in.

Q. Supposing that 25 per cent. or 50, of the meters which w in existence on August 1st, 1904, have since been replac
2121 rebuilt, wholly or in part; that affects the accuracy of y depreciation tables, does it not?

A. If they have been replaced, if 50 per cent of them have b replaced——

Q. Or part of them?

A. I will just take that.

Q. Or have been rebuilt in part, or renewed in part.

Mr. Tobin: Just a minute. If the Master please, I do not thi it is a fair question, because the proposal as made by Judge Rans is simply an assumption. It assumes something.

The Master: Of course, it does not prove anything; but it is pro cross examination.

A. If 50 per cent of these have been replaced it would mean t on August 1st, 1904, the company had approximately $43,000 wo of meters and connections, instead of the figure shown by Colo Miller on page 2 of Exhibit 96, of $21,595.

Q. Or that meters have been partly rebuilt?

A. Well, I assume that in order to have the life which I ha assumed of 40 years the meter has got to be repaired regularly a taken into the shop and that meters are repaired and replacements minor parts are put in, and new sides put in when they are rusted o and that they are only scrapped when it involves an expenditure t would be unreasonable, and they throw them away, as they d scrap them.

Q. Now coming back to Table 11 that table was used by you making up your various subsequent tables, was it not?

A. It was.

2122 Q. That is, in making up Table 21, Exhibit A-106——

A. Table 21 was it?

Q. Table 25 I mean.

A. Table 25, yes.

Q. Purporting to show what you call depreciation from December 31st, 1904, to 1919, you used Tables 10, 11 and 12, did you not?

A. I worked back from the figures as shown in those tables.

Q. And the figures for 1919 in Table 25, Exhibit A-106, represent the total of the depreciation column on these first supporting exhibits?

A. They do.

Q. And the first figure $92,044 set opposite the heading Buildings and Apparatus is the sum of the depreciation columns in Tables 10 and 11?

A. That is correct.

Q. Who made up Table 11 for you? Or did you make it up yourself?

A. Table 11, the first actual computation work was done by Mr. Unger.

Q. What did you do about it.

A. I checked it. I instructed him as to how to make it up; I gave him the ages and I gave him the depreciation rate to use.

By the Master:

Q. What did you say was the average, 2.17?

A. 2.17 on Apparatus and Piping, that is all.

Q. That would mean according to what you told me some time ago that an amount should be added to the cost of the gas to make up that depreciation of 2.17 during the years?

A. Absolutely, on that particular part of the property, yes.

2123 Q. And if it is not saddled onto the consumer in that way, then the consumer ought not to get the benefit of the depreciation that you now claim?

A. Why, the consumer has got to, in my mind——

Q. Pay for it?

A. Pay for this.

Q. Yes, that is what I mean.

A. Surely.

By Mr. Ransom:

Q. When you say you checked Table 11 after Mr. Unger made it up, what do you mean that you did?

A. I mean that I compared practically every figure in this, that I went through most of the computations, that I put a check proof on all the totals.

Q. That is, you checked the totals, the footings?

A. Yes, checked across.

Q. And you checked these computations resulting from the application of the percentages of depreciation to the cost figures?

A. Yes, a great many of them.

Q. Take first the column headed "Depreciation" on sheet A of Table 11. Will you tell me whether the amount shown as the footing on that is correct, or anywhere near correct?

Mr. Tobin: Just a moment. If the Master please, previously you suggested that it would be possible for counsel on either side to indicate anything on a particular exhibit that was not correct, rather than driving in this particular way. Now I think it is only
2124 fair to this witness, who has worked under great pressure at all times, to be saved these minor matters in the way of digging it out in that fashion.

The Master: We will get at it very quickly. Is there an error there, Judge Ransom?

Mr. Ransom: Why, yes.

The Witness: There is an error in that.

Mr. Ransom: An error of not over a hundred per cent.

The Master: Suppose you just call attention to it.

Mr. Tobin: I ask that that last part be stricken out until we know what it is, first.

The Master: Yes. Recalculate it and see if this is not the situation. You may ask that question.

Mr. Ransom: He has footed up his depreciation column to total $74,095.62 on Sheet A. The correct total is $40,651.09, a difference of over $34,000 out of $40,000.

The Master: All right. Mr. Hine, check that up and see if it is not right.

Mr. Ransom: Now, that is assuming the correctness of the figures which make up the column, and I shall take them up in a moment.

The Master: Let us approach it that way.

Mr. Ransom: I may say that he checked——

Mr. Neumann: Suppose you just let him check one at a time.

Mr. Ransom: It will be of aid to him. The same error is carried forward into Sheet B of Table 11, and the figure that should be $40,651.09, assuming the correctness of the figures that make
2125 up the column, is carried forward on Sheet B as $74,095.62, and the total of Sheets A and B, relating to the Apparatus and Piping, is given at $81,684.06, whereas a correct mathematical process would give it $48,239.53.

Mr. Tobin: That is assuming, if the Master please, that the data that Judge Ransom has worked from is the same data Mr. Hine has in his hand.

The Master: Mr. Hine is required by this question to figure up his own figures and see if they agree with the figures now presented by Judge Ransom. If he does not, we will find out where the error is.

Mr. Ransom: We have used the blue prints in making this check.

Mr. Tobin: We would like to have it noted, if the Master please, that counsel for the complainant still has the working paper of Mr Hine as to the age of the mains and services.

The Master: Yes.

The Witness: I have made that computation.

Q. How much is your depreciation column on Table 11 overstated?

A. The addition there is $33,445.53 more than the correct figure and, consequently, the last column Cost Less Depreciation is understated by the same amount, and that same error, a mistake in addition, is carried forward into Table 11-B and the difference extends through on the whole thing.

By the Master:

Q. Does it affect the percentages?

2126 A. It affects the final percentages—well, not the individual percentages, no, but it does affect the depreciation.

Q. Does it affect that rate of 2.17?

A. No, it would not affect the 2.17.

Q. How is that?

A. Well, because the 2.17 is founded on the annual amount that would have to be laid aside for operating expenses, not on the accrued depreciation as of December 31st.

By Mr. Ransom:

Q. The same error is likewise carried into the Table 25, Defendants' Exhibit A-106, is it not?

A. Undoubtedly. I will check it in just a moment. (After making computation.) Yes.

Q. And it is likewise carried into Table 30, Defendants' Exhibit A-107?

A. Yes, sir.

Q. Which table purports to show cost of fixed capital less depreciation?

The Master: He said yes.

Mr. Tobin: He said yes. He admits the mistake in calculation.

Q. Coming back to this column and taking up some of the items in it, according to your working papers this first item of property installed prior to August 1, 1901, at a cost of $64,600, you have assumed a life of forty-seven years, reached in the way which you have described, and have assumed an expired life of twenty years?

Mr. Tobin: If the Master please, I think the witness has clearly answered that question before.

Q. Well, is that correct?

The Master: That is preliminary to another question.

2127 A. Yes. Well, I have told you it is slightly incorrect, in that I have taken a certain rate.

By the Master:

Q. But it is substantially?

A. It is substantially that. You would not check to the cent for

the forty-seven years, and I have taken 2.17 as the annual rate and multiplied that by twenty.

Q. As near as you could work it out that would be forty-seven years?

A. Yes, giving it in even years.

By Mr. Ransom:

Q. Then you have not even undertaken to fix a period of useful life, as you call it, or a definite period of years of age expired, have you?

Mr. Tobin: If the Master please, I think the witness has clearly indicated just what he has done as concerns these particular calculations, more particularly along the question that has been asked. He used the best data available and all the information that it was possible to have at hand. The Master quite well knows that, as was set forth in Colonel Miller's exhibit, there was not the best kind of information back of the year 1904.

The Master: The objection is overruled.

Mr. Tobin: Exception.

Q. Do you recall the question now?

A. Yes, I think that I have. I do not think that I agree with your assumptions there. I have fixed it.

Mr. Ransom: May I mark in evidence this tabulation, in which he checked the years of assumed life and the age, which he
2128 gave to Mr. Alrich. In other respects the paper is a copy of Table 11.

Mr. Cummings: Do you offer it in evidence?

Mr. Neumann: If the paper is a copy of Exhibit 11, what is the purpose of offering this?

Mr. Ransom: In respect to those two columns, on which I asked him to check the figures of Mr. Hine.

Mr. Neumann: On counsel's own statement, if this is the same as Table 11, what is the purpose of offering it?

Mr. Ransom: It is the same except as to the columns which he checked. I wish the record to show those figures.

The Master: I will receive it on the statement of counsel that except for those two columns it is a copy of Exhibit 11, the witness having identified the two first columns as being correct.

Mr. Neumann: The Court did not give us the opportunity to put in our objections on it. I simply asked the question as to what the purpose was.

The Master: I thought you were objecting.

Mr. Neumann: Now I object to it on the ground it is incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 107.

The Witness: In connection with that first item of 47 years and also the miscellaneous items to which the same rate is ap-
2129 plied, I have used the rate of 2.17. I find it figures out closer to 46 years, if you reduce it back to years, I have worked from the percentage, as I have stated before.

Q. What assumed number of years of useful life, as you call it, did you attribute to the property acquired August 1, 1904?

Mr. Tobin: Just a moment, please. If the Master please, I think that the paper itself shows exactly what he is trying to have this witness answer. It is unfair to go back again and again and have the witness repeat his answers. He has answered that question and he has answered it fully.

The Master: Overruled.

Mr. Tobin: Exception.

A. The average that I obtained for the other items, definite items in making up this account.

Q. What number of years?

A. It figures out to a rate of years of approximately, as near as I have got it on the slide rule, now, 46.1 years. I did not assign it, though, by the year basis; I took the average for the other items, and it is the resulant year that you would compute.

Q. Have you ever before calculated the number of years of estimated life?

A. Ever before today?

Q. Yes.

A. I did for Mr. Alrich for the first time. I reduced that to years.

Q. 47?

A. And I got 47, as I remember, then. I did it on the slide rule

Q. If you assume 47 years of useful life and 20 years of
2130 expired life, the quantity of depreciation shown as the first figure in the depreciation column of Table 11 is incorrect, is it not?

A. Oh, it would be. That is not taken way out to the nth place, and it was computed in another manner, as I have explained to Mr. Alrich and I have explained to you.

Q. It is not a matter of the nth place, it is the difference between $47,489.24, which would be the figure on a basis of a 47-year life, and the figure $28,036.40, which you set down in this column.

Mr. Tobin: Just a moment. If the Master pleases, I think the witness has repeatedly stated that he did not attempt to measure the exact life of that property, that he was asked the result from figures that he had obtained. He has repeated that in the record several times, and I do not think it is fair for Mr. Ransom to again go back and have it repeated in this record. I think it has been done sufficiently.

The Master: Overruled.

Mr. Tobin: Exception.

A. The error in that computation is that the 47 is not out to the end. What was actually done was to take 2.17 or $64,300, which gave $1,401.82 as the annual depreciation, and that multiplied by 20 gave the $28,036.40.

Q. Is it not a fact that taking the items installed prior to August 1, 1904, and making the computation which you say that you made the result is a figure of 47 and not of 46.1?

Mr. Tobin: If the Master pleases, I think it is unfair to try to have the witness assume something which he did not do at
2131 all, and then try and get an answer to a question upon that assumption. I think it is decidedly unfair to carry on this line of questioning.

Mr. Neumann: He has distinctly shown time and time again that he used 2.17, the annual depreciation.

The Master: The objections are overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Would you please repeat that question?

Q. Is it not a fact that taking the items installed prior to August 1, 1904, and making the computation which you say that you made, the result is a figure of 47 and not of 46.1—that is, that the average is 47 and not 46.1?

A. No, I do not get that.

Mr. Neumann: I submit that is an answer, if the Court please. He has answered that question.

Q. Let us see if he understands it. Taking these items, the life in years, aside from the first and last items in Table 11, and producing such an average as you have described, isn't that resulting average 47, as you told Mr. Alrich, and not 46.1?

The Master: Taking it by years instead of the percentage rate.

A. Well, I haven't it that way. It would, of course, throw the thing a little different, because you cut off different points on your percentages. Some places here the last 3.33 is as close as I have gone, and it might make a difference in per cent.

Q. You mean to say you do not take all those items, except the first and the last, and produce an average?

2132 A. I did, but I told you how I did it.

The Master: What Judge Ransom means is that you did not take a percentage but took the years?

The Witness: No.

The Master: Judge Ransom asks you the direct question now, didn't you take the years now and average it and find it to be 47?

The Witness: No, not in that way.

Q. Let us take the second item. You told Mr. Alrich that your estimated useful life was thirty years and your calculation of the expired life was fourteen years for this 7 foot 6 Lowe water-gas set.

On that basis the amount of accrued depreciation would be 14/30 of the cost of that water gas set, $8,135.21, would it not?

A. Would you please give me that again?

The Master: The stenographer will read it.

Q. (Read by the stenographer.)

A. Yes, on that basis. The way it was calculated was by taking 3.33 per cent of the cost, which gave an annual of $270.90. Multiplying that $270.90 by 14 produced $3,792.60. If you would change the fractions and use fractions instead of decimals you would get a slightly different result.

By the Master:

Q. Why was it not fairer to take 14/30ths or, say 7/15ths?

A. Why, because I was calculating the annual depreciation first, and then I just multiplied that by the years.

Q. That is against this complainant company somewhat, though, is it not?

2133 A. Well, it is just—no, it would not be against them at all, because 3.33 is not as much as 3⅓. Now, if you were to use 3⅓ applied to that, the annual depreciation would be $271.17; the other way it figures out $270.90, and therefore the depreciation, handling it the way I did, the accrued depreciation, was slightly less. Now, that would go both ways, depending on how your fractions came, whether the decimals were more or less than the half.

Mr. Tobin: The Master might like to know that the exhibit of Mr. Hine concerning the life of the mains and services, and their age, is still in the possession of complainant's counsel.

The Master: Do not keep repeating that.

Mr. Tobin: It might also be interesting to know that the complainant company has contended that there is no depreciation and still they attack it here.

The Master: They have got to. You have offered the testimony on depreciation and they cannot permit the record to stand as it is.

Q. The same way with the next item: for example, you told Mr. Alrich that your assumption of the usual life was 33⅓ years and your estimate or calculation of the expired life was 12 years, which would make the accrued depreciation under your theory 12 into 33⅓ of the cost as shown, which gives again a different figure than you have set out in your depreciation column.

Mr. Cummings: I object to this, your Honor. It just shows if he figured it in a different way he would get a different result,
2134 that is all.

The Master: It is a proper question.

A. There may be a slight difference handling it by fractions rather than by percentages. I have taken 3 per cent of $1,506.75 as the annual requirement, and taken the depreciation as 12 times that.

Q. In other words, your theory of accrued age or accrued depreciа-

tion is not based upon any accurate relationship to the actual number of years of life and actual number of years of expired life, but rather upon some percentages?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, presupposes a set of facts that has not been testified to, and not in accordance with the record up to the present time.

The Master: Overruled. The witness will so state if that is the case.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. I say that it is based on an accurate computation. As to whether you should use percentages or whether you should use fractions in my mind does not destroy the accuracy.

Q. What you seek is a fraction and not a definite number of years of assumed useful life and a definite number of years of expired life?

A. No. I took a definite number of years of assumed useful life and I took the expired life and I reduced the definite number of years of assumed useful life to a certain percentage per year, and therefore I found the depreciation accruing here by that
2135 method, and then I multiplied that depreciation, so computed as accruing each year, by the age in years I had taken.

Q. But in each instance you took fractions which did not actually or closely correspond—or you took percentages which did not actually or closely correspond to the actual fractions indicated by the years of assumed useful life and the years of expired life.

Mr. Neumann: Just a moment.

A. I did.

Mr. Neumann: All right, he said he did.

The Master: What did you expect him to say?

Mr. Neumann: Here is a difference between counsel and the witness as to a method. There is no real difference at all.

The Master: You must assume this witness is going to stand his ground. He knows what he is contending for. Also, on the other hand, Judge Ransom is putting on the record his method of calculation.

Q. Let us take the last item, you put that down at 47 years, the miscellaneous item, in the manner which you have described. You said that property had a useful life of 47 years and an estimated expired life of 5½?

A. I said approximately, and told Mr. Alrich approximately 47, and it is stated repeatedly how that was obtained, that I took 2.17 per cent of the cost and so obtained the annual amount, and then multiplied that by 5½.

Q. Can you now state precisely in years the amount of assumed useful life of this property?

A. For those miscellaneous items?

Q. Yes.

2136 A. No, it would bring a string of figures and I do not know whether I could get to anything definite.

Q. You use——

A. I use there in connection with those two 2.72 per cent per annum, which would result approximately in 46 or 47 years.

Q. Approximately. Can't you give us anything more definite?

Mr. Neumann: How close do you want the witness to come?

A. Very close to 46.1. I have not taken it out by long hand to see how far it would go.

Mr. Ransom: I offer in evidence the witness' working papers or computation, or non-computation, of depreciation of mains.

Mr. Neumann: I think that is manifestly unfair and ungentlemanly. The word "non-computation" should be stricken from the offer.

The Master: I do not think you need worry about that.

Mr. Neumann: But we should be gentlemanly, if nothing else.

The Master: The trouble is we are lawyers.

Mr. Neumann: That should not preclude us from being gentlemen—even Judge Ransom. There is no way of offering an exhibit like that. The language is insulting.

The Master: It is not insulting.

Mr. Cummings: I make the objection to it on the ground that he has shown he did not use that method that the Judge is questioning about.

2137 The Master: I do not recognize your objection. I am recognizing Mr. Tobin today.

Mr. Cummings: I except to that, then.

Marked Complainant's Exhibit No. 108

Q. In making up this Complainant's Exhibit No. 108, which is your working sheet with respect to depreciation of mains, with respect to the column called Age in Years, did you start in 1919 and work back?

A. Would you let me see the paper?

Q. (Hands witness paper.)

A. Will you please repeat the question?

Q. (Read by the stenographer.)

A. No, for the cost of the mains installed from August 1, 1904, to 12/31/04, I took the age as 15 years. For those installed in 1905 the age is 14½ years, on the average at the end of 1919 and so on, and for the mains installed prior to August 1, 1904, I took 20 years.

Q. Why did you take 20 years for those installed prior to 1904?

A. As I have explained before.

Q. Is that all?

A. That is all that I can say, that I determined something over 21 years a minimum and used 20 years for that property.

Q. That is, you assumed that any main that had been laid prior to August 1, 1904, is at least 20 years old; is that right?

A. No, I did not.

Q. What did you do?

A. I assumed on the average all the mains that are now in use, that were installed prior to August 1, 1904, are 20 years old.

Q. That is a weighted average?

A. Yes.

2138 Q. Irrespective of size of mains?

A. Irrespective of sizes.

Q. In the second place you assume that any main which was laid between August 1, 1904, and December 31, 1904, is 15 years old?

A. I do.

Q. And that any main laid prior to December 31, 1905, is 14½ years old?

A. No, I did not do that. I assumed that any that was laid in 1905 is 14½ years old.

The Master: Prior to December 31st of each year?

The Witness: On the average, not in any one year. He did not limit it to that.

Mr. Tobin: No, he did not; that was not his question.

The Witness: All mains laid in 1905, prior to December 31, 1905, are taken as 14½ years on the average.

Q. How do you reach from that that any mains laid between August 1, 1904, and December 31, 1904, are 15 years old?

Mr. Tobin: Just a moment, please. If the Master pleases, I think that the witness has answered that question completely; he has answered it fully on the record. He should not be asked the same question.

A. I did no- take that out any more places than that; the nearest I have taken any of those was to the half year. It would be slightly more than 15 years old on the average. I have taken 15 years, that is all.

Q. Why did you take 15, just as an approximation or a guess?

A. No, it is not an approximation or a guess, it is close enough for an approximation of that kind. I have taken the nearest

2139 half. On the assumption that mains are laid uniformly through the year, or half before June and half after it.

Q. Your depreciation rate seems to vary up and down for the different years.

A. Yes, that is based on the rate, or on an estimated average useful life for wrought-iron mains 40 years, and 100 years for cast-iron mains, and the variation is produced because of the variation in the amounts of those mains that are laid in the various years, all of the mains now in use and installed prior to August 1, 1904, being taken as cast-iron mains.

Q. Have you the details of what you claim is the depreciation rate, or as to how you got that depreciation rate?

A. I see unfortunately I have not. I can send down for it and have it sent up here.

Q. Can you get it tomorrow and let us look at it?

A. I think I can get it up here tonight.

Q. Do you want to keep this and let me have a copy of it (handing witness paper)?

A. I can make a copy for you.

Q. I will make a copy.

A. I would like to have the original.

Q. I will let you have the original back. You testified, Mr. Hine, that Table 20 was made up from the preceding exhibits, together with Col. Miller's figure as to the cost of property up to August 1, 1904, physical property now in use, taken from Complainant's Exhibit 96?

A. Yes.

Q. And in making up Table 20 you started with the year 1919, you said, "starting with the figure as of December 31, 1919, which was shown by the preceding tables"—I am reading your
2140 testimony on page 2272—"and then working back from the book debits and credits to date as of August 1, 1904, by subtracting the additions and adding on deductions as I went back, the Douglaston Extension being set forth separately." Is that correct?

A. Yes, sir.

The Master: I think it ought to be noted that you are reading from the mimeograph record.

Mr. Ransom: Yes, page 2272 of the mimeograph record.

Q. So that the 1919 figures in Table 20, Exhibit A-105, are the only figures taken directly from and which are to be found in the preceding exhibits?

A. Well, there are not all of those shown in the preceding exhibits, but those are the only ones that are directly shown in any of them, in the preceding exhibits.

Q. Anything else that is in Table 20 becomes a matter of computation?

A. From the preceding exhibits.

Q. No.

Mr. Neumann: Why not take the witness's testimony instead of Mr. Ransom's?

Q. But so far as the withdrawals from the preceding exhibits are concerned yes.

Mr. Tobin: Let the witness say.

A. From the preceding exhibits and the amounts shown for mains, services, meters as per Exhibit 96, those amounts being for the property installed prior to August 1, 1904, and still in use. That is all that you would need.

Q. Exhibits A-96, A-97, A-98 purport to show the property now in existence and in use at its book cost plus Colonel Miller's
2141 figure for property up to August 1st, 1904?

A. Yes.

Q. And those figure buildings, apparatus and miscellaneous?

A. Yes.

Q. And your first two items in Table 20 for 1919 represent the totals of Tables 10, 11 and 12?

A. Yes, they are taken from those tables.

Q. And they represent the totals of those tables?

A. Yes, the total of those two items is the total of 10, 11 and 12.

Q. Why did you change your method when you came to the items of mains and other items following?

A. Because of the fact that there was no way of setting up, and I did not believe it was necessary to set up, each item of mains separate. It was not handled in that fashion and there was no necessity. I have set up the debits and the credits to mains, and if you would add on Colonel Miller's figure, why, you would have the amount. I have not depreciated them on the basis of specific pieces of main—that is, specific life for a 6 inch main in any one street, more than I apply to another main in another street—and there was no necessity of setting them up separately.

Q. At least you did not do it?

A. At least I did not, yes.

Q. And you did the same thing with meters?

A. Yes, they were treated as a unit.

Q. When you come to mains, then you go to this table 15, Mains, debits and credits, for your source of information?

2142 A. For working backwards, yes.

Q. Table 15, Mains, debits and credits, does not show any opening balance for August 1st, 1904, does it?

A. It does not. It does not show any balance whatsoever.

Q. In setting down your figure for mains you took Colonel Miller's 1904 and added to it the adjustment debits as arrived at by you, did you not?

A. I did

Q. Why did you not use the same method in Buildings, Apparatus and Miscellaneous, using Colonel Miller's opening figure plus the debits and credits in Tables 13 and 14?

A. Because of the fact—to arrive at the figure for December 31st, 1919?

Q. Yes?

A. I have applied the same method to get that figure.

Q. That is, for buildings, apparatus and miscellaneous have you taken——

A. Oh, no, it would be slightly different there, because of the fact that some of that property has evidently been retired that was put in since 1904, and this has been tied up with the inventory, and working from the figures used by Colonel Miller backward. Now, with the mains that procedure was not necessary.

Q. Have not some of the mains been retired that were put in since 1904, or did you just assume they had them?

A. No, according to the company one small piece of main has been retired from the period 8/1/04 to 1919, inclusive.

Q. Let us see about that. Your figure for 1919 in Table 20, Exhibit A-105, purports to show the balance of property as

2143 per the books as of December 31st, 1919?

A. It does not.

Q. It does not even purport to show the balance then as per the books?

A. No, it does not tend to show it as per the books, but it tends to show the balance of property there starting with a certain amount at 8/1/04 and taking the additions since then, but not the balance.

Q. Aside from the Miller figure as representing cost up to August 1st, 1904, does this Table 20, Cost of Fixed Capital, purport to show the cost as per the books?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial and not a proper statement. Reproduction cost is what Mr. Miller made it as of 1904, and not cost.

The Master: Overruled.

Mr. Neumann: Exception.

The Master: Mr. Hine agrees with Mr. Miller that the figure he places as of August 1st, 1904, is probably the actual amount paid for it. They agree. Aside from the Miller figure of August 1st, 1904, have you taken the additions from the books?

The Witness: Yes, I have worked back from the schedule Mr. Miller had and have checked back to the books and used the book figures.

Q. Your figure amounts to $375,838?

A. It does.

Q. In reaching that figure did you deduct the retirement of mains in 1912 as shown in your table 15, Exhibit A-101?

2144 A. No.

Q. On meters, in stating your 1919 net figure, have you deducted the retirements shown on your table 17, Exhibit A-103, of $3,644.51?

A. No, I have added on the adjusted debits to the figures taken for the cost of meters and meter installations as of 8/1/04.

Q. If you have done what you say on page 2272 of the mimeograph record you have done, the results which you reached by this method of going backward to August 1st, 1904, ought to produce and equal Colonel Miller's figure, should it not?

A. No, it should be a higher figure than Colonel Miller's figure, because I have added on the deductions, and it is a higher figure.

Q. How can you undretake to state the cost of property in use as of the end of 1919 and over the previous years through this process of working back, which you have described, to 1904, without taking into account the retirements of property shown by the books and contained in your own exhibit?

A. I do take those into account in working backwards. If Colonel Miller's figure, as I take it, and as I have taken it, represents the property there in 1904 and there now, and if the retirements or many of those retirements were out of that property, that were there in 1904, they would not be there now, so there was more there in 1904 than would be there now, that was there in 1904. It is complicated, but you have got to think a little, and you will find here, if you look at this figure of mains, for instance, as of 8/1/04, on

Table 20, which is Exhibit A-105, I get $117,874. Now, in
2145 working backwards I have added on to the figure Colonel Miller gives now for the mains that are there now and were there then.

Q. Is it not a fact that your item for mains for August, 1904, on Table 20, varies from Colonel Miller's figure to the extent of the retirement of mains which you failed to take into account?

A. It varies by the retirement which I did take into account and which I have repeatedly told you I did take into account in working backwards.

Q. Then why does it vary by that amount?

A. I cannot explain that any more. I told you I added on the retirement, and this figure that I have in Table 20 is greater than Colonel Miller's figure by the amount of the retirement.

Mr. Tobin. If the Master pleases, I think it is not fair to go on with this continuous questioning. That is, if Mr. Ransom will be good enough to examine the exhibits he will find it is quite clear there.

Q. Well, will you please explain why the amount shown for 1919 in Table 20, for Buildings and Apparatus, namely $275,611, differs by more than $23,000 from the amount arrived at for buildings and apparatus by using your tables 12 and 13 instead of your tables 10 and 11?

A. Well, there must be something wrong then in the books. I cannot see and I do not know where that difference is.

Q. Or in your tables?

A. I have told you exactly how I made this up and this checks with Exhibit 93—or 96. Now, there may be something or other in those debits and credits that is not right. They may not have kept their books right.

2146 Q. Or you may not have made your tables right?

A. Well, I happen to know that they check up with the other things and they must be right. They check with the balance.

Q. Is it not a fact that if you take your balance for August 1, 1904, as per your table No. 20, and subtract it from your balance of December 31, 1919, in the same table, the difference represents the net increase during that period shown by the books?

A. It should if the books were properly kept.

Q. Or, if your table was correctly made up?

A. No, if the books were properly kept.

Q. This net increase as shown by the books is contained in your Tables 13 to 18, isn't it?

A. It is not made up that way. It is property that can be identified back to the books.

Q. Only property that you were able to identify?

A. No. Colonel Miller was unable to identify the same property.

Q. Can you offer any explanation why the increase that you have indicated by your Table 20 is less than the net increase which you have indicated by your Tables 13 to 18 to the amount of $1,210,307

Mr. Tobin: I don't think it is fair to repeat the question. This witness has answered that question four or five different times. It is unfair to ask him again and again the same questions. He has explained it on the record.

The Master: Objection overruled.

Mr. Tobin: Exception.

A. I don't know just what it is. Do you wish me to make the calculation now?

2147 Q. I ask you if you can make any explanation of it?

A. I would have to find out what it is, to look at it. I cannot explain it just on your description.

Mr. Ransom: I will let the record speak for itself.

Q. With respect to the Flushing plant concerning which you have given tables of depreciation figures in the way in which you have described, what life did you assume for this plant?

A. I assumed a life for these various items making up the plant, lives for the various items or classes of items, as I have testified to.

Q. Did you make any estimate of the life of the plant, as you undertook to testify in the Consolidated case?

A. No, I used the items. I had the items here, and in the Consolidated case I did not have the items.

Q. In the Consolidated case you testified to a life of fifty years for manufacturing plant, did you not?

A. I believe I used that figure, including holders at the manufacturing station.

Q. What life did you or would you assign to this plant?

A. It would figure out approximately 45.60 years.

Q. What is your method of reaching such a figure?

A. The method of reaching that figure is taking the total cost of the buildings as shown on Table 10, $46,217.51; and adding to that the cost of the apparatus and piping, that is, the other plant

2148 equipment, $229,393.16, as shown on Table 11; adding them together, and getting a total of $275,610.67. Then, taking the annual depreciation which I have computed for buildings as 1,069.83; and the annual depreciation for apparatus and piping of 4,972.97. In that way I get the annual depreciation requirement for buildings, apparatus and piping, of $6,042.80. Dividing the 6,042.80 by the $275,610.67, I find that the annual requirement 2.19 per cent of the cost, which figure would result in the average ge that I mentioned.

Q. Is that the method which you followed in the Consolidated ase?

A. It is not. In the Consolidated case I assumed a 50-year life r the plant. I did not have the specific pieces of apparatus, no list the apparatus and units.

Q. Now, before estimating your accrued depreciation set forth in e third column of your Tables 10, 11 and 12, did you ascertain by inspection and examination of the property the extent of physical ecay, if any, of each or any of the items?

A. I went over the whole plant generally to see the condition of the plant, to see how it was maintained. I did not make a specific study of each and every piece of apparatus and equipment to find out just its condition from wear and tear, and how soon it would have to be repacked, if it was a pump, or whether a new shingle would have to be put on some building.

Q. You did not undertake to ascertain the extent of physical decay of each item then?

A. No, I did not.

2149 Q. Does your estimate of accrued depreciation as set forth in these exhibits purport to represent any dilapidation or deferred maintenance which you think you actually discovered?

A. No, I added nothing for that.

Q. And included nothing for that?

A. No. I would say that this plant is maintained well, but there is deferred maintenance there, and there will be in every plant always, but that is only incidental, one of the incidental things and that is not taken care of until the time comes when it is best to take care of it.

Q. Does your estimate of accrued depreciation purport to measure any reduction in the present operating efficiency of the plant and its equipment on its efficiency when new?

A. No.

Q. In compiling these Tables 10 and 11, did you make any calculation to discover what the composite life for the entire plant is the life expectancies which you did assign to the different items produced?

A. No, except by these accounts. I have a figure there at the end which gives it roughly.

Q. In your Table 10, have you assumed 50 years as the life expectancy of a brick building?

A. I have.

Q. And twenty-five years as the life expectancy of a frame building?

A. Yes, generally speaking at least. There may be one or two slight variations from that.

Q. What life expectancy have you assumed for the garage?

A. That was thirty years.

Q. Why did you assume for this building a life other than twenty-five or fifty years?

A. Because of the construction of that garage. It was a frame structure with galvanized iron siding over it. I gave it a little longer life.

2150 Q. A little longer life than what?

A. Than I otherwise would have given on a frame building.

Q. Have you had any experience with respect to sheet metal buildings like this garage?

A. Yes, some, considerable.

Q. As to their life?

A. Some considerable.
Q. Where?
A. In St. Louis and around this territory.
Q. What instance can you give, or instances, sustaining a life expectancy of thirty years for a building of this kind?
A. Well, I cannot give you any specific instances. I have seen many of them that did not last anywhere near as long.
Q. You mean they were taken down before a greater period had expired?
A. Yes, and I have seen them where they have absolutely rusted to pieces, and I have seen them where they have fallen down. I have seen all kinds of things happen to that kind of building.
Q. Do you want to give any instances warranting an expectancy of thirty years for this garage building?

Mr. Neumann: I object to that on the ground that it is fully covered.

Q. You assume that this would last a little longer than the other frame buildings on this property?

Mr. Tobin: The witness has answered that, and there is no necessity of lumbering up the record with repeated questions and answers of the same kind.
The Master: Objection overruled.
Mr. Tobin: Exception.

2151 A. I have estimated a longer life for this than for the frame structure at that plant, yes.
Q. Did you ascertain that the frame structure at that plant already have had a life in excess of thirty years?
A. Probably there are some that have. That is the average life that I have estimated.

The Master: On what do you base that estimate of twenty-five years for a frame building?
The Witness: Well, on a general knowledge only. I have never been able to gather data so that I could absolutely prove lives of this type of building. They keep changing as there is progress in the art, as larger structures are required. You see them removed in three or four years. I have studied the retirement of buildings as they are reported by companies in this district and in my judgment twenty-five years is a reasonable average life for a frame structure in the gas business.

Q. What instances can you give sustaining an average life of twenty-five years for frame structures in a gas works?
A. I cannot give you any detailed stuff on that.
Q. Not any?
A. Not any details; I have nothing with me.
Q. Did you ascertain from the facts and from the testimony in this case that on August 1, 1904, there had been a gas works at this location in Flushing for more than forty years?
A. I do not remember the forty years. There had been one here, I believe, from somewhere around 1850.

2152 Mr. Tobin: 1855.
The Witness: Some time in the 50's.

Q. How do you know that but some or all of the buildings in this group were not forty years of age in 1904, instead of four and a half years?

A. I don't know. These buildings left there are pieces of buildings, generally speaking. The additions have been additions to buildings, and it would be almost impossible to tell just what they were.

Mr. Neumann: May we ask the Master just what the purpose of these questions is?

The Master: Proceed.

Q. The other items in Table 10, if no information had been available to you as to the year when the expenditure shown in the second column had been made, it would have been necessary for you to have made an estimate or guess, just as you did as to the first item, wouldn't it?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it presupposes a state of facts not testified to, and a state of facts not supported by the record.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I believe that this figure of 20 years was a minimum estimate, and if there had not been any figures available as to the age of these expenditures, these additions, why either an estimate of their age would have had to have been made, or nothing could have been done that would require the use of their age.

Q. You testified in the Consolidated case that nobody could know the age of anything, didn't you?

2153 A. No, I did not. That is absurd, I would say. If I did, I was in a trance.

Q. I admit your assumption.

A. Well, I vigorously protest against having said anything like that.

Q. If I said age, I misspoke. You said that nobody could know the life of anything.

A. No, not until it has expired definitely. We can get out actuarial tables as to the expectancy of various ages, but nobody can say definitely when anybody is going to die, unless he is going to kill him and can do it.

Q. Do you say that you can or cannot know the life of a piece of property, or of properties making up a plant?

A. I don't believe that anybody can fix absolutely the life of any kind of apparatus or property unless there is some outside influence that arbitrarily cuts off its life. Now, if you know that at a certain time a building has got to be razed, then you can tell how long it is going to live, although it may fall down before that time because of an accident. It cannot exceed that life, that is sure.

Q. In your estimates of what you call useful life of property have

you taken into account the possibility or contingency of decisions to remove for reasons not relating to the use of the property?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, vague and meaningless, and indefinite.

The Master: Do you understand it, Mr. Hine?

The Witness: I don't know whether I understand it. I have an understanding, and I think I can make myself clear.

2154 I have taken into account everything that I can conceive of that would cause depreciation or loss of life, that is, such as progress in the art, increase in business, and all of those factors. Now, if those are the things that you mean, yes, I have taken them into account.

Q. Well, with respect to this group of buildings, or these buildings that we have been talking about, and this apparatus, just how have you taken into account the factor of increase in business?

A. Well, because——

Q. I mean how concretely.

Mr. Tobin: If the Master please, I think the witness ought to be allowed to answer the question. He should not be directed to answer it in a particular way that Mr. Ransom wants.

The Master: He will be allowed to answer if you don't interrupt.

A. I cannot certainly make any allowance that way. Things go out of use due to a combination of many causes usually. It is very seldom it is one cause, unless it is some outside influence, some absolutely outside influence that causes that, and even then there is usually a combination of causes. Now, as a plant becomes inadequate, as you think you may want a larger building there, or to put in larger apparatus, you will allow more physical decay to occur, you do not maintain it in the same way. All these things combined together cause depreciation of the property in time, and fix the useful life of property on the average, and I figure that on the average for brick structures in a gas plant, that 50 years is a fair estimate for their useful life, considering all these factors.

2155 Q. Do you figure that this plant is going to become inadequate?

A. Well, it is going to be a very peculiar community if this particular plant does not become inadequate.

Q. Do you figure that it is going to become inadequate?

A. I do, yes, this particular plant. Now, don't misconstrue me there, I say this particular plant

Q. When?

A. I don't know when

Q. Within what period of time?

A. I have not made a study of that, but inadequacy is one of the factors that come in. It is going to be inadequate some day unless the growth of this city changes a great deal.

Q. Take the brick buildings, how did you take into account with respect to what you call depreciation as to these buildings, the pros-

pective increase of business, or the prospective inadequacy? Can you give any indication of the way you took it into account?

Mr. Tobin: If your Honor please, I think the witness has answered that question two or three times. He should not be asked again and again. What is the use of lumbering up the record repeating questions and answers?

The Master: Objection overruled.

Mr. Tobin: Exception.

A. I cannot answer that. I have not taken that specifically, and, as I stated before, it is a combination of everything. In my mind a 50-year life is fair.

Q. Can you give any itemization of it?

A. I cannot.

2156 Q. Or any illustration of how you have used these different factors you have mentioned?

A. No, I have just considered those, and have reached in my mind a fair estimate. There would be this to be stated however. If the estimate was high—I mean if you had estimated a 25 year life, we will say, where the correct life should have been 35, it would mean that the annual depreciation requirements would be higher, and while you were too high in your accrued depreciation, you would be too high also in your annual requirements, and they would counterbalance each other. That is a factor.

By the Master:

Q. In other words, if you made a mistake, and I charged it to the consumer, the consumer has got to pay more than he ought to pay?

A. No, he would not, because that applies on both sides. In one place it would be a reduction in the value, and on the other side it would be an increase in the rate.

Q. And all the consumer knows is that he would be paying 6 or 7 cents more per thousand cubic feet?

A. No, that is not the way it figures out.

Q. How does it figure out?

A. If there was no such thing as depreciation the consumer would not have to pay anything for the use of this property. That would mean 6 cents reduction in operating expenses, and in my mind it would mean also that there was no accrued depreciation to be deducted, if there was not, while he would not pay the 6 cent operating expenses, he would be paying more as a return on the value, and they tend to counterbalance.

2157 By Mr. Ransom:

Q. And the investment or property would have been correspondingly confiscated?

A. By the example I just stated?

Q. Yes.

A. There would not be any confiscation. If there is no depreciation or anything there cannot be any confiscation. That is absurd of

of course, because I know there is depreciation, and there would be confiscation if the consumer did not pay for it.

Mr. Neumann: Mr. Ransom, I take it, assents to that?

Mr. Ransom: I do not, or anybody else except this witness.

By the Master:

Q. This is what I do not get clear, Mr. Hine: Suppose the life of a plant is 100 years instead of 50 years. If I assume your figure of 50 years, and I follow your reasoning, and charge the consumer with an operating expense to set up a reserve on the theory of 50 years——

A. Yes.

Q. And the fact is that the plant is good for 100 years, then I have spread the cost of this over only 50 years?

A. Yes.

Q. Are not those consumers paying more for it than they ought to pay?

A. Yes, they would, if you take such a variation as that. I said they tended to counterbalance. The accrued depreciation on my basis would be higher, that is, on the 50 year life basis; therefore, there would be a greater subtraction from the cost, and they would not pay a return on so much money, so they tend to counterbalance.

2158 Q. What interests the consumer is whether he is paying a fair price for the gas, or for something he is not getting the benefit of. You are charging him for something he is not getting the benefit of.

A. Absolutely no. If he is not getting the use of this water gas machine that is being operated for his benefit, then the company should not have that machine.

By Mr. Ransom:

Q. You stated on page 2289 of the mimeograph record as follows:

"It seems to me that what the consumer has got to do is to pay enough in his rate to take care of the depreciation that accrues, and that the company has got to keep their books so as to set that up, so that when the property is retired for any cause whatsoever that fund can be charged with the cost of the property."

A. Yes.

Q. Now, is it a part of your theory of depreciation that it is the gas company's right to collect from the consumer, and the consumer's obligation to pay in advance, an amount necessary to cover the loss due to the retirement of each unit of plant and equipment as it is retired?

A. I don't know as I would state it just that way. It is my belief that the consumer should pay in his rate each year for that part of the life of each and every piece of apparatus that is used or held for his benefit.

Q. When you are fixing a rate for the future you say that there should be taken into account the fact that various units of plant

and equipment will be retired at various points in the future, isn't that so?

2159 A. Yes.

Q. And would you gauge the prospective time of the retirements of these units by the remaining portion of what you call unexpired life?

A. Yes, but I would also keep in mind and use the total average useful life. I cannot just take it on one end, and say, "Now here, there is only three more years life for the use of this thing, therefore I am going to make the consumer for those three years pay for that thing." Over the entire life of each of these items he should pay a proportionate part.

Q. So there will have been paid by the consumer in advance, over the period of the life of portions of plant and equipment, an amount which will cover the loss due to their retirement when they are retired?

A. I don't think that is just exactly truly stated. But there should be provided on the average during the life of each unit an amount sufficient to take care of the cost of that unit when it is retired, and that would be just the amount of the fund, theoretically, when it was retired.

Q. Now, let us see. Would you say that when a water-gas set was installed—assume that it had a life of thirty years from the moment that it was installed you would have the company begin to collect from the consumer in its rate 1/30 of its cost, would you?

A. Each year?

Q. Each year.

A. Certainly.

Q. Over its period of life?

A. Yes, if they put it into use at the beginning.

2160 Q. Creating during the 30 years a fund to cover the loss due to its retirement when it was retired?

A. To cover its cost.

Q. So that at the end of thirty years—assuming that this water gas set cost $100,000, at the end of thirty years the company will have back the $100,000?

A. Yes.

Q. Then the company uses this water gas set for another 20 years?

A. Then he is wrong.

Q. No, but you are guessing at the life?

A. No, there is a difference between a guess and an estimate.

By Mr. Ransom:

Q. Now, in other words, you would have this reserve set up from the very day that the water-gas set was in use?

A. Yes. Now, I am not drawing the lines to the very day.

Q. I do not mean the very day, but immediately?

A. Yes.

The Master: Say at the end of the first fiscal year?

The Witness: Yes.

Q. And it should be promptly reflected in the rate?
A. Yes, as they come and go.
Q. And the reserve should be promptly set up?
A. You ought not to have to take care of this, generally speaking, for each and every item of property as it is added.

2161 Q. I do not mean creating a separate reserve, but you would have a reserve covering all the property, which would include this water-gas set?
A. Yes, so that on the average it would take care of it.
Q. And against the reserve created out of the moneys thus paid by the consumers you would charge this water gas set, or its cost, when it was retired?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial, and a subject which is fully covered by the Uniform System of Accounts.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. Yes.
Q. So that you would always have in the reserve an amount representing the estimated accrual of depreciation in respect to each unit of property equal to the expired part of its life expectancy. That is, to make that concrete, in the case of a water gas set with a 30-year life, at the end of 20 years you would have in the reserve 20/30 of its cost?

Mr. Neumann: I object to that on the same grounds as last urged by me.
The Master: Objection overruled.
Mr. Neumann: Exception.
Mr. Tobin: Exception.

A. Yes.

By the Master:

Q. Let me ask you this, Mr. Hine: Are you not on your theory really asking the consumer to pay for this plant, instead of paying a return on the investment?

2162 A. Absolutely not.
Q. What?
A. No.
Q. I can't get it any other way.
A. I am asking them to pay a return on the investment by this theory, and I am asking them also to pay for the use of that property that is used up in their service, that is, a return of investment at the time this property goes out of use. Here is what happens: Those funds can either be invested outside or in the company's own property. If the fund that is provided by the consumer is used to build up the plant, to make extensions, to add new mains, it means that the investment of the company is not reflected by the cost of the mains that they have, certain portions of them are taken care of out of these reserves.

Q. I would hate to go over to Flushing and explain that to the people of Flushing, if I followed your theory in arriving at a conclusion in this case.

A. I would feel exactly the same way if I followed the other theory.

Mr. Neumann: Perhaps the courts may adopt his theory, they probably have.

By Mr. Ransom:

Q. Mr. Hine, in your testimony on page 2289 of the mimeograph record, on your direct examination you said, "So that when the property is retired for any cause whatsoever that fund can be charged with the cost of the property." At some other place, and today, you have spoken of it as a reserve. Do you mean fund or reserve? Do you mean, or do you draw any distinction between a fund and a reserve?

2163 Mr. Neumann: I object to that question and move to strike out from it, "at some other place."

The Master: Objection overruled and motion denied.

Mr. Neumann: Exception.

A. I mean that the reserve should be charged with that. I do not mean that there should be a fund in cash kept on hand, or anything like, representing that reserve.

By the Master:

Q. Technically you would call it a reserve fund?

A. Yes, but it does not mean cash.

Q. It is a reserve fund?

A. Yes.

Q. You do not draw any distinction between the word "fund" and the word "reserve"? You use them together?

A. Yes. I may use one or the other unintentionally.

By Mr. Ransom:

Q. What you would have would be a renewal reserve account, or what you would probably call a depreciation reserve account?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and that subject is fully covered by the Uniform System of Accounts which they themselves have placed in evidence.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: A further objection is that the witness has answered that question previously. He has answered it again and again on the record.

2164 The Master: Objection overruled.

Mr. Tobin: Exception.

A. I would have a reserve account irrespective of what it was called.

Q. Well, it would be in effect a renewal account, wouldn't it, or depreciation reserve?

Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

Q. Well, it would be in effect a renewal account, wouldn't it, or depreciation reserve?

Mr. Neumann: I make the same objection.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. It would not be what I understand this company means by a renewal account. It would be an account which in my mind would take care of all the depreciation that had accrued on that property on the basis that I have outlined. Now, you can call it anything you wish.

Q. You would have a debit and a credit account of course?
A. Surely.
Q. And you would charge the expense account and credit the reserve account?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and covered by the Uniform System of Accounts.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. You credit this reserve yearly or monthly with whatever you take out of operating expenses.

Q. And you would charge your expense account which would be one of your subdivisions of operating expenditures, on the other hand, wouldn't you?

2165 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and fully covered by the uniform system of accounts.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. I would include that in the operating expenses.

Q. That is, you would have an operating expense account which you would call a renewal expense, or something of that sort, one of the subdivisions of operating expenses?

Mr. Neumann: Same objection as last urged by me.

Mr. Tobin: And further, if the Master please, I think it is decidedly unfair to continually pick at this witness along this line. He has answered these questions time and time again; and more than that, when Colonel Miller was on the stand the Master refused to allow Mr. Chambers to go into an examination of the same scope on cross examination, and I think it is unfair to this witness to go on along this line.

Mr. Ransom: We did not go into depreciation in our direct case.

The Master: I do not think it is unfair, and I do not believe the witness thinks so, either. Objection overruled.

Mr. Tobin: Exception.

A. I should say it should be put in there, I don't care what it is called.

Q. Now, your method of computing depreciation assumes, does it not, that a fund should have been created and should have been invested in plant and equipment?

2166 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and fully covered by the uniform system of accounts.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Not all of that.

The Master: It might be in Liberty Bonds, might it not?

The Witness: Yes, or they might have given it back to the stockholders. They should have created a fund, I believe, but that they should have invested it in the property or what they have done with it is different. My personal belief is that it should have been invested in the property.

The Master: Suppose there was no necessity for reinvestment?

The Witness: Well, that is a very peculiar case, that gas company. It was not this gas company. Then they should have returned it to the stockholders, I would say.

The Master: In other words, you would have the consumer paying into a reserve account a lot of money that the company did not need in order to give it to the stockholders of the company?

The Witness: I do not think that thing occurs at all, but here is the thing, that if the plant stops growing, or the gas company stops growing, or starts getting smaller, its consumers should have been paying something in there in the years past that would be returned to its stockholders so they can get their principal back.

2167 Q. In other words a company has an investment of $100,000 in a water gas set, you estimate that in thirty years that water gas set is going to come out of it. If it becomes inadequate, it is wiped out and new capital investment is made in a new water gas set, if it is retired because of progress in the art and they put something else in its place, it is added to capital account? Your theory is that this cost of $100,000 should be accumulated over the thirty years so that the $100,000 can be repaid to the investors when the unit does go out of use?

A. No.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and presupposes a set of facts not testified to here, and contrary to the record at the present time.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Witness: No, I say that during the life of that unit there should have been accumulated a reserve which will represent the cost of the unit, so that the integrity of the investor's dollar will be maintained all the time.

Q. Well, what should be done meanwhile with this amount which is accumulated?

A. Well, I think that if you would study the history of this company a little and see some of the things that they have done, you would find that the cry seems to have been: "We cannot get money," and that has been general, "We have got to make extensions and haven't enough."

2168 Q. Well, what should be done with it?

The Master: This would not cover extensions.

The Witness: Well, it would cover——

The Master: They would not have any right to make extensions out of this fund.

The Witness: I beg your pardon. That fund is money in the treasury of the company, and it should be, in my opinion, invested in the property, which would mean that that $1,000 which is laid aside this year to take care of depreciation would buy $1,000 worth of mains.

The Master: But they have to capitalize that main.

The Witness: Yes.

The Master: And they sell securities against it.

The Witness: They do not have to if they get it out of this fund, and they should not, and they do not, what is more.

Q. You do not believe this fund should be kept as a reserve intact, do you?

A. I think this fund should be kept as a reserve. I do not believe the cash should be kept there in fact, no, if that is what you are referring to.

Q. The cash could be used for the corporate business?

A. I think it should be used for corporate purposes, yes.

By the Master:

Q. Just to illustrate, suppose this company had $140,000 on hand in the beginning of 1919?

A. Yes.

2169 Q. When they started the Douglaston Extension. You would say use that money for the Douglaston Extension, is that right?

A. Yes.

Q. And then they are entitled to capitalize that extension, aren't they?

A. I would say they are not entitled to capitalize that extension if that $140,000 represented reserves of that description, absolutely no.

Q. Let us analyze that a minute. If this company, having put $140,000 in that extension, came to the Public Service Commission for authority to issue securities against that, the authority would be granted, wouldn't it?

A. Well, in one case the company came to the Public Service Commission of this district and wanted that, and they said that they had

made so many extensions that cost so many dollars, and they had retired so much property——

Q. We are not talking about retirement?

A. Well, we will say there are no retirements.

Q. All right.

A. They say, "We have spent a million dollars for extensions in the last five years, and we want to be reimbursed for that," and the Commission analyzed it and said, "Now, here, during these five years you should have laid aside twenty-five or fifty thousand dollars, or whatever it was, for depreciation reserve, we don't need to reimburse you for that now because you do not need it, come back when you do need it."

Q. Well, suppose we use that $140,000 for the Douglaston Extension?

A. Yes.

2170 Q. And when the time comes we have to replace the water gas set?

A. Yes.

Q. Where are we going to get the money?

A. Then is the time to raise the money and to capitalize it and reimburse your fund.

Q. Capitalize what?

A. You would capitalize the expenditures.

Q. Which expenditure?

A. Well, you have got to take this whole thing together. Nobody capitalizes a certain extension of mains.

You have got to justify your capital extension, that is your increased issue of securities, by showing additional value in the plant, haven't you?

A. Yes.

Q. You have got to say that this movement into an extension like Douglaston, haven't you?

A. Not necessarily a particular extension.

Q. Including that?

A. Yes.

Q. That would be one of the items justifying an increased issue?

A. Yes.

Q. Then you would have to sell securities to replace the property that has gone out?

A. No; you would not do that; you would replace that fund; your company needs money at a certain time to buy a new water gas set, and you will sell securities against that Douglaston Extension to reimburse this fund, and meantime you do not need that money.

Q. What difference does it make, in theory, whether you do it immediately upon putting in the Douglaston Extension, or

2171 whether you need it for the other plant? In theory that Douglaston Extension is being paid for by additional capital?

A. I think it will make a great deal of difference if you ever come to the time when the company is not growing rapidly, or if anything happens to it.

Q. Just now I have to decide how much the consumer has to pay for his gas?

A. And I think that is the only way to decide it.

By Mr. Ransom:

Q. Let us take this instance, going right back to the water gas set, the way your theory works, Mr. Hine, the investors have put $100,000 in a water gas set. At the end of twenty years, under your theory of depreciation, you have accumulated $66,000 plus in this reserve on account of the approaching retirement, we will say, of the water gas set. They invest that $66,000 in extensions of mains, when you figure the entire cost of the company's property, and your theory is in the first place that you should deduct from the $100,000 which this water gas set costs the $66,000, so that you withhold from the investors any return on that $66,000, don't you?

A. Go on, I don't just take one point.

Q. You do that ?

A. No, I cannot say that then. If that is all the premise you have, it cannot be answered.

Q. And in the second place, you say, you would not allow any return on the improvements built with this $66,000, because it was built out of a reserve?

A. No, you are absolutely misstating my statements now, absolutely.

Mr. Neumann: What did you say?

2172 Q. If you deduct from your cost of property?

A. Total cost of mains and water gas machines and everything.

Q. If you deduct from your total cost of property the amount of your accrued depreciation, you have denied a return upon that much of the investment?

A. No, sir.

Q. And when you treat the Douglaston Extension as you do in this case, then you have deducted a return on that part of the investment?

A. No, I want to say that that is not so at all.

Q. Well, now, have you——

A. I want to answer that now, if that is a question put to me.

Mr. Neumann: Let him answer.

The Witness: It is certainly a misstatement of what I have said. What I say is that from the cost of the property you should deduct the accrued depreciation. Now, if that depreciation has been charged to consumers and it should have been charged to the consumers, the company would not have made the investment that was represented by the cost of the property that was built from that reserve, there would not have been any sacrifice on the part of the company. If we would take a case where the company started out and made an initial investment of $100,000——

The Master: Let me give you another figure, to see where we arrive at. Take this $100,000 water set for a minute——

Mr. Neumann: I object to the Master not permitting the witness to answer fully the last question, which is in answer to Judge Ransom's question.

2173 The Master: Your objection is noted.

Mr. Neumann: I take an exception to your Honor's refusal to allow him to proceed with the answer.

By the Master:

Q. Take this $100,000 water set, and let us assume now if we figure on the basis of a six per cent return, before there is any depreciation the consumer ought to pay $6,000 a year for that $100,000, ought he not?

A. Yes.

Q. And the next year you take off $1,000, don't you?

A. Considering that alone, yes.

Q. That leaves $99,000 on which the consumer has to pay 6 per cent?

A. Yes.

Q. That is $5,940, isn't it?

A. All right.

Q. Is that right?

A. It would be a hundred years if you only take off $1,000.

Q. How much should I take off?

A. $3,333. Or we might make it simple by taking any arbitrary amount each year.

The Master: I just want to take this $100,000 I am talking about.

Mr. Neumann: Take $90,000 would be easier.

The Master: We will take $90,000. The second year the consumer would be paying $5,400 interest?

The Witness: Yes.

Q. The next year you are taking off how much?

A. $3,000.

2174 Q. So then he would be paying on $87,000, is that right?

A. Yes.

Q. Now, he has got to pay that $3,000 that you have taken off, hasn't he?

A. Yes, he has got to pay that.

Q. Now give me six per cent on $87,000?

A. $5,220, I make it.

Q. And then he would have to pay that $3,000?

A. Yes.

Q. So that he would be paying $8,200 instead of $5,400?

A. Yes.

Q. Is that correct?

A. That is what he would pay in total.

Q. And that would be included in his price for gas?

A. Surely, and should be.

By Mr. Ransom:

Q. Does your theory of depreciation assume that a fund should ve been created and should have been invested in plant and equip-ent of the company?

A. My theory of depreciation assumes that that is the only way do it, yes. That is the proper thing to do. That is true, funda-entally true, just the same whether or not any fund was created.

Q. Well, unless the fund created is invested in plant or equip-ent of the company, there would not be any reason for deducting, der your theory, the amount of accrued depreciation?

A. Yes, there would, just the same.

The Master: I think that you have covered this depreciation situation sufficiently, Judge. The minute Mr. Hine meets my criticism of depreciation in the Consolidated case by coming back here with a suggestion that the consumer ought pay in the manner he suggested, I think it destroys his testimony, hat is my own judgment of it.

Mr. Cummings: His theory of depreciation is upheld by all the urts, very common. You can go counter to it if you like, but you ow the result.

Mr. Neumann: Does your Honor claim that when a plant goes t of existence that the day it goes out of existence these consumers ould pay the whole amount of the plant?

The Master: I am not here to contend; I am here to decide.

Mr. Ransom: The witness does not need any help from these en.

Q. Having created the reserve and having invested it in plant and operty, how would you make the reserve available for the renewal d replacement of plant and equipment?

Mr. Tobin: If the Master please, that question has been answered.

The Master: I think so.

Mr. Ransom: I would like to have him answer it. He answered or hinted at it in an answer to that question.

The Master: I will let him answer this, although I think it has en fully covered.

The Witness: As I have stated before, at that time if there were funds available, the treasury would have to be reimbursed for ose expenditures.

Q. By the issuance of some form of securities?

A. Yes, something of that sort.

Q. That is, the investment representing the reserve would be capitalized?

A. No, I did not say anything like that.

Q. Well, isn't that what it means?

A. No, it is not. I should say that when the funds are needed u would provide them by issuing securities against construction ork which had been done originally out of this fund, for the money id aside for this fund, just to reimburse the treasury on account of ose expenditures.

The Master: I think we have had enough of it.

Q. Going back to some of the matters we were talking about when the Master raised this question about the effect on rates, going back to some of this physical property, isn't the works office building among those included in your first item on your Table 10?

A. Yes, I would say that is in there.

Q. The extension of this building is frame?

A. Yes.

Q. Why did you assign to it a life of fifty years?

A. I have assigned the same life there without any particular reason because of the fact that a majority of the building was a brick building.

Q. The fifteenth item on your Table 10 is a closet and basin at the works?

A. Yes.

Q. That is located in the works office?

A. I could not say for certain. I think so, yes.

Q. Well, how did you figure that this item of plumbing will survive the building in which it is included?

A. I do not. I have treated that these additions to build-
2177 ings would tend to increase the life of the average building they have all been treated that way.

Q. That is, you figured that that increases the life of the building?

A. Well, if you will just take that closet and basin at the works, I do not think it would, especially if you would look at it.

Q. Well, I fortunately have.

A. But there is this, Mr. Ransom. Any addition to a structure that is a reasonable addition would, in my mind, tend to increase the life of the whole over what it would have been otherwise.

Q. Well, how about the plumbing itself? Do you figure the plumbing can last fifty years and the building only twenty-five?

A. No, it would all come together there as part of the building, one building.

Q. And yet you have not so treated it?

A. It would be a weighted amount for the whole thing. No, I have not attempted to put those things in.

Q. On Sheet 12-A, storage equipment, you assume a life of twenty years for wax figures, signs and sink?

A. Yes.

Q. Why did you assume 20 years' life for the sink and 50 years for the closet and basin, any reason?

A. No. Because it was included in this account, was the principal reason.

Q. Isn't this sink cast iron?

A. I believe so. I don't know. I did not locate every one of these particular items to know which one it is.

Q. Don't you think a cast-iron sink will outlive a wax figure?

A. I have seen cast-iron sinks that did not.

2178 Mr. Tobin: If the Master please, this line of questioning is simply silly; there is no necessity for asking the witness these questions.

Q. That is all the answer you can give?

A. That is all based on averages. That particular wax figure might not last 20 years.

Q. Did you discover that the figures given for extensions in the generator house, exhauster room, pump house, two-story coal bin, boiler house and compressor house, represent extensions of buildings which had been erected previous to 1904?

A. Yes, I would say that every one of those did.

Q. Well, if this be true, how can any of those items survive the remainder of the building of which they are a part?

A. The same answer I gave before in that line covers that.

Q. What is that?

Mr. Tobin: If the Master please, the witness has answered this before; he has answered four or five different times, and this is just simply lumbering the record, making more work for you to go through afterwards.

A. I have stated before that I have taken the probable life of the extensions as though they were a new building. These extensions, many of them, and separate rooms built on, they may outlive the rest of the structure, but you cannot tell what will happen, and I would say anyway that the addition to the building would tend to increase the life of the remainder, and that it would be a weighted amount. All of those buildings are gathered together at the works.

2179 Q. These additions to boiler house and generator house are additional rooms built on in the sense of extensions—they are an upper floor built on and roof, aren't they?

A. They may be; I could not tell.

Q. You don't know anything about that?

A. I could not tell just what was done. Certainly the boiler house was not an additional floor. They may have raised the roof.

Q. How do you figure the upper floor of the building will survive the lower floor?

A. I do not say that, as I said before, but I told you it will increase the life of the whole, so therefore that method of calculation is not unfair.

Q. Can you describe——

A. (Interrupting.) Not inconsistent.

Q. Can you describe the equipment represented by your item of "Electric line for conveyor"?

A. I think that expenditure covers a line of wire that runs down through the works, down toward the coal bin there.

Q. Do you know?

A. No, I do not definitely know that that is it, but there is an electric line that runs down through the yard that has been put in evidently in 1919, it seems to be a sort of a temporary construction. I believe from indications there that that was going to be a perma-

nent line, and that that was just an original stringing of the wire, I do not know.

Q. Do you know that this temporary installation which you have described is this item which you have dealt with as electric line for conveyor?

A. No, I say I don't know definitely.

Q. You assume a life of 20 years for this, whatever it was?

2180 A. Yes.

Q. Is 20 years your idea of temporary life?

A. I would say if that was built temporarily, or if the wires were strung up temporarily to be later fastened and put in as a permanent structure, that would be part of the cost of the permanent installation, and should be so treated.

Q. On what basis did you undertake to assign a 20-year life to this electric line for conveyor which you don't know what it is or where it is?

A. I think that is a fair life for electrical wiring, outside wiring.

Q. I notice that you set down an item here of 12 trees.

The Master: Twelve what?

Q. Twelve trees. What kind of trees were they?

A. I am certainly unable to state. They were included in Colonel Miller's summary, and while I did not find the trees, I thought that they were evidently planted in the yard.

Q. Did you ever look at them?

A. No, I did not.

The Master: What life did you ascribe to the trees?

The Witness: I just put the trees in there at 50-year life.

Q. You don't know anything about what kind they are?

A. No.

Q. You assume a life of 50 years for them?

The Master: How can trees be considered part of a manufacturing plant?

The Witness: Well, if they were connected in here, the trees planted on the property, the cost of those trees would certainly be a part of the cost of that property, and the trees that you

2181 have planted, you buy the land and then put the trees on it, and I know it costs you money and I know you have got to get it out of somebody else if you sell.

The Master: What has that got to do with making and distributing gas?

The Witness: Well, I would say if they put trees in there and got shade, the men might work a little better.

The Master: How did you figure depreciation on trees?

The Witness: I just took a 50-year life on those trees?

The Master: Well, don't trees generally improve with age?

Mr. Chambers: For a period.

The Witness: I have had them improve and then die.

The Master: I know I have got a lot of trees around my place i

Sea Gate that I think are better every year, and I spend a lot of money getting them better.

The Witness: I would say in a manufacturing plant a 50-year life on a treet would be pretty good.

The Master: Let's don't waste any more time on foliage.

Mr. Ransom: I referred to it only as illustrating the method or lack of method.

The Witness: I did not worry much about those trees myself.

The Master: I think the difficulty with this whole situation on depreciation is what we have been discussing this afternoon. It can't work out. Unless the consumer has to pay for it, the company is having its property taken away from it, and if the con-
2182 sumer is paying for it, he is paying more than he ought to pay, in my judgment.

Mr. Tobin: What would you do with the investment the owner has put in the property, destroy it for the sake of the consumer during its lifetime?

The Master: You are worrying about the public just now; don't worry about the stockholders.

Q. You testified at page 13429 of the record at the Consolidated Gas case that the average life of a water gas machine was 20 years, did you not?

A. I do not remember. I may have given some figure. I did not have any there. I was giving some rough estimates.

Q. Well, do you doubt that you did so testify?

A. No, I do not.

Q. I don't believe the estimates are any rougher than the present ones?

A. Well, that may be.

Mr. Tobin: I move to strike that out, there is no necessity for that kind of remark.

Q. (Reading:) "By the Master," page 13429, "Well, now, what do you consider the life of a water gas set and the boilers? The Witness: I should say on the average around 20 years."

The Master: Did you say that, Mr. Hine?

The Witness: So far as I know, yes.

Q. Do you say that now also?

The Master: Now he says it is 30 years.

The Witness: For this plant.

The Master: Water gas set.

Mr. Tobin: Water gas set.

Mr. Tobin: For this plant, he said.

Q. Didn't you know that the water gas sets in the 44th Street plant, to which you were applying that estimate, included
2183 water gas generators similar in size and kind and so on to those in the present plant?

A. I knew that they were similar in kind, as to whether they were the same size I certainly do not remember. But there were in the Consolidated case system Lowe water gas sets, U. G. I. sets.

Q. Well, owing to what circumstances do you attribute 10 years more life to the Flushing water gas sets than to those in 44th Street?

A. As I say, I had not prepared that; I was then answering that question as to rough figures offhand, without any information available, without any of my records available.

Mr. Cummings: Look at the record, Mr. Hine, if that will assist you. There may be *be* some particular thing you have reference to.

The Witness: Oh, I remember it. In the Consolidated case we had no list of property and no estimate was made for each particular unit of property or class of property.

Q. You have assumed here an average life for a Terry steam turbine of 20 years?

A. Yes.

Q. Isn't it a fact that it is less than 20 years since the first Terry turbine was put on the market?

A. I could not say. I would judge so.

Q. Under such circumstances, how do you undertake to say that the life of a Terry turbine is 20 years?

A. Well, that is my estimate. I know one thing, that a great many of them have been replaced.

2184 Mr. Cummings: Under that same theory, you could not appraise a holder. They are a hundred years, you know, and Mr. Hine has not lived that long. I object to it; there isn't any man living that could appraise it under that theory, and that is absurd.

Q. Are you familiar with steam turbines?

A. Yes.

Q. Of what make?

A. Well, I have seen them run and set up and started to work.

Q. What makes?

A. Terry steam turbines and Le Laval.

Q. What makes are commonly used in driving blowers? What makes are commonly used for driving blowers and exhausters in gas works?

A. Why, the Terry turbine is probably used more than any other; at least I have seen it more.

Q. What is the other one you claim to know about?

A. De Laval.

Q. Which will last longer under the same duty conditions?

A. Well, I do not think they have the same duty conditions. I would say the De Laval would certainly not last as long, on the average, as the Terry.

Q. Which has the longer life, a steam turbine or the steam pipe and valves connected therewith?

A. I would say that the piping that belongs to the turbine should have, on the average, the same life as the turbine, because it would probably go out when the turbine came out, and a new header would

be put in when you put in a new machine or a new line for the machines from the old header.

2185 Q. With respect to these two Terry steam turbines, do you know that their cost was included with the cost of the 8 foot 6 water gas set?

A. I did, all except that item of $141.51, which was some period, I think, in 1912. The Terry turbines were installed by the contractor putting in the water gas sets.

Q. And this item of $141.51 is merely the cost of valves and piping?

A. I do not remember just what it was now, something like that, yes.

Q. Now, is this 30 years of life which you have assigned to the 8 foot 6 water gas machine a composite of the life of the water gas machine and of the turbine?

A. No. I took that as the water gas machine.

Q. Well, then, how have you given a 20-year life to the steam turbine?

A. I have only given it to that addition.

Q. To the $141.51?

A. To the $141.51. There is no separation of the cost on the other.

Q. So the effect is, you have given the turbine a 30-year life and the valves and pipe 20 years?

A. Well, that is what comes out there on that little machine.

Q. In spite of the fact that you say the valves and piping have the same life as the turbine?

A. Well, if the tubine was separate, that is the life I would give it.

Q. Can you describe a Fisher control governor, what it is used for at the Flushing works?

A. No, I cannot, that governor; I do not believe I saw it.

Q. You do not know what it does?

A. No, I don't know just what that one does.

2186 Q. And yet you have assigned a life of 33 1/3 years for it?

A. Yes, that $19.25 governor. I believe it is a pump governor. There is a governor on the pumps, some of them.

Q. Do you know whether that item represents the entire governor or just an expenditure on the governor?

A. No, I don't know; not that one.

Q. And yet you have depreciated that on a 33 1/3 year life basis?

A. Yes.

Q. From what circumstances or conditions do you estimate the life of 33 1/3 years for such a governor or part of governor represented by this item?

A. Under the conditions existing there in Flushing.

Q. What do you know about this governor, anything?

A. No; I did not attempt to even find all these little items.

Q. Isn't it very much less than 35 years since the first Fisher Governor was built?

A. Very probably.

Q. Don't you know?

A. No, I don't know. I did not look up the Fisher Control Governor especially.

Q. At page 13,416 of the record in the Consolidated case you estimated the life of the shaving scrubber at 40 years, didn't you?

A. I do not remember. If it says so in the record I would assume so.

Q. Here you have estimated the life of a tar washer and tar extractor at 20 years?

A. Well, it is not a shaving scrubber by any means.

2187 Q. You have assigned a life of 30 years to the Babcock and Wilcox boilers at these works?

A. Yes.

Q. Didn't you testify in the Consolidated case that the life of such boilers was 20 years?

A. I do not remember. As I say, the testimony I gave there was offhand testimony, no estimates had been prepared for specific kinds of apparatus.

Q. Isn't it a fact that these Flushing boilers are about 120 horsepower each and of the same size as those you were dealing with in the various stations of the Consolidated Gas Co.?

A. About what?

Q. Are of the same size as those you were dealing with?

A. There were probably some of that size, and some larger. I do not remember any just that size.

Q. You have assumed in this case the life of a six-foot station meter as 40 years?

A. Yes.

Q. There are two such meters side by side at the Flushing Works?

A. Yes.

Q. One of them was installed prior to August 1, 1904?

A. I don't know whether it was or not, or whether it was included in the cost of that water-gas set. It is hard to tell.

Q. You did not even know that?

A. No, I cannot tell you.

Q. Could you tell by examination which of the two meters was the newer?

A. No, I cannot tell you, except I believe there is some—there may be a designation on them that would indicate, but not from the inspection, unless there is such a thing as that.

2188 Q. Has a larger exhauster a longer life than a smaller exhauster?

A. Well, that would depend on conditions.

Q. With respect to conditions such as those at this plant?

A. I would say generally speaking that with the commercial sizes there, if anything, that a larger exhauster would have a longer life than a smaller one.

Q. As a matter of fact, there is a greater prospect of inadequacy terminating the career of a smaller exhauster than a large one?

A. Yes.

Q. Now, you have assigned a life of 33⅓ years to the two No. 7 Root Exhausters in your Table 11, have you not?

A. 33⅓.

Q. Yes.

A. I believe so, yes. I find one of them here.

Q. At pages 13,429, 30 and 31 of the record in the Consolidated Case, did you not assign a life of 15 to 20 years to the exhausters at the 21st Street station?

A. I do not believe that I—or as I stated before, I may have stated that. I do not remember just what I testified here; the figures, but those were not made up from estimates; they were offhand opinions on this, and it would be a factor to bear in mind in connection with the Consolidated that a great many of the exhausters would be used more than they are at the Flushing works.

Q. Oh, in order to determine the estimated life of property of this kind you have got to know and take into account the extent to which the property is used, or a particular unit?

A. To a certain extent, yes.

2189 Q. Consequently that involves the factor of its physical condition?

A. Oh, it would involve that, too, yes.

Q. And involves knowledge as to the extent to which it is used and the way in which it is used?

A. Yes, the way it is kept up, principally.

Q. Have you not assigned a life of 33⅓ years to the 10 x 12 New York Safety Engine, and an age of 11½ years?

A. Which page is that on?

Q. Sheet A, Table 11?

A. 33⅓.

Q. Did you discover from page 22—this age of 33½ years, that is 33⅓ years of useful life, and the age of 11½ years?

A. Yes.

Q. Did you discover from page 22 of Complainant's Exhibit 96 that when this engine was installed at the Flushing works in 1918 it was a second-hand engine?

A. Yes, I must have read it there, and I showed it, and I knew it was a second-hand engine from an examination of it and from other information that I received.

Q. Have you any idea how old that was when it was installed at Flushing, in 1918?

A. No, but I should say it was rather old.

Q. Have you assumed that this piece of machinery had been rejuvenated by removal and new reinsulation?

A. No; I imagine that one of the factors that entered into the other place it was used was that it was inadequate.

Q. Did you know that the manufacturers of that engine had been out of business in 1918 for a good many years?

2190 A. No, but I did know that another engine that had been at this company's place was removed and could not have been there prior to 1850.

Q. Now, this compressor on Sheet B of Table 11, one 8-inch by 12-inch by 8-inch compressor, didn't you discover from the books of the company or its vouchers on page 28 of Complainant's Exhibit 96, that this compressor was installed in 1908 and not 1918?

A. Yes, that is so, this was wrong in here, it should have been 1908, and the age should therefore have been eleven years.

Q. And your method of computing depreciation fails and breaks down whenever you make a clerical error in it?

A. No, the method does not do anything of the sort, the accrued depreciation would have been increased if that figure had been used.

Q. You have assumed eighteen years as the life of a gas holder?

A. Yes.

Q. In the Consolidated case you testified that seventy-five years was the life of a gas holder?

A. I thought I testified the average life of the gas holder station was seventy-five years, including the building and compressors and so forth, at that station.

Q. But in your Table 260 in the Consolidated case, where we applied this seventy-five year life, the entire property you dealt with at the 63rd Street station was a gas holder?

A. Yes, I believe that is an average life for a holder station, including everything at the station.

Q. Likewise at 14th Street and 65th Street stations, they were simply holders, principally?

A. 14th Street? Yes, a holder station. I applied it to the particular holder station in question and everything there, pump
2191 station and building and everything. At 66th Street I do not believe the Consolidated had a pumping station and boiler house; it belonged to another company. The 14th Street station the Consolidated owned the pumping station.

Q. You assumed an age of three years for the million cubic foot holder in Flushing?

A. Yes.

Q. Did you observe that most of the expenditures in the construction of this holder were during the year 1915?

A. Yes, at least the principal part of it, a very large part.

Q. Did you or did you not include depreciation on this holder for the year 1915?

A. No; I took three years there, as I did in all these; I tried to be careful not to get too low an age, depending on when it was put in, so here this is based on the assumption that it was finished and ready for use certainly not later than the end of 1916, and I do not know just when it was.

Q. Didn't you testify in the Consolidated case that you should begin computing depreciation from the time expenditures were begun?

A. No, I did not state that; I stated that I had; I did not say that you should.

The Master: Well, why did you?

The Witness: In that case I had to, because we did not have the information. The proper time to compute that is when it is put to use, of course. It would make a very slight difference.

Q. You had the same information in the Consolidated case
2192 that you have here,—the vouchers and books showing just when the expenditures were made—didn't you?

A. Well, you could not tell all those things, you could not obtain it.

Q. Didn't you say that you should begin computing depreciation on an apparatus before it even was put in service?

A. I do not think that I did, no. I testified that I had started computing depreciation in that case from the time the expenditure was made, as I remember now at this time. I certainly did not say the other.

Q. As a matter of fact, your Table 265 in the Consolidated case, your own tables, set out these facts as to the expenditures in the different years, didn't it?

A. Which table?

Q. Your Table 265 in the Consolidated case?

A. Why, yes, I believe that I just told you that I testified that that is what I had done in that case.

Q. Well, why did you do a different thing here from what you did there?

Mr. Tobin: If the Master please, the witness has indicated why.

The Witness: If I have not answered that, I cannot answer it any better.

Q. The charges to the 100,000 cubic foot holder, did you discover that that represented the installation of certain electrical apparatus, electric alarm?

A. Yes. I have forgotten just what it was. I think it was something like that, a very minor addition.

Q. You attributed to that electrical equipment eighty years, in connection with the holder. Can you state why this electrical equipment on a holder will last eighty years, while the electrical equipment in Table 10 you estimated will only last twenty years?

2193

A. I have stated that in connection with units and additions to units that I have considered in every case that the addition would correspondingly increase the probable life of the unit.

Q. How did you arrive at the life of 50 years for the deep tar well, as you call it?

A. That was my estimate of the life of an underground tar well of masonry construction.

Q. Are you sure it is a tar well?

A. No, I am not absolutely sure. I did not get in it.

Q. You have depreciated it on the basis of a tar well.

A. Which item is that you are speaking of?

Q. The deep tar well, Sheet B of Table 11.

Mr. Villas: The fourth item from the bottom.

A. Yes, I would have put it on the same basis if it had been a water well, the same, or an ammonia well.

Q. Do you figure this is a tank or what—what kind of a——

A. I figured it was a masonry well. I took the longest. I do not know just what it was. I think it was an expenditure in connection with one of the large wells, but I do not know. You cannot identify

these expenditures, or I cannot identify these expenditures with the actual things, and I did not attempt to in the small items.

Q. Just how do you figure that a well of this type would depreciate; what happens to it?

A. Well, the thing happens if it is a masonry well, masonry
2194 disintegrates; for various reasons there are changes that occur in the yard that cause the removal of wells. They get too small and they use the space for something else. Those things happen all the time, that you are doing away with wells and doing away with other things because of changes in the plans and everything of that character.

Q. Except for termination of use through that factor, there is nothing else happens to it, is there?

A. I do not believe that the element of physical decay is so large there, if they are well maintained and kept pointed up.

Q. You did not find out that this was simply a water well, a driven well of the type commonly used on Long Island?

A. No, I did not know that this was a water well of that kind.

Q. A driven well?

A. Of any description, no. I assumed that this description was correct.

Q. You do not think this well would ever be pumped dry; you have not any basis for that, have you?

A. No; but I notice this—that a great many wells on Long Island are going dry, and in Brooklyn.

Q. How long have they been in existence?

A. I don't know.

Mr. Ransom: I think that is all.

The Master: Any redirect?

Mr. Tobin: Yes, your Honor.

Mr. Ransom: I should like to have gone into some further points along the line that your Honor opened this afternoon. I
2195 have deferred rather reluctantly to your expressed view in that respect that I have gone into it as far as necessary.

The Master: Depreciation?

Mr. Ransom: Yes.

The Master: Oh, I think you have covered it.

Redirect examination.

By Mr. Tobin.

Q. Mr. Hine, were you employed in the Public Service Commission at the same time that Judge Ransom was counsel to that Commission?

Mr. Ranson: Objected to as immaterial.

The Master: Objection sustained.

Mr. Tobin: I do not know, I think you have given great freedom, if the Master please, to counsel on the other side to go into every phase and situation that might possibly exist here as to this witness'

testimony, and immediately when we start to ask this question we are shut off.

The Master: You can take your exception.

Mr. Cummings: Well, we will. Ask another one.

Q. Are you acquainted with the different gas-making machines, Mr. Hine?

Mr. Ransom: Objected to as not redirect.
The Master: Sustained.
Mr. Cummings: Exception.

Q. Do you know from your experience, study and knowledge of the situation exactly how water gas is made?

Mr. Ransom: Objected to.
The Master: Objection sustained.
Mr. Cummings: Exception.

Q. Can you make it yourself if you have the machinery, the oil and the apparatus?

2196 Mr. Ransom: Objected to as not redirect examination.
The Master: Objection sustained.
Mr. Tobin: Exception.

Q. Could you step into a gas plant that was properly equipped and take charge and operate the gas machines to make water gas?

Mr. Ransom: Same objection.
The Master: Same ruling.
Mr. Tobin: Exception.

Q. Are you familiar with all the apparatus used in making water gas?

Mr. Ransomff: Same objection.
The Master: Same ruling.
Mr. Tobin: Exception.

Q. You have made a study, have you, of the latest designs for making water gas—kept abreast of the times, have you, and of the machines for making water gas?

Mr. Ransom: Same objection.
The Master: Same ruling.
Mr. Tobin: Exception.

Q. Have you operated them yourself at some time or other in your career?

Mr. Ransom: Same objection.
The Master: Objection sustained.
Mr. Tobin: Exception.

Q. Have you seen them operated?

Mr. Ransom: Same objection.
The Master: Same ruling.
Mr. Tobin: Exception.
The Master: I am not going to let you qualify this witness now if you did not do it on direct.

Mr. Cummings: But he has attempted to destroy those
2197 qualifications, your Honor, by asking him in regard to his salary and so forth.

The Master: It does not make any difference. It is up to you to qualify him on direct examination.
Mr. Cummings: Well, we can do that further now.
The Master: You cannot do it now. It is getting too late in the night.
Mr. Tobin: We have been very patient as to the cross examination today and we are surely entitled to——
The Master: You have had the widest latitude to qualify the witness, and if the witness is not qualified on his direct testimony you are not going to do it now.

Q. You are acquainted with Judge Ransom, the counsel in this case, Mr. Hine?

Mr. Ransom: Objected to as immaterial.
The Master: Objection sustained.
Mr. Tobin: Exception.

Q. And you were associated with the Public Service Commission at the time that Judge Ransom was counsel to that commission?

Mr. Ransom: Objected to as immaterial.
The Master: Objection sustained.
Mr. Tobin: Exception.

Q. What was your position at the time Judge Ransom was counsel to that Commission?

Mr. Ransom: Objected to as immaterial.
The Master: Same ruling.
Mr. Tobin: Exception.

Q. Were you not a gas engineer connected with the Public Service Commission at the time Judge Ransom was counsel to that Commission?

Mr. Ransom: Objected to as immaterial.
2198 The Master: Same ruling.
Mr. Tobin: Exception.

Q. Were you not also used as a witness in various cases in which the Public Service Commission was a party, as a gas engineer, in which cases Judge Ransom acted as counsel to the Commission?

Mr. Ransom: Objected to as immaterial.
The Master: Same ruling.
Mr. Tobin: Exception.

Q. Were you not placed upon the stand in various cases, as an expert in gas cases, and interrogated by Judge Ransom as counsel to said Commission?

Mr. Ransom: Objected to as immaterial.
The Master: Same ruling.
Mr. Tobin: Exception.

Q. Were you not at various times and in various cases had before the Public Service Commissioners, in cases in which the Public Service Commissioners were parties, a witness and testified on the question of depreciation; and were you not interrogated on the question of depreciation by Judge Ransom, who was then counsel to the Public Service Commission?

Mr. Ransom: I object to this line of inquiry.
The Master: The same ruling.
Mr. Ransom: It is contrary to the fact, but it is just getting things into the record.
The Master: Anything else?
Mr. Tobin: In just a minute.

Q. The method that was adopted by Judge Ransom in these cases that I have referred to before the Public Service Commission, in which he was counsel—do you believe the method there used was the proper method for depreciation?

2199 Mr. Ransom: Objected to.
The Master: Objection sustained.
Mr. Ransom: And I never examined Mr. Hine on any such subject.
Mr. Tobin: Exception. That is all we have got.
The Master: Is that all?
Mr. Tobin: Yes.
The Master: We will excuse Mr. Hine. Is there anything else from the defendants? Have the defendants any further proof?
Mr. Tobin: No.
The Master: You are all through?
Mr. Tobin: Yes.
The Master: Do you rest?
Mr. Tobin: Except that we——
The Master: Where is Mr. Neumann?
Mr. Tobin: Mr. Neumann is not here.
Mr. Ransom: They previously announced that they were through.
Mr. Tobin: We do not ask you to act as counsel for the State and the Public Service Commission.
The Master: How about rebuttal now?
Mr. Ransom: I have a little rebuttal.
The Master: Do you want to finish it tomorrow afternoon?
Mr. Ransom: I would like to.
The Master: I had expected to go away tomorrow, but I will stay in town and finish this up tomorrow afternoon.
Mr. Ransom: Two o'clock or half-past one?

The Master: You had better make it two o'clock. Do you think it will take you over two or three hours?

2200 Mr. Ransom: I should imagine three or four hours. That is, my case, but if we start at half past one we will have that much more margin.

The Master: All right, we will make it half-past one.

Mr. Cummings: Is this a close estimate of the time, Judge?

The Master: I have not got my diary in mind, but I think I have tomorrow afternoon open. We will adjourn to half past one tomorrow afternoon.

Adjourned to Thursday, June 24, 1920, at 1.30 P. M.

Last Complainant's Exhibit 108.
Last Defendants' Exhibit A-111.

2201 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 24, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.
Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

The Master: Have the defendants rested?
Mr. Neumann: The defendant Nixon rests.
Mr. Cummings: So does the Attorney General.

MAYNARD H. SPEAR, recalled as a witness for complainant in rebuttal, testified as follows:

Mr. Neumann: I take it that the Court will confine the complainant to rebuttal.
The Master: That is a fair assumption.
Mr. Ransom: In connection with the defendants' proof on the question of candle power, and in rebuttal thereof, I offer in evidence the opinion adopted by the defendant Public Service Commissioner for the First District in its case No. 2235, on October 13, 1917, as reported in the official reports of the Public Service Commission
2202 for the First District, Volume 8, at page 255, and the following.
Mr. Neumann: Let me see it a moment.
Mr. Ransom: That being the opinion which was received in evi-

dence by your Honor in the Consolidated Gas case, and referred to at length in your opinion.

The Master: I only took the opinion after I took the order and as supplementary of the order, if you recall.

Mr. Ransom: I do not think you limited it in any way to that ground.

The Master: No, but that was my theory. You will remember at first I rejected the opinion, and subsequently the order was offered by the other side and then you offered the opinion and I took it.

Mr. Ransom: I always hesitate to doubt your Honor's recollection.

The Master: Well, don't hesitate, because I have thought of a good many things since then. I usually throw a thing out of my mind when I am through with it.

Mr. Ransom: The defendants, as I recall it, somewhat early in the complainant's case offered in evidence the order.

The Master: In the Consolidated case?

Mr. Ransom: Yes. Up to that time there had been no offer by me of the opinion. Subsequently in rebuttal, in connection with the question of candle power, I offered in evidence the opinion.

The Master: And I took it.

Mr. Ransom: And you received it.

The Master: Well, I am correct that I took the opinion after the order was in.

2203 Mr. Ransom: That is correct; but I believe there was no limitation of it to that ground, at least not so stated.

The Master: I did not so state, but that is the way my mind ran, rather than that I doubted the competency of the opinion as a separate piece of proof, but the order having been admitted I felt I was justified in taking the opinion as explanatory of the order.

Mr. Ransom: Well, here is the situation: The Commission here is a defendant, and it becomes an admission; they having raised the question of candle power, here are the official acts of the Commission with respect to a portion of this period. It happens that these acts were in part performed through the witness Hine, who has been on the stand, but in any event as against the defendant public authorities it was a part of the action of the Commission.

The Master: I see that this opinion includes the New York & Queens as one of the companies examined by the Commission or under its jurisdiction, for the purpose of determining the candle power.

Mr. Ransom: It does. I also call your Honor's attention to the fact that the order of the Commission in this case No. 2235, under which this hearing was held, is a part of the certiorari record in the Douglaston case, from which the defendants in this case have put in evidence various portions; in fact the order for hearing in case No. 2235 is already in evidence as Defendants' Exhibit O and the order adopted in connection with this opinion is a part of the same document.

2204 The Master: I will hear any objection.

Mr. Neumann: May I see it first?

The Master: Yes.

Mr. Neumann: Before making my objection to this, I would like to say to the court that there is a paper in this case No. 2235 that was introduced in evidence upon which this decision is based that I think would be competent if this opinion goes in evidence.

The Master: You mean there is some other paper in evidence?

Mr. Neumann: No, in this hearing, No. 2235, this record that he has brought here.

The Master: Well, that is another matter to be considered.

Mr. Neumann: Certain correspondence with the United States government, as I recall it, and there are certain recommendations that the Commission made with reference to a reduction in price.

The Master: Well, that is another matter that I will take under consideration. Just now I will hear any objection you have to the receipt in evidence of that opinion, which covers and includes a report or finding with reference to an investigation made under the auspices of the Commission as to the candle-power tests. On glancing at that opinion, I see that it refers to an investigation made covering 88 tests at the Flushing plant between January 1st and August 31, 1917, showing the results of those tests. In view of the plea of the defendant Public Service Commission that there was a violation of the statute, I am inclined to think that that opinion or report, practically, of the Commission, apparently establishing the
2205 contrary fact, ought to be received in evidence.

Mr. Neumann: I do not understand that this establishes a contrary fact at all.

The Master: It shows that for a period of six months the average candlepower was over 22.

Mr. Ransom: And that during the very period during which the defendants plead with reference——

Mr. Neumann (interrupting): No, it shows that the maximum was 23 and the minimum 20.

The Master: And the average over six months is 22.

Mr. Neumann: There were 88 tests taken.

The Master: I think it is quite clear from the record as it stands that the candlepower cannot be kept at a uniform standard, that it does fluctuate, and it goes up and it goes down, and the only basis on which to determine a violation of the candlepower requirement is an average over a period, and I think an average of 22 for a period of six months, tests made by the Commission itself, is a very forceful proof of the good faith of this company in this case, in any event.

Mr. Cummings: However the opinion of the Commission is accepted merely to dispute the correctness of the tests made by the City's inspectors, is that the idea?

The Master: I am receiving it, I do not know of any other proof here that is at all important in this case, but I am receiving it because I think it bears heavily upon the contention that there
2206 is no wilful violation, or not alone wilful but no regular violation.

Mr. Cummings: Well, then, you disregard the opinion of the Commissioner upon that fact; you simply accept the figures, and if

the figures prove to you that there was not any wilful violation, why that is all you care about?

The Master: Yes.

Mr. Cummings: Irrespective of the Commission's opinion.

Mr. Ransom: Here is the official action of the body charged by law, not what some city does under contract, but here is an official action of the body charged by law in behalf of all these defendants——

The Master (interrupting): I will hear any objection the defendants may have to it. I have expressed my views about it.

Mr. Cummings: Well, I object to it on the ground that it is incompetent, irrelevant and immaterial, and furthermore that it is a statutory regulation, it is a law fixed by statute and the opinion of the Commission upon the validity of such a statute is immaterial. They have no power to define or annul or limit in any way the law as fixed by the statute.

The Master: Is there anything you want to add, Mr. Neumann?

Mr. Neumann: No.

The Master: The objections are overruled, the table will be received in evidence.

Paper marked Complainant's Exhibit No. 109.

2207 Mr. Neumann: That is the whole opinion?

The Master: Yes, I am accepting the paper as offered. I want the stenographer to note in the record at this time, because I do not want to spend much time in an opinion by me on the subject matter, the following:

Mr. Neumann (interrupting): If the Court please, if you are going to read any part of this case, I must object to it on the ground that the whole opinion ought to go into the record, if anything, not extracts of it.

The Master: Well, you can read in anything else you want, but I want the record to show at this point, so that I can have it for ready reference, the following quotation:

"By authorization of the Commission, Mr. W. F. Hine, its Chief Gas Engineer, has established testing stations throughout the City and from January to the present time has supervised tests in those stations as well as secured the results of tests conducted in testing stations maintained by the City under procedure agreed to. The results of these tests down to and including August 31st (that means the year 1917), are set forth in Exhibit 1 herein, a summary sheet of this exhibit, as follows:"

The sheet is entitled:

"Tabulation of tests Made from January 1st to August 31st, Inclusive."

Referring to this particular company, the line is as follows:

"N. Y. & Queens."

The next column is "Testing Station, Flushing," the next general column is "Illuminating value in candles," and then the sub-
2208 columns are, "Number of Tests, 88, Maximum 23, Minimum 20.5, average 22.3," and the next four columns have to do which heating value in B. t. u.'s, with which I am not interested.

Mr. Cummings: I object to that on the ground it is incompetent, irrelevant and immaterial, and Mr. Hine is not an officer designated by law to make official tests under the statute. He may or may not be qualified. As a matter of fact I do not think he is a qualified gas inspector and does not pretend to be. The statute fixes the way it should be tested.

The Master: Overruled. Proceed.

Mr. Neumann: One moment, I want to look through this now and see if I want to read any other part right in here.

The Master: Well, you look it over a little later and read it in a little later on.

Mr. Ransom: Have you here, Mr. Neumann, Defendants' Exhibits O and P?

Mr. Neumann: I have not, but Mr. Cohen is on his way over here with them.

Mr. Ransom: Well, that is this certiorari proceeding. I have a copy of the same printed document.

Mr. Neumann: Well, if you say it is a copy, I will take your word for it.

Mr. Ransom: It is a printed copy. In connection with the portion of the certiorari papers which were placed in evidence by the defendants in their case, I offer in evidence the order of the Special Term of the Supreme Court, First Judicial District, allowing a writ of certiorari, and the petition for writ of certiorari upon
2209 which the order for writ was entered.

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, and upon the further ground they are self-serving declarations.

The Master: But as I understand it, you offered in evidence other documents from the same record.

Mr. Neumann: I tried to offer the whole record, and it was objected to.

The Master: Yes.

Mr. Neumann: Then the Master compelled me to pick out certain parts and would only allow me to offer such parts as were declarations against interest by the complainants.

The Master: Yes.

Mr. Neumann: Now, those parts I offered. Now, these parts are not declarations against our interest, they are self-serving declarations made by this company, and since the complainants themselves objected to the introduction of their evidence in the original instance, I do not see how they can now offer them.

The Master: You will have to let me see what was offered before.

Mr. Ransom: Exhibit O was the resolution of the Commission. Exhibit P was an opinion of the Commission, Exhibit Q was Mr. Spear's affidavit. Exhibit S was the order of the Commission denying

the application for rehearing, Exhibit T was an order fixing the time for compliance, and Exhibit U was an opinion of the Commission denying the second application of the company for rehearing.

2210 Mr. Neumann: I offered each paper separately, and each paper was objected to.

Mr. Ransom: These orders of the Commission certainly are not declarations against interest on the part of the company; Commission's acts are not in that status.

Mr. Neumann: I am talking about your petition being a self-serving declaration.

Mr. Ransom: It certainly is explanatory of the papers which you put in evidence.

The Master: Well, are they?

Mr. Ransom: Very obviously, I should think.

Mr. Neumann: Why did you object to them in the original instance when I offered them? You cannot eat your cake and still have it left, you know.

Mr. Ransom: I was not in court that day.

Mr. Cummings: That is no excuse; you had a representative here.

Mr. Ransom: I assume that the objections that were made were sound, else they would not have been made, and certainly would not have been sustained.

Mr. Neumann: And the unsoundness of them is the fact that you are offering this.

Mr. Ransom: Then why are you objecting to it?

Mr. Cummings: The absence of leading counsel, you know, is not a very substantial objection, especially when you had Mr. Vilas here, let alone Mr. Goetz.

The Master: Were you offering the order?

Mr. Ransom: The writ and the petition for the writ?

2211 Mr. Ransom: Yes.

Mr. Neumann: That would compel an introduction of further papers again.

Mr. Ransom: The company is entitled to show the circumstances under which the judicial action was taken.

Mr. Neumann: Well, your affidavit shows that, your affidavit shows what you thought of at that time.

Mr. Ransom: The company has a right to show what the circumstances were.

Mr. Neumann: You said they were making a Hipprodrome out of the Court.

Mr. Ransom: And I said also they are entitled to a fair rate.

Mr. Neumann: Yes, but you said they were making a Hippodrome out of the Court.

The Master: And I say this discussion is out of order, let's stop it. I do not think I can take this.

Mr. Ransom: The objection was made here the other day to the receipt of the exhibits which were offered in behalf of the defendant Commission that the statements of the Commission were not binding upon the complainant in this case. That objection was overruled and the documents were received. Now, if the defendant Com-

mission is entitled to spread at length upon this record as against this complainant its own version of the event, this complainant is likewise entitled to have upon the record here the papers upon which the action of the Court was taken, because whatever was done by this company was done under the protection of judicial decrees, and we are entitled to show those decrees. No individual,

2212 no matter what his position——

The Master: Let me just go over this again. The resolution of the Commission directing an order as to standards and measurements of quality and power of gas is not specially important one way or another, is it?

Mr. Ransom: No.

The Master: It is simply the official act?

Mr. Ransom: That was the resolution in Case No. 2235, in which you just received the opinion.

The Master: Yes. Now, the memorandum——

Mr. Neumann (interrupting): And you say that was introduced in evidence at the prior hearing?

Mr. Ransom: Which, the resolution?

Mr. Neumann: By me?

Mr. Ransom: I so judge from my records.

The Master: The memorandum of the Commission adopted upon relator's refusal to accept order made may be questionable.

Mr. Ransom: That is already in evidence.

The Master: I may strike it out. I think I will strike it out.

Mr. Neumann: I must object to striking it out at this time, after it has been received and now that he cannot get in what papers he wants, you cannot strike out our exhibit from the record.

The Master: But I will, and allow you an exception. I will strike out Exhibit P. I think I was in error in allowing it in.

Mr. Neumann: Exception.

Mr. Cummings: Exception.

2213 The Master: I shall also reconsider my ruling as to Exhibit U.

Mr. Neumann: I call to the Master's attention that at this time there has been no application of this kind made by the complainant, this is solely on the Master's own motion.

The Master: Yes. Opinion denying the second application, in other words I am striking out opinions as distinguished from orders directing things to be done, and I strike out this Exhibit U. I think I probably went too far in allowing P and U in, which are opinions of the Commission.

Mr. Cummings: You are just letting in another one.

The Master: Yes, I am letting that in because it contains the statement of a fact.

Mr. Neumann: Well, those contain statements of fact.

The Master: No.

Mr. Neumann: Why, those contain the statements of fact as to what this Company was doing there, making a hippodrome out of the courts.

The Master: Very well, I may be in error about it, but that is going to be my ruling.

Mr. Neumann: There is no doubt about it that you are in error.

Mr. Ransom: If that is going to be done, then these papers ought to be stricken out physically from the record, because without any instructions from the Court, that I know of, these documents were physically printed in the minutes.

2214 Mr. Neumann: No, these being in the record and now being stricken out, they cannot be physically stricken from the record. The Court must have these before them to determine whether they are properly in or out.

The Master: The Master will direct that they be physically stricken out, but they can be marked for identification under the same exhibit number as they now have.

Mr. Neumann: To which I except.

Mr. Cummings: Exception.

The Master: I shall sustain the objection to the offer made by Judge Ransom of the petition for a writ and the order of the Special Term allowing the writ of certiorari, allowing him an exception.

Mr. Ransom: And I offer separately the order for a writ.

The Master: That is the same objection, I suppose?

Mr. Neumann: Same objection.

The Master: Your objection is sustained, and exception allowed.

Mr. Ransom: I offer to show from the various orders of the Court which were made in the course of this litigation——

The Master (interrupting): I will change my ruling again. I will allow the order in to show there was a certiorari proceeding. I will allow the order of the Special Term.

Mr. Neumann: Now, this is a continued state of the record.

Mr. Ransom: That is the second certiorari proceeding, this second order.

The Master: I don't care which one it is, an order of the Court I will allow. Which one is it? Identify it and have it marked.

2215 Mr. Ransom: It is the order printed on page 47 of the document from which the defendants' Exhibits were taken.

The Master: That is the order to which the objections were, and the objection is overruled and it will be marked.

Mr. Neumann: I want to get clear which exhibits have been stricken out.

Order marked Complainant's Exhibit No. 110

Mr. Neumann: So that the record may be clear, the reasons they are stricken out is not by reason of the fact that the original papers were not offered?

The Master: No. They are stricken out because I think they are irrelevant and incompetent.

Mr. Neumann: All right, then; I take an exception.

Mr. Ransom: May the petition upon which this order was entered be marked for identification?

The Master: Yes.

Marked Complainant's Exhibit No. 111, for Id.

Direct examination.

By Mr. Ransom:

Q. Mr. Spear, in connection with the testimony offered by the defendants upon their case, and the request made of you by the Master at that time, have you prepared a detailed statement showing the cost of land acquired by the New York & Queens Gas Co. from August 1, 1904, to December 31, 1919, and computed the price paid therefor in cents per square foot?

A. I have.

2216 Mr. Neumann: Computation so far as the cents per square foot is concerned only?

The Master: You need not answer. Go ahead.

Q. And have you also upon this tabulation shown what would be the cost of the land acquired before August 1, 1904, if you applied the same unit price per square foot which is the average unit price paid for land acquired since August 1, 1904?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, purely speculative, based upon hypotheses, not based on any judgment or knowledge of the witness but a pure computation.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Cummings: Exception.

A. I have.

Q. And this is such statement?

A. It is.

Q. Known by you to be correct?

A. It is.

Mr. Ransom: I offer it in evidence.

Mr. Neumann: It is objected to on the ground it is incompetent, irrelevant and immaterial, not clear, not definite, very vague, it does not identify the parcels in any way so that they can be checked up, the exhibit itself states Plot A so much, Plot B so much, and so forth, nothing showing the description of the property, nothing whereby it can be identified.

Mr. Ransom: Most of these parcels have already been

2217 identified, and I have a map that I shall offer as the next exhibit which brings together all of the identifications.

Mr. Neumann: No foundation for the introduction of this exhibit.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Cummings: And also disputes other exhibits put in evidence by the complainant.

Paper marked Complainant's Exhibit 112.

The Master: As I recall it, I announced that I thought that the figure for the land ought to be about $44,000. I see that my figures

re pretty close to what it figures out in the way just described by the itness. That land was bought a good many years ago, prior to 904.

Mr. Ransom: On the basis of the Halleran figures, of course.

The Master: It would be $55,000.

Mr. Ransom: On the basis of its present value, of course on the asis of the Halleran figures it would be 21 plus 18.

The Master: That is 42?

Mr. Ransom: Yes, that is as the original cost of the land.

The Master: And I said that I would hold you to——

Mr. Ransom: No, it should be 44, that is right.

The Master: Well, that is the figure I will stand by, I think that about fair. This rather confirms the figure than otherwise, that hey may have bought it for a few thousand dollars more or a few housand dollars less.

Mr. Ransom: On this basis, of course, it would be $47,000,
218 but on the basis of the Halleran figures plus cost of land acquired since 1904, it would be $44,000 as the original cost.

The Master: I think I have hit a pretty fair figure as to original sts and value of $44,000.

Mr. Ransom: I think that you should find also the undisputed cts of the case that the present market value of his land is $55,000.

The Master: Yes, I think I shall have to, there is no dispute bout it, there is no witness who has been brought to the contrary, ut I shall report the probable cost of approximately $44,000, and e fair value prior to the war at about $44,000 and that the undisuted proof of Halleran, no one having been called to contradict im——

Mr. Cummings: You forget our Deputy Tax Commissioners.

The Master: Yes.

Mr. Cummings: So you must not say it is undisputed.

The Master: Yes, I think that raises a dispute. I think that I n going to let it stand at $44,000 as the present value.

Mr. Ransom: Well, I do not see how you can find that is the pres- t market value.

The Master: Well, I think I will let it go at that.

Q. In connection with Complainant's Exhibit 112, did you also the Master's request, Mr. Spear, prepare or have prepared under ur direction, a diagram showing each of these parcels of land by tters and showing from whom each parcel was acquired and just here each such parcel is located within the plant?

A. I have.

219 Q. And this is such diagram?

A. It is.

Q. Known to you to be correct?

A. It is.

Mr. Ransom: I offer it.

Mr. Neumann: Objected to on the ground it is incompetent, irlevant and immaterial. This witness has not shown any qualifitions for drawing any diagrams or anything else—no foundation d for this

The Master: Overruled.

Mr. Neumann: There is certainly not any foundation laid for it. He had it prepared under his direction, but that does not mean anything.

The Master: Overruled. It is a very unimportant document, simply a general sketch showing the general layout of the ground; and it is not intended to be precise or accurate, but simply gives me a general picture of where these lots are, and I am taking it on that theory.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 113.

Mr. Neumann: If the Master thinks that in a rate case, where they are required to prove this beyond a reasonable doubt, this testimony is sufficient, that is the Master's responsibility, not mine.

The Master: Yes, I think the important thing in these rate cases is, perhaps, to resolve doubts against the complainant company, and that is why I have reached the conclusion that I will not take the testimony of Mr. Halleran, in the light of the deputy tax com-
2220 missioners and in the light of the reports made by the company itself. I am therefore resolving the doubt against the complainant company in that respect, and I think $44,000 is a fair value before the war. I think that as a matter of judgment on the disputed testimony it probably is pretty nearly right now.

Mr. Neumann: And that in the face of their own exhibit, showing a lower figure.

The Master: No, their exhibit shows $44,000—their report to the Tax Department.

Mr. Neumann: Before we get through with this witness we will show you the exhibit that we have in mind.

Mr. Ransom: And the testimony of the only real estate man who has been called to the stand with respect to values at the present time is that it is $55,000.

The Master: No, you have got to have in mind the deputy tax commissioner.

Mr. Ransom: Not at this time.

The Master: Yes, in 1919. I think I will stand before the Court on that.

Mr. Neumann: To which, of course, we do not assent.

The Court: Of course, neither side is satisfied with it. We must have some logical figure somewhere.

Q. Mr. Spear, in connection with the opening entries of the books of the New York & Queens Gas Company in 1904, that have been placed in evidence by the defendants, have you produced the minutes of the opening meeting of the board of directors of the New York & Queens Gas Company in 1904, also a complete and correct excerpt and transcript from the minutes of the meetings of the board of directors of the company on the respective dates shown?

2221 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not within this witness' province to so testify. The present state of the record indicates that this

witness was not with that company at that time. The secretary of the company and the one who kept the minutes should be the one to be produced, and the original minutes should be produced and not extracts.

The Master: Let me see the minutes. (Takes paper from Mr. Ransom.)

Mr. Ransom: The original minutes were here, and I understood it was agreed the other day when you used one of these——

Mr. Neumann: I agreed that day so as not to call Mr. Raynor down, but I did not agree you should not produce your book. I wanted to accommodate and I will not do it again, in view of that fact. If concessions that I want to make in order to assist them are going to be used against me in a trial, I shall not make another concession.

Mr. Ransom: There is no effort to use anything against you. The original minutes are here. I am offering the certified copy, certified by the secretary, only for convenience.

The Master: These are the minutes of the New York & Queens?

Mr. Ransom: Yes, sir. In other words, it is the underlying data on entries which the defendants have placed in evidence in their case, based upon a theory of the case which they follow but not the complainant. It is offered in rebuttal on that theory.

2222 Mr. Neumann: How is it Mr. Cohen could not obtain those minutes when he asked for them, if they are in existence?

The Master: I have on the record the fact that Henry R. Wilson was the president of the Newtown & Flushing Gas Company in 1913, likewise in 1914, and of the New York & Queens——

Mr. Ransom: In 1903 and 1904.

The Master: Yes, 1903 and 1904, and of the New York & Queens after the purchase from the Newtown & Flushing. Have I not?

Mr. Neumann: Wilson? I do not recall Wilson.

The Master: Oh, no, he was a director.

Mr. Neumann: I do not recall Wilson.

Mr. Ransom: He was not the president of the New York & Queens.

The Master: Who was the president?

The Witness: Mr. Tilford.

The Master: Yes, Mr. Tilford.

Mr. Ransom: The first president of the company——

The Master: Of the New York & Queens?

Mr. Ransom: Of the New York & Queens——

The Master: It was Tilford, was it not?

Mr. Ransom: It appears to have been Charles Thomas.

The Master: Charles Thomas was vice president, I think, when that 1904 report was made.

Mr. Ransom: Well, he was vice president of the Newtown & Flushing very early after the New York & Queens began business.

The officers who have been elected upon the preliminary
2223 organization, various of them retired, and Mr. Tilford succeeded Mr. Thomas as president of the company. Mr. Thomas was elected president on the 13th day of July, 1904.

Mr. Neumann: I do not know whether that is so; and if it is so it ought to be susceptible of proof, not counsel's statement in the record here, creating an atmosphere.

Mr. Ransom: I have now offered the proof as to these bonds.

The Master: You produce the original minute book, do you?

Mr. Ransom: I do.

Mr. Neumann: What part do you offer?

The Master: Do you question the fact that that is the genuine original minute book.

Mr. Neumann: If he will let me look at it for a minute I will tell you whether I do or not. I cannot tell from this distance.

Mr. Ransom: I do not want a general roaming through the book, only with respect to the opening entries.

The Master: He will not do that.

Mr. Neumann: All I want to do is to satisfy myself that this is the original book, that is all.

Q. Do you know whether it is, Mr. Spear?

A. It is.

The Master: From appearance it would seem to be a rather ancient document.

Mr. Neumann: Is this the first book of this company?

Mr. Ransom: It is.

2224 Mr. Neumann: And the book that is being used now?

Mr. Ransom: No.

Mr. Neumann: Where is the book that is being used now?

The Master: That is not the question I want you to discuss now, Mr. Neumann.

Mr. Neumann: I want to be sure that I am being given the book containing the minutes of the Board of Directors. That is what I want to be sure of.

The Master: I simply ask you whether there is any question about that being the original book, the first book used, containing the opening entries.

Mr. Neumann: How can I tell that?

The Master: The witness says it is.

Mr. Neumann: I cannot tell it.

The Master: The witness swears it is.

Mr. Neumann: One moment. The Master must take into consideration this fact—that at that time this witness was not with that company.

The Master: That may be.

Mr. Neumann: How he can swear that was the book at that time, when he was not there, probably used four or five years prior to the time he came there, is more than I can understand.

The Master: I think it is satisfactory proof.

Mr. Neumann: Exception.

The Master: Taken in conjunction with the book itself, it is satisfactory proof.

Mr. Ransom: I offer in evidence the minutes of the first 2225 meeting of the Board of Directors, being also all the incorporators, held on the 13th day of July, 1904; the minutes of the special meeting of the Directors——

Mr. Neumann: One moment. Now you are offering one and I want to look it over.

The Master: What pages?

Mr. Ransom: That is comprised on pages—well, I will offer a copy of the certificate of incorporation which appears in connection with the minutes, that which appears on pages 1 to 3, and then the minutes of the first meeting appearing on pages 6 to 11, both inclusive; then the minutes of the meeting of the stockholders on the 15th day of July, 1904, appearing on pages 12 and 13; the minutes of the special meeting of the directors of the company held on July 18, 1904, appearing on pages 14 and 15; the minutes of the meeting of directors on August 3rd, 1904, pages 16 to 19. I think that is all.

Mr. Neumann: Now I want to look at them.

The Master: Look at them down to page 19.

Mr. Neumann: Down to page 19?

The Master: Yes.

Mr. Neumann: You did not offer them including page 19?

Mr. Ransom: I think I did.

The Master: Yes, it includes page 19.

Mr. Neumann: This is objected to on the ground it is incompetent, irrelevant and immaterial, not properly proven, not properly shown to have been the minutes of the meeting of the Board of Directors; that the book is offered and a person is offered who introduces it, to whom no cross-examination can be directed
2226 to determine whether the book is the book, or whether the book is the book that was in use at that time, or whether the statements therein set forth contain a true and accurate and correct account of the meetings that it purports to set forth.

The Master: Do I understand that to be an application for leave to cross-examine Mr. Spear?

Mr. Neumann: What is that?

The Master: Am I to understand that you want to cross-examine Mr. Spear?

Mr. Neumann: No, quite the contrary. Mr. Spear was not the man who took these minutes.

The Master: Then you do not want to cross-examine him?

Mr. Neumann: Why, that is not the question now.

The Master: You said something about not being permitted to cross-examine him or not being able to. I did not want an inference on the record that I am preventing you from cross-examining him.

Mr. Neumann: No, the record is quite clear. I stated exactly what the facts were, that they were introducing them through a person who had not kept them, and thereby we are deprived of the right of cross-examining him.

The Master: No, you are not deprived of it.

Mr. Neumann: We are. I do not see how else the Master can figure it.

The Master: I will not deprive you of the right to cross-examine.

2227 Mr. Neumann: If the book is introduced here through a person who did not make it, I say that the defendants are deprived of the right to cross examine the person who kept the minutes.

The Master: We will not argue the meaning of the word "deprived." I understood it to mean to keep or take away some right. The objections are overruled. They may be received in evidence.

Mr. Ransom: May we mark the certified copy instead of the original?

The Master: No, mark the first page of the original.

Marked Complainant's Exhibit 111.

The Master: As I understand it, Judge, that record shows that Mr. Wilson, owning all of the stock and all of the bonds of the Newtown & Flushing, consisting of $300,000 of common, $300,000 of bonds and $50,000 and odd of preferred stock, sold that company to this New York & Queens Company for all of its capital stock——

Mr. Neumann: One moment: I do not think that that is what the shows.

The Master: Then let us see if I read it correctly.

Mr. Ransom: Of course, it does not say that Mr. Wilson on July 12, 1904, owned all of the stock and all of the bonds. It says that he offered to sell and deliver.

The Master: Well, he could not afford very well to sell and deliver unless he owned them prior to——

Mr. Neumann: Why couldn't he, as a broker?

2228 Mr. Ransom: He could; he had to be in a position to get it.

The Master: I do not think that changes what is in my mind.

Mr. Ransom: He may not have owned a share of it.

Mr. Neumann: In the first place I want to place an objection on the record right here to the Master reading into the record now his own interpretation of this exhibit. The exhibit speaks for itself.

The Master: All right. The people who owned all the stock, common and preferred, and the bonds, of the Newtown & Flushing, as a result of this deal, became the owners of all of the capital stock of the New York & Queens, did they not?

Mr. Ransom: All of the entire authorized capital stock.

The Master: And $650,000 of bonds.

Mr. Ransom: Of bonds.

The Master: Isn't that so?

Mr. Ransom: That is correct.

The Master: So that those securities issued by the New York & Queens Gas Company were precisely of the same value as the securities which they got, were they not?

Mr. Neumann: No, they were not. They were $600,000 less.

The Master: I am talking to Judge Ransom, not to you, for a minute. The aggregate of all the stocks and bonds paid for the aggregate of all of the property represented precisely the same thing.

Mr. Ransom: $300,000 common and $50,000 preferred.

2229 Mr. Neumann: I cannot quite follow that.

Mr. Ransom: And $300,000 of bonds.

The Master: Maybe I can make it clear to you. All of the s

curities of the Newtown & Flushing represented in value the value of the Flushing plant, did they not?

Mr. Neumann: I don't follow that at all.

The Master: Then I will have to ask Judge Ransom; maybe he can follow it.

Mr. Neumann: Suppose the company was overcapitalized?

The Master: I do not care how much overcapitalized it was. All the securities standing out, owned by a company, are worth precisely what the property represented by those securities is worth, no more and no less.

Mr. Neumann: But the property may not be worth anywhere near the securities issued.

The Master: Did I say it was?

Mr. Neumann: That is the point.

The Master: Did I say it was?

Mr. Neumann: That is what I understood you to say.

The Master: That is why you do not understand me; you do not get my point. Do you get it, Judge?

Mr. Ransom: I do.

The Master: How am I to determine the value of the property by reason of that transaction? I cannot fix it at $1,250,000 just because that was the figure placed on it in par value of securities, can I?

Mr. Ransom: Well, the sale was for $1,250,000.

The Master: In securities?

2230 Mr. Ransom: $1,250,000, payable in a certain way.

The Master: In securities.

Mr. Ransom: Yes.

The Master: I take it that it is reasonable for me as master to have in mind the securities of a par value are not necessarily worth that, par, even though men are willing to deal with it in those figures.

Mr. Ransom: It becomes a matter of evidence. For example, right at this time it appears that the treasury bonds were sold at par.

The Master: I do not think it shows that.

Mr. Cummings: There is no evidence of that.

The Master: It does not show that, Judge. It says he can sell it—Oh, yes, at par, I beg your pardon.

Mr. Ransom: And that, of course, is as to the bonds.

The Master: Yes.

Mr. Ransom: And, of course, as to the stock. The statutory provision——

The Master: I know the statute; I have organized a few companies in my day and I know all about present value for the purpose of issuing stock. What I wanted to get clear is this: I took this evidence—this record in evidence because I wanted the record to show just what was done, and I thought it was well to have it in the record.

Mr. Ransom: That is what I want, and that is the reason why I offered it.

The Master: I do not think it makes any difference one way or the other. But I have been puzzled right along and I have

2231 been waiting for the opportunity to draw out your view as to how I am going to determine what the New York & Queens actually paid for this property, assuming, as I always have assumed from what I have heard before, that they paid $650,000 in bonds, as

to which you are justified in the contention that a sale of $50,0
at par would indicate they were worth par, making it $650,000, as
what the value of the stock was. Now, that is what is bothering m
Mr. Ransom: Well, I think there is evidence with respect to o
of these reports
The Master: Made by you?
Mr. Ransom: No, which has been placed in evidence as a defen
ants' exhibit, showing quotations at 90, or more.
The Master: At 90 for bonds?
Mr. Ransom: Stock.
The Master: I do not think so—for bonds. I think it referred
bonds.
Mr. Cummings: It slumped off a little bit.
Mr. Ransom: I am not sure.
Mr. Neumann: Perhaps complainant's counsel would like to e
plain how the Franchise Account from 1904 jumped from 469
1,073, if the bonds represented tangible property of that value.
The Master: Well, the stocks and bonds both represented tangi
property.
Mr. Neumann: I will say what I said the other day, any findi
made on that will be like Mahomets' Coffin, suspended in the a
without any visible means of support.
2232 The Master: You have what I had in mind, Judge.
ahead.
Mr. Ransom: I think under all the circumstances, and we offer
Col. Miller's testimony showing cost of property down to that ti
which is still in use——
The Master: I have got Col. Miller's, I think, a figure that M
Hine agreed to, of two hundred and some odd thousand dollars
tangible property, excluding land.
Mr. Neumann: Both agree on the sum, except that they disag
on the question of depreciation.
The Master: Yes.
Mr. Neumann: Colonel Miller's figure is without depreciation a
Mr. Hine has figured it with depreciation.
The Master: I do not disagree with myself on depreciation.
Mr. Neumann: I do not want any confusion in the record.
Mr. Ransom: Also, of course, you have the record on both s
that to those tangible you have to add certain structural overhe
for which Colonel Miller gave certain figures and as to which M
Maltbie and Mr. Hine gave certain figures.
Mr. Neumann: We have analyzed all that on Exhibits 11 and
The Master: Do not interrupt, Mr. Neumann, but go ahead w
Mr. Spear; it is not quite so simple as the Consolidated case, whe
had a basis to work from.
Mr. Ransom: It is not.

Q. Mr. Spear, in connection with the testimony of the wit
Cohen on June 3, 1920, his Schedule 10, Defendant's Exh
2233 A-20, and the inferences which he undertook to draw th
from, have you prepared a schedule in the same form as
Defendants' Exhibit A-20, but showing the revenues and expense
the complainant company during the first five months of the y

1919 and 1920, in accounts of cents per thousand cubic feet of sales?
A. Yes, I have.
Q. You have that with you?
A. Yes, it is right in that package there (indicating).
Q. This is such statement, as so prepared (indicating)?
A. It is.

Mr. Ransom: I offer it in evidence. If there is no objection I will be willing to mark the printed copy which was furnished to the defendant some time ago.
Mr. Neumann: What is that; what was that last statement about furnished to the defendants some time ago?
The Master: Some time ago, a printed copy of it.
Mr. Ransom: A week ago.
Mr. Neumann: To whom did you send that?
Mr. Ransom: To all the defendants.
Mr. Neumann: You did not send it to me.
Mr. Ransom: I am sure I did, with an affidavit annexed to it.
Mr. Neumann: With an affidavit of whom?
Mr. Ransom: An affidavit of Mr. R. A. Carter.
Mr. Neumann: In one of the books of the other companies?
Mr. Ransom: In one of the other cases.
2234 Mr. Neumann: You are talking about another case now?
Mr. Ransom: I am talking about a schedule which was furnished.
Mr. Neumann: In another case?
Mr. Ransom: In another case, not in this identical case.
Mr. Neumann: In another case?
Mr. Ransom: Yes, not in this case.
Mr. Neumann: Why didn't you say that at the start?

The Master: Do not get into this discussion. This is taken from the books, Mr. Spear?
The Witness: It is.
Q. It is in the same form as Defendant's Exhibit A-20?
A. Yes.

Mr. Neumann: I object to it on the ground it is incompetent, irrelevant and immaterial. Part of a year is not a proper basis. The complainant put in the first exhibit for part of a year and we matched him, and now he is coming back.
Mr. Ransom: In this case?
Mr. Neumann: In this case.
Mr. Ransom: Oh, no.
Mr. Neumann: You put in part of a year and we showed it to you.
Mr. Ransom: We showed the cost as of a given date, but that was not the cost for three months or five months.
Mr. Neumann: For part of a year.
The Master: Finish your objection.
Mr. Neumann: That it has not been shown to be correct; on the

further ground that the underlying data on which it is base
2235 is not here, that there are no details shown. It deals i
figures without showing how they are arrived at, and is not
safe basis for the Master to form any judgment on.

The Master: The objections stated are overruled.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 115.

Q. Mr. Spear, you have in court the 1920 books covering ga
operations to the end of May, 1920?

A. Yes, I have.

The Master: Well, they are the same books that were marked i
evidence, are they not?

Mr. Ransom: Yes, and I would just like the record to show tha
they are considered in evidence. The same books were used fo
1920.

The Master: Yes, the entries are being made in them since the
were marked in evidence, so that the entries are being made in ther
right down to date.

The Witness: That is right.

Mr. Neumann: One moment. I do not remember that the book
for 1920 are in evidence, and I do not think they were offered i
evidence. I do not see how the Master can rule in evidence book
that were not offered.

The Master: I am not. The vouchers, the operating books, be
ginning with January 1, 1919, are the same books that are no
being used, as I understand it?

The Witness: They are.

Mr. Neumann: Isn't there a new book in 1920?

2236 The Master: I do not understand so.

Mr. Ransom: The books were in evidence down to Ma
25th.

The Master: But it is the same book.

Mr. Ransom: The same book.

The Master: You did not open a new book in 1920, did yo
Mr. Spear?

The Witness: No.

The Master: It is the same book.

Mr. Neumann: As I recall it, the book I examined here ran dow
to the end of 1919 and had no 1920 entries in it, and the book w
in court.

The Master: Have you got it here?

The Witness: Yes.

The Master: Let us have a look at it and we will settle that. L
us see the operating journal, for instance.

The Witness: I have the cash book (producing book).

The Master: Any one of them will do. Mr. Neumann, you m
come over here and look at it.

Mr. Neumann: I would rather have Mr. Cohen. He can t
more than I can about them.

The Master: I am showing Mr. Cohen Complainant's Exhibit

the first entry being September, 1918, and it runs down into April, May, and the last entry being May, 1920—the end of May, 1920, apparently. I suppose the other books are the same; I do not think we need waste time looking at them. Complainant's Exhibit 52 Mr. Cohen suggests he would like to look at, and it contains entries as late as May 21, 1920.

2237 Mr. Neumann: May I say this right now, that I will ask that our accountant be given those books tomorrow to work on.

The Master: Yes.

Mr. Neumann: On these exhibits.

The Master: Yes.

Q. Mr. Spear, in January and February of 1918 was the Flushing Bay or Creek frozen over?

A. It was.

Q. So that deliveries of oil could not be made by boat?

A. That is right.

Mr. Neumann: What year was that?

Mr. Ransom: 1918, January and February.

The Master: That is the time the gas candle power went down considerably?

Mr. Ransom: At times.

Q. During that time you could get oil only by train, by rail?

A. By tank cars, yes.

Q. Did you have difficulty in obtaining during those months an adequate supply continuously?

A. We did, because the Standard Oil Company——

Mr. Neumann: One moment. I object to it on the ground it is incompetent, irrelevant and immaterial. The fact that they had a little difficulty in getting oil, so far as transportation is concerned—I do not see how that can affect the candle power.

The Master: The objections stated are overruled.

Mr. Neumann: One moment, I have not finished them yet.

The Master: Oh, have you another one?

Mr. Neumann: Yes, I have another one.

2238 The Master: Let us hear the other one.

Mr. Neumann: In addition to that I want to call the Master's attention to the fact that this is not strictly rebuttal.

The Master: That is overruled. Anything else.

Mr. Neumann: Exception.

Q. Did you finish your answer?

The Master: No, he was interrupted. The question is not whether you got an adequate supply, but tell us what troubles you had getting your oil. If Mr. Neumann objected to the word "adequate" I would have sustained it.

The Witness: We had a great deal of trouble getting oil from the Standard Oil Company, because they did not have tanks enough. At the same time there were a great many other companies that were frozen up the same way——

Mr. Neumann: I move to strike that out about the other companies.

The Master: Yes.

Mr. Neumann: This company was dealing with——

The Master: I sustained your objection. Just tell your own troubles, Mr. Spear.

The Witness: We were telephoning frequently, several times a day, to the Standard Oil Company to get cars. Some days we would not get any cars, some days we would get one, some days we would get two, and our stock went down as low as 30,000 gallons on days.

By the Master:

Q. How much did you need a day?

2239 A. About four to five thousand, but you cannot pump it out of the tanks.

Mr. Ransom: That is all.

Mr. Neumann: So far as the exhibits are concerned, I am going to request at this time that the cross-examination be suspended until our accountants have time to check them up.

The Master: All right, I will give you until Monday morning.

Cross-examination.

By Mr. Neumann:

Q. Mr. Spear, the winter of 1918 was a severe winter?

A. It was. That was the winter of 1917-1918.

Q. Yes. You recall when I was cross-examining you with reference to Flushing Bay being frozen over, you stated that it never froze over?

A. No, I did not.

Q. Well, I will have one of the men look it up and direct you to that in a moment.

A. My recollection is that I stated it had been frozen over only twice since I have been in Flushing.

Q. Do you recall I was directing your attention to a particular year?

A. Yes, I think that was the year 1919 you spoke of.

Q. Asking you whether it was frozen over.

A. Yes, I think that was the early part of 1919.

Q. And in answer to that question you said you did not recall that it ever had been frozen over?

A. Oh, no; I did not make that statement.

Q. Did you not state on your cross-examination that you had difficulty in getting coal during the year 1919?

2240 A. Yes.

Q. And was that not by reason of the bay being frozen over?

A. No.

Q. What was the reason for that?

A. Due to a shortage of coal.

Q. How much oil did you have on hand in November of 1917, do you know?

A. No, I don't remember.

Q. How much oil did you have on hand in November, 1917, do you know?

A. I don't recall now.

Q. Have you any data in court here now that will give you that?

A. No.

Q. You did cause perpetuated to testify to that?

A. No.

Q. Is it not a fact that you had less than your usual supply on hand during that time?

A. No, I would say we had our usual supply in November and December; that is, the early part of December.

Q. When did this shortage begin, then, as you state, of the shortage that you state?

A. The early part of January, 1918. The log from west about the 27th or 28th of November, 1917.

Q. What is the usual quantity of oil that your company keeps on hand, on average for a month?

A. Well, our tanks hold about 100,000 gallons of oil, and when we get——

Mr. Newmann: One moment, I move to strike that answer out as the ground it is not responsive.

The Master: Motion denied.

2241 Mr. Newmann: That question has been gone over time and time again.

The Master: Motion denied.

Mr. Newmann: And we have the situation of 100,000 capacity and 100,000 on hand.

The Master: Go on.

A. (continued): And we rarely get below a minimum of 60,000 gallons, when we order another cargo, which fills us up. We get between 120,000 and 130,000 gallons to a cargo.

Q. And you use about 4,000 gallons a day?

A. We did at that time, between four and five thousand.

Q. Now you make it five, do you? At first you said four. How much gas do you manufacture in a month?

A. Do you mean now at the present time?

Q. No, in 1917 how much gas did you manufacture in a month?

A. Well, I do not recall just what the figure was now. We would run between four and five thousand gallons a day of oil.

Q. But your original figure given on direct was 4,000, wasn't it?

A. I may have said about 4,000.

Q. And you don't recall how much gas you manufacture per month?

A. I don't recall how much we manufactured per month at that time, no.

Q. Do you know how much you manufacture now?

A. Yes.
Q. How much?
A. Between 30,000,000 and 35,000,000.
Q. And how much oil would that take?
A. It would depend upon the time of the year.
2242 Q. I am taking an average of four gallons per thousand cubic feet.

Mr. Ransom: I object to the assumption. There isn't any testimony in this case from anybody that four gallons is enough for this company.
The Master: Don't take Mr. Neumann's estimate. How much oil do you use a month?
The Witness: One hundred and thirty to 140,000 gallons a month.

Q. How much has your manufacture increased over 1917?
A. Probably 20%.
Q. Isn't it more than that?
A. Well, I would say 20%.
Q. Isn't it between 25 and 30?
A. No, I would say it was about 20%.
Q. Even taking it at your own figure, 20%, how much do you figure from that taken in 1917, taking 20% off?

Mr. Ransom: I object to that as complicated, indefinite and meaningless, and not cross examination.
The Master: Overruled.

A. Well, it would be somewhere around 110,000 to 115,000 gallons per month, figuring it that way.
Q. 20% of 140,000?
A. 20% of 140,000 would be 28 off. That would be 112,000.
Q. I now show you Complainant's Exhibit 13, and direct your attention to Parcel A down there, the one next to the corner of Farrington Street, being 50 feet west of Farrington Street, on the northerly side of Myrtle Avenue.
A. Yes.
2243 Q. That is marked Parcel A?
A. Yes.
Q. Isn't that the parcel that was conveyed to the New York & Queens Gas Company by Mary E. Rogers and John F. Rogers on the 26th day of May, 1919?
A. 1909.

Mr. Cummings: 1909 is right.
Mr. Neumann: This exhibit says 1919; it must be an error. Oh, 1909, I beg your pardon.
Mr. Ransom: Then the exhibit is not an error.

A. It is conveyed by Mary E. Rogers, wife of John F. Rogers.
Q. And that is the whole parcel that was conveyed by this deed?
A. Yes.
Q. Look at that deed and tell me what the consideration in that deed is.

Mr. Ransom: I object to that as incompetent, irrelevant and immaterial, and worse. The paper speaks for itself.

The Master: I will allow it.

Mr. Neumann: "Worse" is pretty good. You must have run out of words. Exception.

The witness is now looking at Complainant's Exhibit 38, which the defendants' counsel has directed attention to.

A. The consideration spoken of in the deed is $300. That is not the amount we paid for it.

Mr. Neumann: I move to strike out the words "that is not the amount we paid for it."

The Master: Motion denied.

Mr. Neumann: Exception.

2244 Mr. Cummings: There is no ambiguity about the amount in the deed.

Q. The amount that you have on Complainant's Exhibit 112 for that same plot is $1,200, is that correct?

A. That is right.

Q. Now, taking this same plot that we were just discussing, Plot A, was that a vacant piece of land?

A. It was.

Q. No house of any kind on it?

A. No.

Q. Plot B, was that a vacant piece of property?

A. It was.

Q. And Plot C?

A. That was vacant.

Q. And Plot D?

A. That had a house on it.

Q. What kind of a house?

A. Two-story and attic house, frame.

Q. What happened to that house? Did you tear it down?

A. No, it is still there.

Q. Still on the property?

A. It is.

Q. Is it used in your business?

A. Yes, that is the house Mr. Morrison lives in.

Q. And Plot E?

A. That was vacant land.

Q. Plot F?

A. That was vacant land.

Q. Plot G?

A. That had four houses on it.

Q. What kind of houses?

A. Frame.

Q. Where were they? Can you indicate that on the map?

2245 A. There was a house on each of lots 11, 12 and 13 facing Farrington Street, and a house on lot 9, facing this street here (indicating).

Q. Facing the street here, which street do you mean?
A. To the north of lot 9.
Q. There isn't any street there, is there, or is that Centre Street, that one in dispute?
A. Supposed to be Centre Street.
Q. Was there a house on that?
A. There was a house.
Q. Is that house still there?
A. No. All four of them have been torn down.
Q. When?
A. As soon as we got the title to the property.
Q. Do you recall when that was?
A. 1915.

The Master: You could not buy the land without the houses, could you?

A. We could not.
Q. You took them all down, did you?
A. Yes, sir, and built the holder there.
Q. Plot H, was there any house on that?
A. There was.
Q. Where?
A. Well, I would say about the centre of the lot facing Farrington Street.
Q. Is that still there?
A. It is not.
Q. When was that torn down?
A. As soon as we got possession of the property, for the same reason, to build the holder.
Q. Now I notice on your Exhibit 112 here, "Deduct for the Kirby House, $2,000." What do you mean by that?
2246 A. We paid $3,000 for the property with the house on it, and I considered the lot was worth $1,000, so I deducted $2,000 for the house.
Q. Tell us why you did not deduct the amount of the houses from the other lots?
A. Because the houses did not remain on the property and were of no use to us.
Q. You had to tear them down?
A. Yes.
Q. And you allowed nothing for their value at all on this exhibit?
A. Because they had no value to us.
Q. You tore them right down and allowed nothing?

The Master: So he said.

Q. This Raynor plot, H, is that the Raynor who is with your company?
A. It is.
Q. Do you know whom he bought that from?
A. Yes.
Q. Who?

A. Paulina Curetti.
Q. Do you know how much he paid for it?
A. The same price that we paid for it.
Q. There was no advance in price over what he paid?
A. Oh, no.

The Master: He bought it for you?
The Witness: He did.
The Master: Took it in his name?
The Witness: Yes.

Q. What was the reason for taking the title in his name, rather than in the name *of the com-* of the company?

Mr. Ransom: I object to that.
2247 The Master: I will let Mr. Spear give the reason.

A. I don't know; that was the lawyer's idea.

Mr. Neumann: Have you Exhibit 96 here?
Mr. Ransom: I think so. Here is the original.

Q. I now show you Complainant's Exhibit 112, and direct your attention to the amount, $29,237.03, with a note ahead of it, "Balance of Area applying average price paid for land acquired since August 1, 1904, total, $29,237.03." Where did you get that figure from?

A. I took the total area of the property, which is 107,402 square feet, and deducted the number of square feet in the property bought since August 1, 1904, subtracted it, and got the figure 65,598 square feet, which, multiplied by 44.57 cents a square foot, gives $29,-237.03.

Q. I now direct your attention to Exhibit 96, page 2, "Cost of plant and distribution system exclusive of undistributed structural cost, acquired by Complainant on August 1, 1904, estimated as of that date." You see the line there?

A. Yes.
Q. And what is the figure?
A. $19,423.

Q. So the land there must be the identical land that you figured at $29,237.03, is that correct?

Mr. Ransom: I object to that.
The Master: Objection overruled.

A. I would say that is the same property.

Q. Now, explain how you got $10,000 more than Mr. Miller does for the same property?

A. By taking the cost of the land acquired since August 1, 1904, and dividing it by the number of square feet in the property
2248 gives me a figure of 44.57 cents a square foot, after deduc-ing $2,000 for the Kirby house. The other computation is as I have stated before.

Q. Is it not a fact that if you took out the other houses that that 44.57 would be less?

A. Yes, but you would not have any right to take out those houses. The houses were not of any use to us, and we had to take them with the property, and tear them down to build the holder.

The Master: Let me ask you this, which perhaps is more useful than the stuff Mr. Neumann is wasting his time on.

Mr. Neumann: I take an exception to the Master's comment.

The Master: How did Mr. Miller get that cost of $19,000, do you know?

The Witness: I don't know how he figured that. It must be from the Halleran testimony.

The Master: How much did the testimony show the property after August 1, 1904?

Mr. Ransom: After August, 1904, $18,630.90.

Mr. Neumann: That is only deducting the Kirby house, and not taking the other houses.

The Master: The testimony is that $18,000 was for the land after 1904?

Mr. Neumann: Yes, $18,630—no, $20,630.90, includes all land and all houses acquired since 1904. Then he has deducted $2,000 for the Kirby house, but has not deducted anything for the other houses that he said were there, four of them.

Mr. Ransom: There was $19,000 aside from the grading and filling. Personally, I think that is low as an index of present value.

2249 The Master: I am trying to figure cost as compared with value. How many square feet in the total area?

The Witness: Yes, sir. You remember the other day looking at the map, and you said we had bought a little less than half.

The Master: My judgment was apparently right.

Q. Don't you know that Mr. Miller used the square foot basis to arrive at the value of $19,000 of land in 1904?

Mr. Ransom: I object to that.

The Master: Objection overruled.

A. I think he did.

By Mr. Cummings:

Q. In Exhibit 112 it is stated here, "Balance of area applying average price paid for land acquired since August 1, 1904." Where did the company acquire that balance of area spoken of here?

A. It was prior to August 1, 1904.

Q. Why didn't you apply the price then of land at that particular time?

The Master: What do you mean?

Mr. Cummings: I mean, why didn't he apply the price as of the time he acquired it.

The Master: Prior to August 1, 1904?

Mr. Cummings: Yes.

The Master: Because he didn't have it.

Mr. Cummings: The time they acquired it was 1901.

The Master: What?

Mr. Cummings: The time they acquired that balance of area.

Mr. Ransom: Who acquired it, the New York & Queens Gas Company?

Mr. Cummings: Yes.

2250 Mr. Ransom: Why, no; they acquired it in 1904.

Mr. Cummings: Is that right?

The Witness: Yes, the New York & Queens Gas Company acquired it in 1904.

Mr. Cummings: I was mistaken about that. I thought they acquired it in 1901.

(Witness excused.)

JAMES E. ALLISON, called as a witness on behalf of the complainant, in rebuttal, being duly sworn, testifies as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Allison, where do you live?

A. St. Louis, Missouri.

Q. What is your business or occupation?

A. I am a consulting engineer specializing in valuations of public utilities.

Q. Rate making work?

A. Rate making work, and I am also a lecturer on the economics of public utilities at Washington University.

Q. What is your firm?

A. James E. Allison & Company.

Q. What is your education, and what special course of study have you pursued?

A. I graduated from Harvard a number of years ago, and then became student engineer in cordage and cotton mills, specializing on machine design and prime movers. Then I became student engineer of a gas works, and afterwards manager of gas
2251 works. Then I became manager, designer and manufacturer of street railway equipment; also consulting engineer at times of the mechanical department of a street railway.

Mr. Neumann: May I at this point ask what is the purpose of the introduction of this witness into the record? What is the purpose of his testimony?

Mr. Ransom: Rebuttal.

Mr. Neumann: That does not mean anything. I think before we go any further we ought to have this straightened out, as to the purpose for which this man is now being called. I take an exception.

Q. You were a student engineer with the Hooven & Allison Mills?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, no necessity shown for calling this witness.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes, sir.

Q. As a mechanical engineer on machine designs?

Mr. Neumann: I make the same objection.

The Master: There is no sense in repeating these objections as to the qualifications of this witness. It may be a very interesting story that will be spread on the record as to the qualifications of Mr. Allison. Counsel are entitled to have that. If when they are through with qualifying Mr. Allison they ask a question in rebuttal which is not proper then your objection will be timely. Don't let us waste time with objections now.

Mr. Neumann: Exception.

2252 A. Yes, sir.

Q. These gas works in which you were first a student engineer, and ultimately a general manager were located where?

A. Xenia, Ohio.

Q. When you became manager and chief engineer in charge of manufacture of street railway equipment, that was for what company?

A. For the Southern Manufacturing Company.

Q. In what city?

A. Nashville, Tennessee.

Q. What happened after that?

A. After that——

Q. That was about 1890 or thereafter?

A. Yes. The next thing that happened was going into the Spanish-American war. When I came out I went to St. Louis and established myself as consulting mechanical engineer. Shortly after that I was appointed Chief of the Bureau of Inspection of Boilers and Elevators, and Chairman of the Board of Examining Engineers.

Q. That was for power plant engineers in the City of St. Louis?

A. Yes. In 1909 I was appointed Commissioner and Chief Engineer of the St. Louis Public Service Commission.

Q. Had you also been selected engineer for the St. Louis World's Fair?

A. Yes, I had been selected as engineer of one of the departments of the World's Fair.

Q. What was the jurisdiction of the St. Louis Public Service Commission of which you were Chief Engineer and member of the Commission, I mean so far as properties of public utilities and valuations are concerned?

2253 A. Our duties were to make valuations for rate making purposes, and establish rates for the public utilities of St. Louis.

Q. There was not a State Commission in Missouri at that time?

A. There was no State Commission then.

Q. How long were you the Chief Engineer and a member of the St. Louis Public Service Commission?

A. Four years.

Q. During your incumbency of that office what was the nature of your particular work?

A. My work was to oversee in detail the inventory and valuation of the different public utilities of St. Louis.

Q. You had charge of the work and laid it out?

A. I had charge of the work.

Q. And selected the staff?

A. Selected the staff and instructed them.

Q. You supervised the work?

A. Supervised the work.

Q. And made the determination according to the results of the work?

A. Yes.

Q. And wrote the reports?

A. Well, yes, I did write the reports.

Q. In 1913, did you resign from the Commission?

A. I resigned from the Commission and went in to practice as a valuation engineer.

Q. In your present firm?

A. In the present firm.

Q. Are your clients both cities and companies, that is, both public officials and public bodies and public utility corporations?

2254 A. Yes, we do work both for cities and for corporations.

Q. And since 1913 you have been engaged in this business of valuing the properties of public utilities?

A. Yes. I think altogether we have made detailed valuations of nearly half a billion dollars, maybe more. I can't always recollect them. I think I testified last time to 350,000,000, but I recollected some cases since then.

Q. That includes gas companies in various cities?

A. Yes. For the last seven years I have been consulting engineer on valuation for the Laclede Gas Company of St. Louis, and during that time have made two complete inventories of their property, one supplemental inventory, and three valuations.

Q. That is, you made a valuation of the United Railway Company, that is the Street Railway Company in St. Louis, for the City?

A. I made three valuations for the city and valuations of different parts of it for bankers and bondholders.

Q. You also made a valuation of the United Railways Company while you were Chief Engineer and a member of the Commission?

A. Yes, sir.

Q. Did you value the New Orleans Street Railway system?

A. I wrote a report on service there. I did not make a valuation of it, but its valuation was included in the problem.

Q. You valued the East St. Louis & Suburban Railways, and the East St. Louis Railways?

A. Yes.

2255 Q. Were you a member of the Board of Arbitration created by an ordinance of the City of Buffalo with respect to

the valuation of the properties of the International Railway C
pany of Buffalo?

Mr. Neumann: I object to that on the ground that it is im
terial, irrelevant and incompetent. What has that to do with
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Yes, I was a member of the Board of Arbitration to plac
value on the International Railway Company of Buffalo.
Q. For whom did you do the New Orleans work?
A. For the City.
Q. Have you done any work in Kansas City?
A. Yes, I made valuations of the—two valuations of the Kan
City Home Telephone Company, one for the consolidation of
Bell and the Kansas City Home Telephone Company before the Co
mission of Missouri.
Q. And also a report to the court as an arbitrator in a dispute?
A. Yes, I was made arbitrator on some questions entering in
value by the Court in Kansas City.
Q. Did you value the Johnstown, Pennsylvania Gas Compan
property?
A. Yes.
Q. Did you do any work for the Presidents' Conference Commi
tee of the Railroads of the United States.
A. Yes, I made a report on the principles of valuation to th
Presidents' Conference Committee of the Railroads of the Unite
States.
2256 Q. That was a committee convened with respect to the rai
roads and the valuation work under the Act of Congress?
A. The committee was a committee of the Presidents of all th
railroads of the United States.
Q. That is, Class A railroads?
A. Well, I didn't go into the details of its organization. It is
well-known committee.
Q. You are frequently retained by bankers and investors to repor
on properties and their values?

Mr. Neumann: I object to that as incompetent, irrelevant and im
material, very vague and indefinite, and does not mean anything.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. Well, I am retained by them every once in a while.
Q. And you appear from time to time before Commissions and
Courts and public legislative bodies in proceedings involving property
values and elements of property of utility companies?
A. Before Commissions and Courts.
Q. Have you written for publication on the subject of valuations?

Mr. Neumann: Objected to upon the ground that it is incompe-
tent, irrelevant and immaterial, and not the proper way of prov-
ing it.
The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Are you a member of any engineering societies?

A. I am a member of the American Society of Civil Engineers, the American Society of Mechanical Engineers; the Harvard Engineering Society; the American Economic Association.

2257 Q. Are you connected with the educational staff of any educational institution?

A. Washington University of St. Louis.

Q. As a lecturer on any particular topic?

A. On the economics of public utilities.

Q. You have read certain portions of the testimony in the present case to which I directed your attention?

A. Yes.

Q. At page 2342 and 2343 of the mimeograph record, Mr. Maltbie, in response to questions, testified as follows:

"Q. Have you considered at all the value of that plant as it stands?
"A. For what purpose?
"Q. For the purpose of making and distributing gas?
"A. That is not the question.
"Q. That is my question.
"A. I cannot give you an opinion on the value of property without knowing the purpose for which the value is to be fixed."

Now, referring to this testimony which I have quoted, to the effect that an opinion cannot be given on the value of the property of a gas system without knowing the purpose for which the value is to be fixed, I ask you whether in your opinion the value of the property can be determined without knowing the purpose for which the value is to be fixed?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, not rebuttal, not from a witness properly qualified to speak, and something that was brought out on cross-examination by complainant's own counsel.

2258 The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Cummings: And the question has been thoroughly settled by the court anyway, irrespective of Mr. Allison's opinion.

A. No. The purpose of a valuation has nothing to do with value. Value is a fact. It is the same for whatever purpose it is made. There is a method of calling it value for this purpose or that purpose which merely gives an excuse for fixing arbitrary figures. Valuation is relation in exchange. The value of property or anything else is what it would exchange for in goods, or measured in money, what it will exchange for in money.

Mr. Neumann: I move to strike out the answer upon the ground that it is not responsive.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Have you finished your answer?

A. Value is a fact. It is difficult to ascertain unless there is actual exchange, but it is there.

Mr. Neumann: I move to strike out the witness' answer upon the further ground, if your Honor please, that the opinion of this Master in the Consolidated case is that there are different kinds of value.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Referring to the testimony of Mr. Maltbie in this case, particularly at pages 2348 and 2349 of the mimeograph testimony as to how depreciation should be defined, and at page 2352 of the mimeograph record as to what factors should be included in
2259 determining an amount of depreciation, how would you define accrued depreciation?

Mr. Neumann: I object to that on the ground it is incompetent, irrelevant and immaterial, fully covered by two witnesses, both the witness Miller for the complainant, and the witnesses for the defendants, and the witness here is only giving cumulative testimony on a subject which has been fully covered heretofore.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Will you read the question?

The Master: How would you define accrued depreciation?

The Witness: Accrued depreciation is a misnomer. Depreciation is a change in value, a lessening in value, two comparative values, whether it is accrued or not. It is just depreciation. The term "accrued depreciation" is used by a certain school of valuators to define what they arbitrarily take off of a property on account of a lack of newness. That has nothing to do with a property composed of productive capital. The value of a property, of a utility property, the present value is what that property will bring. The present fair value of the property is what it will bring under fair rates. Fair rates are what will induce capital now to come into that business and create properties like it. Otherwise capital in the property is in under duress, and there is no free capital that will come into the business.

Mr. Neumann: I move to strike out the answer on the ground that it is not responsive, and that he has gone far afield,
2260 and volunteered a lot of information that the question did not call for.

The Master: I think he has gone afield and made statements not responsive, but I do not think it is of any special importance. I will let it stand.

Mr. Neumann: Exception.

Q. Is there any necessary assumption of loss of value on account of some lack of newness?

Mr. Neumann: I object to that on the ground it is incompetent, irrelevant and immaterial, not rebuttal, and on a subject that has

been fully covered by witnesses for the complainant and the defendants.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: Can you answer that yes or not, Mr. Allison?

The Witness: No, I cannot answer it so it could be understood. I can say "no," that in my opinion lack of newness does not affect value, but it makes the answer incomplete, and perhaps unintelligible.

The Master: Then answer it in some other way.

The Witness: I will say this, that in a plant which is well maintained, and replacements have been made, on account of mere lack of newness there is no depreciation in value. Capital goods are valued on account of their capacity for production.

The Master: I cannot quite follow what you mean by depreciation in value. You say that value means what you can exchange it for?

2261 The Witness: Yes.

The Master: What are you depreciating?

The Witness: Depreciation is only a comparative term. I can say that a property has depreciated from the former value, or has appreciated from the former value.

The Master: That is what I am getting at. I haven't heard you start from anything.

Q. What is depreciation?

A. Depreciation is a lessening of value.

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, not rebuttal, and on a subject fully covered by the complainant and by defendants' witnesses.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: Let us get this clear. Mr. Allison is discussing with you depreciation. Depreciation from what? Where do you start from?

The Witness: You have to say the property is depreciated if its value now is less than a former value.

The Master: Its cost?

The Witness: The real cost of the property does not measure value except at the actual time when the cost takes place. It has nothing to do with present value today, any more than the cost of a stock last week or last month has anything to do with the present value or cost of the stock. Now, then, the stock may have depreciated, and be worth less today than it was then, or it may have appreciated.

Q. How is present value generally measured?

2262 Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant, immaterial, vague, meaningless and indefinite.

Mr. Cummings: The Court has to decide the value.

Mr. Neumann: Yes, not this witness to testify to it.

The Master. I think I will sustain that objection. What I
imagine Mr. Kutcom is getting at is, in arriving at the value
plant, do you get a correct result, in your opinion, by taking
cost and arbitrarily depreciating it based upon the probable li
you view it of the property, do you get the value that way?

The Witness. You do not. You will not get a value as of
time except at the time of the cost to start with. That is no
value today, it is only the value at that time. Depreciation
attribute of value. You cannot apply depreciation to cost
ago and say that that property has depreciated and is now wo
much, any more than you can add apples and potatoes together.

The Master. Isn't that what you are trying to get at, Judge?

Mr. Kutcom. Yes.

The Master. As to whether Mr. Maltbie and Mr. Hine can
to a value when they take what we will assume is original cos
arbitrarily depreciate it, even assuming that they correctly figu
probable life of the property.

Mr. Kutcom. What I am trying to get at is that the pr
2263 value is measured by the present cost of duplicating or
during the property. Cost in an earlier year, let us sa
years ago, would be the measure of the cost of duplicating or
during the property then, but does not measure the cost of dupl
ing the property now, or its value now, and when you try to a
some present theory of accrued depreciation to cost ten yea
twenty years or fifty years ago, you have got an absolutely in
ground thing.

The Master. Let's see if I cannot get this thing clear.

By the Master:

Q. Assuming a piece of property purchased twenty years
$100,000, it is worth $100,000 when it is purchased?

A. When it is purchased, when the exchange is made.

Q. In other words I have got cost and value equal?

A. Identical.

Q. Identical?

A. The cost establishes the value.

Q. I am not going to assume that. I am assuming that as a m
of fact it is worth what you pay for it—I have been stuck more
once by paying more than a thing is worth, but now I am assu
the thing is worth just what you pay for it, so that we will not
any misunderstanding there. Now, that property is maintained
first-class operating condition, replacements made such as you
suggested, and is well maintained. Now, after the period of tw
years, disregarding new reproduction cost of any kind, would
in your opinion determine the value of that property
2264 cost or was worth $100,000 twenty years, disregarding n
duction cost and any other element, as being worth
simply because it was twenty years old? Has it depreciated in
twenty years as a definite certain thing, without regard to any o
element?

A. The cost twenty years ago would be no factor in estimated value today, so that you could not get a value today by deducting anything from the cost twenty years ago.

Q. Now, Judge Kinsman presents another line. His contention is that the only basis of determining value is what it will cost to reproduce.

Mr. Kinsman: To duplicate. I said that is a common standard of determining present value. What I say is that the common way of calculating or arriving at the present value is present cost of duplicating the thing that is to be sold.

The Master: Well, but what you have got to limit your inquiry to so far as the witness is concerned, is what in his opinion is the way to find, as a fact, not the rules of law, but I mean as a person expert in the knowledge of value of property, to go in and value a piece of property, how you would do it in your opinion?

Mr. Kinsman: Well, I will adopt that.

The Witness: To find the value of a property today, I would take its cost to reproduce the property today. That would represent, if it was a property in good condition, if it were not obsolete, it would represent as closely as possible what someone who wished to go into that business today would give for it. The purchaser or the man
2365 who wanted to invest, we will say, in the gas business today, would have the opportunity of buying that property or of building its duplicate if he wanted to go into that particular business, or he might build it in another town, or wherever it was. So, the first thing in his mind would be, What can I afford to give for the property? I can afford to give for it approximately what it could cost me to duplicate it, if I am determined to go into the gas business. We have instances of that, in fact, where cities wish to lay water works or other things. If they are properly advised by a engineer today, and if they are determined to buy that property, they have the option either of building one themselves, which would cost them as much as the duplication of the property, or of buying for other property, and, as I say, if they are properly advised, the engineer advising them will be very careful about allowing them to go into the scale of building a new property when they can get what will give them exactly the same service by buying the present property.

The Master: When you take a figure of that kind, don't you allow something for the age of the property?

The Witness: Not for age alone. You see, if the age—the age of a building, for instance, does not detract at all from its capacity to earn as a productive piece of capital, as compared with its exact duplicate today, provided the building is in first-rate condi-
2366 tion. If we tore down a building in one of our gas plants and put up another building, assuming the first building to be in intact condition, the new building would last no longer than the old building, because the building will go out on account of obsolescence or inadequacy, and the new building will go out just as quickly as the old building.

The Master: If it is a duplicate of the old building?
The Witness: If it is a duplicate of the old building.

Q. Mr. Allison, I call your attention to the question addressed to Mr. Multhie when he was on the stand, as to whether in arriving at a fair value of the property of complainant company at this time there should be a deduction, in his opinion, for depreciation; and Mr. Multhie answered that in his opinion there should be. What is your opinion as to whether in arriving at the fact of the fair value of the property of the complainant company at this time, assuming such property to have been properly maintained by repairs, renewals and replacements and to be in good and efficient operating condition there should or should not be a deduction for depreciation?

The Master: A deduction from what, Judge?

Mr. Neumann: That is objected to on the ground——

The Master (interrupting): Wait until I get my question right. A deduction from what?

2267 Mr. Ransom: A deduction from either original cost or from present cost of duplicating the plant.

Mr. Neumann: One moment; I object to that on the ground it is incompetent, irrelevant and immaterial, the subject fully gone over by the witnesses both of the complainant and the defendant, on rebuttal.

The Master: Overruled.

Mr. Neumann: Exception.

A. Under that assumed property there would be no difference in productive capacity between that property and a new property, and the property described is just as valuable as capital good as new.

Mr. Neumann: I move to strike the witness' answer out on the ground it is not responsive to the question.

The Master: I will deny the motion. The question was, should there be deductions for depreciation from either original cost or duplicating cost.

The Witness: My answer is no.

Q. Why, in your opinion, should there not be a deduction for accrued depreciation from the original cost in ascertaining the fact of value?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, the question is vague, indefinite, incomprehensive. As already stated, the term "value" has a number of meanings, and it should be confined to a particular meaning so that it is clear as to what the witness has testified to. And in addition to that, it is a subject that has already been covered fully on direct

2268 and in the defendants' case, and it is therefore not rebuttal.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: I believe I have already answered you.

The Witness: I thought he did.

Mr. Ransom: I think that is so.

Q. Referring to Mr. Maltbie's testimony that the value of a gas plant and property such as that of this complainant had a constantly diminishing service potentiality with a correspondingly diminishing value, what is your judgment as to whether, in a gas system, which is well maintained by repairs, renewals and replacements, and is in good operating condition and is efficient, there is any such decreasing serviceability?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, fully covered, not rebuttal, and it does not properly state the facts in accordance with the present state of the record.

The Master: Well, what fact is not properly stated?

Mr. Neumann: The witness Morrison in direct answer to a question of the Master stated that, so far as this N. Y. & Queens Property was concerned, that at that time it was not properly maintained because it was dirty, and they did not get the efficiency out of it they should.

The Master: That is not my recollection.

Mr. Neumann: That is my recollection when you were asking him how he could explain why it required 5 to 6 gallons
2269 of oil to enrich the gas.

The Master: Anything else?

Mr. Neumann: That is all.

The Master: Overruled.

Mr. Neumann: Exception.

A. Well, a public utility property, properly maintained and replaced, does not have a decreasing value; it goes on as far as we can see into the future; it has gone on for many years. The property goes on being replaced from time to time as replacements are necessary and it continues to give service, it will in all human probability continue to give service and just as good service as it is giving today for as far as we can see. The fact is, it is exactly as I believe I said before, like a tribe of people, there is so many people in the tribe, people are constantly dying and other people are being created or born and the tribe goes on. That is the way a public utility property goes on. We do not see any public utility properties coming to an end. No public utility property that any of us know about has ever come to an end, and they do not go out of existence like some little mining town out West except where the whole town gives out.

Q. Then you say there is no such thing as decreasing serviceability?

A. There is not, it is constantly kept up. That is what the depreciation charge is for, it is to prevent depreciation.

Q. That is, in a large and well managed gas plant, all of the portions of the plant do not go out of service at one time?

A. They do not, and by management they can be spread con-
siderably and the management can put off the replacement
2270 of one thing that comes in a year with others, and in that way make a comparative level of replacement costs.

Q. Assuming that wear and tear are counteracted by renewal, re-

placement and repair, does the fact that certain periods of time have elapsed since the installation of the different items of physical property going to form the gas plant, limit, diminish or depreciate the length of life of the plant as a whole?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, fully covered and not rebuttal.

The Master: Overruled.

Mr. Neumann: Exception.

A. It does not. The items, if maintained, are always of the same productive capacity as replacement items or new items.

Q. Does such lapse of time decrease, diminish or limit the usefulness of the plant?

A. It does not.

Q. Does a gas plant property maintained properly in your opinion and experience have any definite end to its life?

A. It does not, and therefore it can have no fraction of its life gone.

Q. It continuously renews itself?

A. It continuously renews itself.

Q. Can it be said that the different items in the equipment of a gas system have a definite life which may be assigned to them for the purpose of calculating the value of the plant as a whole?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and fully covered.

2271 The Master: Overruled.

Mr. Neumann: Exception.

A. There can be no ascertained, no definite life to equipment of gas plants. Nearly everything in it, except maybe checker brick which may be consumed, goes out on account of inadequacy or obsolescence, and inadequacy and obsolescence cannot be prophesied. Obsolescence comes up perhaps suddenly by the invention of something else. It cannot be foreseen and the different circumstances of different plants will make different lives for the same kind of equipment. If we take engines, for instance, there may be an average life of engines, although nobody has ever figured it out, all over the United States, but the engine lives would run, we will say, from one year to fifty years. Now, in this particular plant can we say it is going to last twenty-five years? It may last three years, or it may last forty-nine years, and no one can tell. The only thing that can be told is by the experience of the managers that it takes about so much a year to keep their replacements up.

Q. Assuming that the gas plant of the New York & Queens Gas Company, comprising the buildings, structures, apparatus and facilities used in or in connection with the manufacture, distribution, sale and delivery of gas, has been properly and adequately maintained through repairs, renewals and replacements made from time to time as and when required, and assuming that such parts as have actually worn out have been made good, and that the plant is in a good and efficient operating condition, and that the plant is operated as an

established and going concern, and that it has been and is
2272 rendering continuous and efficient service, what is your opinion as to whether or not the value of the gas plant is depreciated below its present reproduction cost?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent and does not take in all of the facts that such a question should.

The Master: Overruled.

Mr. Neumann: Does the Master want me to point out the fact that he has not?

The Master: No.

Mr. Neumann: Exception. And not rebuttal testimony?

The Master: Overruled.

Mr. Neumann: Exception.

A. It is not depreciated and investors wishing to go into the gas business——

The Master: I do not care about that.

The Witness (continuing): — would give that much for it.

The Master: Is it worth its reproduction cost without depreciation?

The Witness: It is worth its reproduction cost without depreciation.

Mr. Neumann: I move to strike out the witness' answer.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Does the amount of capital investment represented by the property as a whole diminish with the lapse of time since the installation of individual items of the plant?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, already fully covered by the direct case and the defendants' case, therefore not rebuttal.

2273 The Master: Objection is overruled.

Mr. Neumann: Exception.

A. Not of the property described.

Q. Mr. Allison, it has been stated by one of the witnesses in this case that in his opinion a depreciation reserve should be created, "so that when property is retired for any cause whatsoever that fund can be charged with the cost of the property," and also that the amount reserved should be deducted from the value of the property in order to determine the amount on which the company should be allowed to earn a return, and that when the reserve is needed for the purpose of renewals and replacements this should be provided by issuing securities against construction work which had been done originally out of this fund of money laid aside for this fund, just reimbursing the treasury on account of those expenditures. I wish to ask you whether as a matter of practical utility finance, it would be possible to do any such thing?

Mr. Neumann: Objected to on the ground it is immatesial, irrelevant and incompetent, to a very large extent this question impeaches the testimony of their own witness Miller.

Mr. Ransom: Not in the slightest.

Mr. Neumann: A great deal of this question is part of Miller's testimony; and upon the additional ground it is not rebuttal and the further additional ground from a witness not properly qualified to answer.

The Master: Overruled.

Mr. Neumann: Exception.

A. As I understand the proposition, it would be to capitalize the property invested in a fund which was deprived of earnings,
2274 or a portion of the property which was deprived of earnings. You could not capitalize property that could have no earnings.

Mr. Neumann: I move to strike the witness' answer out upon the ground that it is not responsive to the question.

The Master: Motion denied.

Mr. Neumann: Exception. There was no mention of earnings, nothing at all in the question.

The Witness: It is deducted from the property.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. The effect of the deduction of the reserve would withhold the earnings?

A. It would withhold earnings.

Mr. Neumann: Same objection as last urged, and in addition to that, it has no relation to the question that was asked at all, the answer.

The Master: Overruled.

Mr. Neumann: Exception.

Q. And would there in fact be any earnings out of which to pay the interest upon the securities issued for the purpose of reimbursing the fund?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant, incompetent, not rebuttal for the reason that the question that the counsel is endeavoring to call the witness' attention to, as I now recall it, did not in any way take into consideration the question of earnings.

The Master: I understand the question is withdrawn.

2275 Q. In your opinion is any reserve for accrued depreciation necessary, and should any be included in the rate and thus exacted from the consumer?

Mr. Neumann: Objected to on the same grounds that it is incompetent, irrelevant and immaterial and in direct conflict to what Colonel Miller testified to when confronted with his testimony in the Kings County case, and not rebuttal, it is cumulative, already been testified to by complainant's witnesses and defendants' witnesses.

The Master: Overruled.
Mr. Neumann: Exception.

A. A reserve for accrued depreciation is in the first place a reserve for what I consider a false calculation of depreciation, and in so far as any fund is permanent and cannot be used for replacement, it is absolutely useless to the company and to the consumer, and simply places some extra burden on the consumer in his rate to accumulate that fund. The only real effect of it is in depriving the company of the earnings from the property accumulated in it. The public, the consumer, becomes a part owner of the plant without his own consent and without the consent of the company. The whole effect of it is to put into operation a socialistic scheme under cover of a depreciation charge.

Mr. Neumann: I move to strike from the record the witness' answer as not responsive, he has gone very far afield to endeavor to inject political questions into this case.
The Master: Objection overruled.
Mr. Neumann: Exception.

2276 Mr. Neumann: So far as I am concerned, I will say to the Master that I am unprepared to go on with this witness and cross examine him now.
The Master: Why?
Mr. Neumann: I had no reason or right to expect that on rebuttal any such witness would be produced.
The Master: Why? You have introduced evidence as part of your case as to the depreciation to be taken from the cost of this property, so why are you not prepared to cross examine Mr. Allison? I would if I were counsel for the defendants.
Mr. Ransom: The complainant offered no evidence on the subject of depreciation on its case.
Mr. Neumann: Did not Mr. Miller go into it?
Mr. Ransom: There were a few questions asked of Mr. Miller on cross examination, but I carefully refrained——
The Master: I see no reason for postponing this cross examination. If I were counsel for the defendants I could proceed with it very easily.
Mr. Neumann: I will tell the Master that I am not prepared to go on, and if I am forced to go on I will have to put myself in the hands of the Master and bow to his wishes, and respectfully except to his forcing me to go on at this time with the cross examination.
The Master: Well, I direct you to.
Mr. Neumann: I take an exception.

2277 Cross-examination.

By Mr. Neumann:

Q. What courts did you testify before, Mr. Allison?
A. I have testified before the United States Courts.
Q. Which ones?
A. Well, I can recollect a few of them. I just finished testifying

in Houston, Texas, before the United States Court, and in Springfield——

Q. What was the name of that case?

A. That was the Houston Telephone Company, the Bell Telephone Company of Houston.

Q. Whom did you testify for in that case?

A. I testified for the company.

Q. The Utilities Company?

A. Yes, sir.

Q. What other case did you testify in in court?

A. I testified before the United States Court in Illinois.

Q. What was the name of that case?

A. That case was the East St. Louis & Suburban Railways.

Q. Whom did you testify for in that case?

A. For the company.

Q. What other case did you testify in in court?

A. Of course I do not recollect them all. I can recall another case or two, maybe. I testified before the court in St. Louis on the value of the Las Vegas, New Mexico property.

Q. The value of what?

A. The Las Vegas, New Mexico, electric property. I was testifying there for a bank.

Q. For what purpose were you testifying.

A. Well, I was testifying to establish the value of the bonds.

2278 Q. Are those the only cases that you have testified in, that you can recall?

A. Before courts, that is all I recall now. I probably could recall more if I had time.

Q. Were you offered as a witness in the case of the King County Lighting Company?

A. Oh, yes, I had forgotten that.

Q. Before Mr. Justice Greenbaum?

A. Yes, and I was also in the case before this witness—or this Master, recently.

Q. In the case before Judge Greenbaum they did not accept your testimony and they did not permit you to testify, did they?

Mr. Ransom: That is objected to.

A. That is true.

Q. And do you recall what the court there said?

A. The court told me to put it in the argument and allowed them to submit in the argument what I had to say.

Q. And you were not permitted to put it into the record?

Mr. Ransom: I object to it; it has nothing to do with this case.

A. The lawyers had to do with that; I do not know whether it went in or not.

Mr. Ransom: They put in some testimony on the direct case and they tried to recall him in rebuttal and they would not allow it.

Mr. Neumann: Just what you are doing here.

Mr. Ransom: They asked Colonel Miller some questions on cross examination, and I carefully refrained from taking up the matter on re-direct. I kept entirely away from it.

The Master: Do not let us get into that case. Judge Greenbaum tried one case and I am trying another.

2279 Q. Did you testify in any other cases that you can recall?

A. I do not recall any more. You may remind me of them, but I do not recall.

Q. No, I have not any others in mind. I would like to find out?

A. I would like to recall a good many more, but I do not.

Q. You say you testified before commissions?

A. Yes.

Q. What commissions did you testify before?

A. The New York Commission for the First District.

Q. In what case?

A. I wrote a report that went into that—that went to that Commission and was called to a hearing. It was several years ago, and whether I testified there or not I cannot recollect; but it is a matter of record. But I wrote the report.

Q. You do not recall what the name of the case was?

A. It was an accounting case of the Consolidated Gas Company, an order, I think, as I recollect it, of the Commission, to which they objected.

Q. Whom did you testify for in that case?

A. For the Consolidated Gas Company—if I testified. I made the report and I was there at the hearing, but I have forgotten whether I went on the stand or not.

Q. Whether you testified or reported, for whom did you——

A. I worked for the Consolidated Gas Company.

Q. That is what I mean, yes. What other Commission did you appear before?

A. I appeared before the Missouri Commission a number of times.

2280 Q. How many times?

A. Oh, three or four cases. Maybe more than that.

Q. Do you recall what the names of the cases were?

A. Well, once for the City of St. Louis in the case of the United Railways Company. I have been before the Commission for the Bell Telephone Company—or rather for the Home Telephone Company.

Q. You appeared and gave testimony on behalf of the Home Telephone Company?

A. On behalf of the City of St. Louis also. They were different cases.

Q. Oh, different cases?

A. Yes.

Q. And the other case?

A. The Home Telephone Company of Kansas City.

Q. On whose behalf did you give testimony in that case?

A. For the Home Telephone Company.

Q. And the other case, the fourth one?

A. I did not say any fourth one. I have been before the Commission, I think, for the Laclede Gas Company.

Q. You gave testimony on behalf of the Laclede Gas Co.?

A. Yes, on behalf of the Laclede Gas Company.

Q. Do you recall any other commissions or courts that you appeared before and gave any testimony?

A. Yes, the Illinois Commission.

Q. How many times did you appear before that commission?

A. I think twice.

2281 Q. Do you recall what the cases were?

A. They were both street railway cases.

Q. And in whose behalf did you appear and testify?

A. In behalf of the company.

Q. In behalf of the company?

A. Yes.

Q. In what court and before what commission did you appear and testify in a rate case?

A. Well, I think nearly all of these were rate cases, except the Kansas City case, which was a consolidation case.

Q. Did you appear for the Brooklyn Edison Company?

A. I did.

Q. That was before the Public Service Commission for the First District?

A. That was. I had forgotten it. I expect I have forgotten a good many cases. I know I have. I do not keep posted on them.

Q. And you appeared on behalf of the utilities company in that Brooklyn Edison Company case?

A. Yes, in that case.

Q. You understand, of course, what a rate case is, do you; you understand what is meant by a rate case?

A. I have made it my business for eleven years, the studying of rate cases.

Q. For industrial properties, or for utility properties, or for both?

A. Well, for utilities, that is my business. I have during the war made a valuation and appeared in a rate case on an industrial property where the Government was regulating it.

By the Master:

Q. I suppose, Mr. Allison, that it is fair to say that there are two well-defined schools on this question of the valuation of

2282 property, are there not—one following the idea that there ought to be a straight line of depreciation, an accrued depreciation, and the other one taking the position that there ought to be no depreciation?

A. You mean there are two well-defined schools, Mr. Gilbert? Most violators do not use the straight-line method of depreciation. Where they deduct depreciation they now do it—and there is somewhat of a fashion in it—by what they call depreciation by observation.

Q. Observed depreciation?

A. Yes, observed depreciation.

Q. In other words, they take a new building and say, Well, the old one is worn in spots and it is worth a little less than the new building, and they depreciate the old building to the extent that they think it ought to be depreciated to meet the conditions?

A. Yes. I think all valuators will say that the condition of a property has something to do with the value, and this is depreciation by observation. If they want to get a real measure of the depreciation in dollars they will ascertain how much money it will cost to put that thing in first-rate condition; then they have a measure of it, otherwise they have no measure at all, and a man whether or not his breakfast disagrees with him or something like that may come to a different result.

Q. After all, the question is, What is the property worth to the person who wants it?

A. Yes.

Q. Is that so?

A. That is it.

2283 Q. If there is no demand for the property at all it practically has a junk value?

A. Yes, and there you get into the question under regulated properties of what is a fair value and a fair value assuming a fair earning.

Q. No, I am talking about this company; if nobody wants to buy it for any reason, it cannot have anything but a junk value?

A. It is the only thing they can sell it for.

Q. That is what I wanted to get at.

A. But that is not a fair value.

Q. It is a fair value for junk, is it not?

A. Yes, for junk, but not for a utility.

Q. But that is so, is it not?

A. Yes.

Mr. Neumann: You draw the distinction between junk and a utility.

The Master: Wait a minute until I finish.

Q. You said there was no difference between the values. There is one kind of value, assuming the extreme case I have assumed, that nobody wants it, under any circumstances, that either because of the public attitude to the utility or court decisions or financial conditions or change in the art or for some other reason they do not want a gas works at all—it will only have a junk value then, will it not?

A. Yes.

Q. Now take another situation where the State or the City suddenly determines to operate its own gas and City water works; the investor and the company are entitled to have all that property is worth, are they not?

A. Yes, sir.

Q. And it is worth at least as much as it would cost the City to replace that plant?

2284 A. Yes.

Q. That is so, isn't it?

A. Yes. You have a demand for it then.

Q. Well, that is a different kind of value, though, is it not?

A. Yes, one is a fair value and the other is the actual value.

Q. Then suppose I present another situation where half a dozen men in this room have gotten suddenly crazy and want to own the gas business, and they want this particular plant like Flushing; for some reason or other they think there is a great future to it—and the New York & Queens Gas Company and its trustees know the situation. Now, they are not going to sell it for what it is going to be replaced for, ordinarily, are they, to these crazy people that are going into this business?

A. Now when you say these people are crazy it puts a little different aspect on it.

Q. Well, they are anxious to get it; it is worth more to them than to anyone else.

A. If they are going into the gas business it is worth just as much as it would cost to build a new one.

Q. But they do not want to build a new one; it is worth more to them than a new one, is it not?

A. If it is in good shape, yes.

Q. That is a different kind of value, is it not?

A. No, that is the same—I have no different kinds of value. I say the value is the relation in exchange of this property; it is what it would bring. If you put up a hypothetical case, of course, by the change in conditions, you can change the value, but they are hypothetical values.

2285 Q. What I am getting at is this. When I have assumed a case where there is no demand for it at all, it has a lesser value than where I assume there is a peculiar demand for it?

A. Yes.

Q. You have two different values for the same article, haven't you?

A. Yes, under two different assumptions.

Q. We have still another situation here. This company has built this plant from day to day and from year to year, and has put its money in it, and it has invested money in it from time to time; it has had the opportunity of serving the people exclusively in that section, in the nature of a monopoly. The cost to reproduce that property varies with the times, does it not?

A. At different times it would cost different amounts for reproduction.

Q. At times of very low value it would cost less to reproduce than in times of very high value?

A. Certainly.

Q. And either one of those values or figures may be more or less than what it cost?

A. Yes.

Q. What is the value to be arrived at having in mind the consumer? In other words, you cannot revalue it today, and then if prices drop next year revalue it again, and then if prices go up next year revalue it again; can you?

A. No.

Q. What value is there?

A. At any one time, your Honor, the value at that time is what it would cost to reproduce.

Q. I know that.

A. Then if you take the phrase "the value" as at the time of use, you would probably take the cost to reproduce as extended
2286 over the period of the rate set.

Q. That is just what I am trying to get clear on this record, as to whether that is altogether so. I ask you to go over there and look at that plant, the first thing you have got to know is what purpose you are looking at it for, isn't that so?

A. No.

Q. Well, supposing I was to tell you that I want to buy the holders for junk, will you not give me a value entirely different from the value that you will——

A. Yes, but that is not a plant, that is not a utility plant, that is a piece of junk.

Q. But I want to buy all of that property.

A. But you have not bought a utility.

Q. Just for junk.

A. You have bought a lot of junk. I am talking about a utility.

Q. Is it quite clear taking the same property precisely it has an entirely different value whether it is operated or is not; isn't that so?

A. Of course, it becomes an operating utility. All these questions are put to me as an operating utility.

Q. I understand that, but what I want to get clear on this record is the question of determining the precise value for this precise purpose. I understand, for instance, that in 919 some property is installed. I take it that the year 1919 is conceded to be a period of very high prices?

A. High compared to several years ago, but possibly not high as compared to several years in the future.

Q. No, but let us assume now that the company having spent $150,000 for a piece of property in 1919, actually put in and
2287 necessarily expended—it is worth that to the consumer, is it not?

A. Yes.

Q. What?

A. It is worth what is established by the the exchange of property.

Q. That $150,000 worth of property put in in 1919 is worth $150,000 to the consumer, is it not?

A. Yes, and to the investor, too.

Q. And to the investor?

A. Yes.

Q. The investor had to put it in. Now, is the investor to be penalized because, perchance, it had cost him less to put it in five years ago?

A. Because it had cost him less? He certainly should not be penalized.

Q. Now, if you value that $150,000 worth of property that went in

with a $150,000 value and five years from now you can put it back for $75,000, is not the investor penalized?

A. Yes, the investor is penalized, but property values change and they must take the changes in value, if you are going to find the value. If a man built a property today, was allowed to do it by a fair rate—and we are talking about value in five years—what is property is worth. He would have to take the consequences, and it would be worth less if the construction costs are less, because people would give him less for it.

Q. Worth less to him?

A. To any prospective purchaser.

Q. For what purpose?

A. For whatever is there. The value of the property is what it can be exchanged for. The value of a property built under an
2280 permit power today, if power go down the value surely is going to go down, because purchasers of property use the cost to duplicate as their standard. So today if I was going to value any watch, I would not find out what it cost me 20 or 30 years ago. I would say, what is a watch like that worth today? Then I would say, this is worth so much, and that is worth so much, and then I would gauge the value of my watch by what it would cost to duplicate that watch. And so would a purchaser or anybody that I took it to to sell.

By Mr Newman:

Q. But you would take off something from the price of the watch?

A. If it was not a new watch, and as good as a new watch, I would certainly take off something.

Q. If you had your watch for 20 years would you say it was as good as a new watch?

A. Yes, and there is the difference that these personal goods depreciate in value on account of their being second-hand—it is a second. But there is no sentiment in productive capital; if you can show me a building already built that will earn me as much money as a new one I would put in place of it. I will give you as much for the old one as I will for the new one.

By the Master:

Q. That is what I am trying to bring out, Mr Allison. Why can't this plant, producing the quantity of gas required, worth just as much to the consumer at any time as it cost to put it up?

A. Because it is what it would cost at that time to put it up.

Q. But you have just used an illustration taking a building and producing the same thing; it is always worth as much as it cost to
2281 put it up?

A. If it produces the same thing.

Q. Yes.

A. The actual value of a utility is based—that is, what it will sell for is based on its earnings capacity, the prospective earnings. But when you say, though, the fair value under the regulation of a rate

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Q. That is what I mean, that that is a very frequent occurrence. So that as a matter of fact there must come a time when
2291 practically the entire plant must be replaced; that is, replacing it step by step and time by time?

A. There will come a time when the property has changed. The physical property is not the same as it was; but there is never any one time from year to year, because they keep replacing parts, and they always keep so much property there.

Q. Exactly, but there comes a time when the original entire parts of the whole plant have got to be replaced, whether it is one year or ten years or a hundred or a thousand or a million years?

A. Well, of course, that is a problem, with cast-iron mains. They have found no exact life to them. I think that the cast-iron mains are still as good as new that were put in 26 years ago.

Q. Would you buy a piece of cast-iron pipe that was in the ground, say for fifty years, and pay the price that you would for new pipe?

A. If I knew it was just as good as new pipe.

Q. If you knew of it?

A. Yes.

Q. Why do you buy new pipe instead of old pipe in the ground, then?

A. Because we can get the new pipe as we want it. Pipes are taken out of the ground and transferred all the time.

Q. Do you know any pipes, even in your own company, that have been taken up and scrapped?

A. When electrolysis or something like that gets at them, yes. They never scrap them otherwise.

Q. Did you ever hear of a pipe becoming too small for requirements?

A. Yes, but that is an inadequacy.

2292 Q. It is another form of inadequacy?

A. It is the only form of inadequacy of a pipe that I know of, because it becomes too small. Unless it becomes too large—that might be a reversal of inadequacy, I do not know.

Q. How about obsolescence, do you recognize that term?

A. Yes.

Q. What does that in your judgment mean, or in your opinion?

A. Well, a thing becomes obsolete when it is no longer economical to use it, or when the public refuses on account of new and better things to put up with it any longer. Just like the high-step cars here, they were very good cars.

Q. Substantially, that is an improvement in the arts?

A. Yes, an improvement in the art.

Q. Did you give as the definition of depreciation obsolescence and inadequacy?

A. Do you mean that that is the definition of depreciation?

Q. Did you give that?

A. No, that is not a definition of depreciation.

Q. Well, what is depreciation?

A. Depreciation is a lessening in value.

Q. Due to what?
A. Due to any cause.
Q. Name some of the causes.
A. Well, as I just said to you, a plant built at very high cost will depreciate in value if all construction costs go down. A plant will depreciate if its rates are lowered; it will appreciate if its rates are increased. It will depreciate if it is neglected.

2293 Q. Wear and tear?
A. If not attended to.
Q. Is it not a fact that depreciation is really wear and tear, inadequacy and obsolescence; isn't that a fair definition?
A. Oh, no; any change in value will make depreciation. In value—that is, a change in value, lessening in value.
Q. Are not those some of the elements that *no* change and lessen the value?
A. If they are present they are a cause of depreciation, but they are not a measure of depreciation.
Q. No, I understand that, but they are the cause of depreciation?
A. They are a cause of depreciation if allowed in the plant. Now, that is, provided that there is no counteracting appreciation.
Q. When you were discussing values with the Master you discussed the question of value from three angles, the scrap, the purchase and the investment angle. Do you recall that?
A. No. No, if you give certain conditions in your premises you have got but one value. Now, if you give different conditions in your premises you have got different values. You have described different conditions of the property; you have described different things that make for value, but there is only one value, that is what the thing will bring.
Q. And that will depend on the conditions under which it is sold?
A. On the conditions under which it is sold.
Q. And purchased?
A. And purchased.

2294 Q. If there were a number of people clamoring for it the seller could get a higher price than if there was nobody wanting it?
A. He could.

Mr. Cummings: That would be a purchase value, would it not?
The Witness: There is no other value in exchange. You say what it is worth. That is what somebody will give for it. When you come to say what it ought to be worth, that is another proposition, when you have to get fair value.

Q. Suppose a number of persons were after the same piece of property, it would appreciate its value, would it not?
A. If they would bid up each other, yes.

By the Master:

Q. Suppose, Mr. Allison, by reason of rate regulation nobody wanted to have anything to do with the gas plant, would it be necessary for me to find this plant had no value?

A. If you were going to find its actual value, yes, Mr. Gill but I am speaking only as a layman now, and that is a laym opinion of fairness. There is a fair value of a public utility, a fair value of a public utility contemplates fair rates, because rates and earning power are the main factors that give value to i

Q. But a minute ago you said value is what you can sell it

A. Yes, and if you have a fair rate, you can sell it for a fair p

Q. Don't you have to assume the rate that exists at the ti The complainant in this case asserts that the rates are confiscat of its property; it gets no return on its property; that a
2295 body that bought this plant, if the rates were not chang in the period of time necessary to eat it up, would lose property altogether. Must I then say this property has no value

A. No.

Q. Why not?

A. The very fact that they say it is confiscatory, that their pres rates are confiscatory, shows that the value has been taken aw from it. That is what is meant by that.

Q. You are placing value upon rates and I have got to base ra on value.

A. We base rates on this: that it must attract capital to the bu ness, otherwise the capital is——

The Master. Well, we are getting into a legal discussion now

Mr. Neumann. I move to strike that last answer out.

The Master. No; I am going to take everything that Mr. Allis says.

Mr. Neumann. I except to your Honor's refusal to strike it out

By Mr. Neumann:

Q. Mr. Allison, do you recognize a distinction between open co petition and a monopoly?

A. Yes, sir.

Q. A gas utility is a monopoly, is it not?

A. Yes.

Q. Don't you know as a matter of fact that in any open co petitive business they all make allowances for depreciation?

A. Well, so does the gas company, and uses those allowances in preventing depreciation.

Q. Is it your theory that a plant should be carried at its full a complete value up until the very moment that it goes out
2296 existence, and that there should be no funds set aside to ta care of the time when, for any reason that you might assig that plant would go out of existence?

A. I cannot conceive of a plant going out of existence, and would be in my mind an absurdity to set up such a fund. Th way to keep it in existence is to spend the money that you get f depreciation, and you spend it in replacements.

Q. How about a change in the art such as came about when th coal-gas plants were replaced by water-gas plants?

A. Well, coal-gas plants are now in very successful operation as compared with the water-gas plants in some places.

Q. That is not so generally, is it?

A. It is so in St. Louis. Water gas costs us more there than coal gas. I do not know what it does here.

Q. Water gas is more there than coal gas?

A. Yes, sir.

Q. And that is true in St. Louis?

A. That is true in St. Louis.

Q. Have you ever in your experience heard of the officers of a gas company in their judgment scrapping a coal-gas plant and putting in its place a water-gas plant?

A. I do not know—I do not recall any instance, but I know that at a certain period perhaps that was done, and proved in some places that it would have been an unwise thing to do.

Q. Based on your own experience with gas plants, Mr. Allison, have you found that the repairs run uniform year after year in a gas plant?

A. Yes, very closely. I was examining the maintenance
2297 and replacement account of the Laclede Gas Company within a week. It is a very large plant and they (the accounts) run by the year, but if you take a cycle of three or four years and keep in your mind also the increase in size of plant, you will find it runs pretty regular.

Q. And that has been your experience throughout the eleven years you have been in the gas-making business?

A. That is my experience on examining these accounts within the last two weeks. You have to take into account the increase in size of the plant, you know.

Q. Take this New York & Queens Gas Company as an illustration—and this is one of the exhibits in the case, and the testimony: In the year 1909 the cost of repairs was $5,072.13, based on the per-thousand cubic-foot basis, the cost of the repairs was 3.46; in 1910, 3.99; in 1911, 4.51; in 1912, 7.51; in 1913, 8.49; in 1914, 7.14; in 1915, 6.55; 1916, 6.669; 1917, 6.61; 1918, 7.33, and 1919, 13.51. Mr. Allison, based on those figures would you say that that conforms to your judgment or refutes your judgment?

A. I will say that does not conform to my study of the——

Mr. Goetz: We object to that on the ground that the question is misleading and the premises false. In the first place it refers simply to repairs and in the next place it takes no account of the element of increase in the size of the plant and the output of the plant. In the third place it takes no account of the element of increased costs. It is altogether misleading and without any foundation for the expression of the judgment of the witness.

2298 The Master: I will overrule the objection.

Mr. Goetz: Exception. Does that apply to the plant alone or to the distribution system? The witness has not been told to what it applies.

The Master: What is the question?

(The question was read by the stenographer.)

Mr. Goetz: There is no indication of the prices paid for these materials or the prices paid for labor.

The Witness: Shall I continue my answer, Mr. Gilbert?

The Master: Yes, finish your answer.

The Witness: I will say that the table as it stands there would not conform to my experience with the Laclede, but the table made up that way may have many factors in it that do not appear. For instance, a company may be putting out a great deal less gas in proportion to its property than it had before, in which case the price per thousand feet or the repairs per thousand feet would go up. There are many factors that would have to be looked into in a table of that kind, to see whether it would refute my idea.

Q. You took into consideration when you answered my question prior to that time, did you not, that prices fluctuate from year to year?

A. Yes, they do.

Q. And every element that you have now stated you took into consideration in answer to all prior questions that I asked you before you answered?

A. I do not get your question.

2299 Q. Just enumerate what are the factors that you now think you ought to take into consideration?

A. Well, you ought to know, for instance, whether the physical property has increased in proportion to the output.

Q. Did you take that into consideration when I was asking you the price questions leading up to this one?

A. It should be. I should have taken it into consideration.

Q. Did you take that into consideration when you were answering my prior questions leading up to this one, based on the table, yes or no?

A. In giving my experience I had taken those into account in reviewing the Laclede property and their expenses, and taking all those things into consideration, therefore my answer would include those considerations.

Q. So that you did take those into consideration in all of these questions that I asked you prior to this one, leading up to this table?

A. I do not know what you mean by all of those questions. The question as to the comparative evenness of maintenance and so on would be taken into account.

The Master: I have just been analyzing Schedule 6B. I take it that Schedule 7 is based on Schedule 6B, is it not?

Mr. Goetz: That is a thing to look at.

The Master: When I analyze this expense Repairs, I find repairs of works and station structures, labor, 1914 $1,120, 1915 $1,359, and 1916 it dropped to $574, in 1917 to $499, in 1918 to
2300 $200, then in 1919 it went up to $636, which was half of what it was in 1915 or less than half. As to other items I find, for instance, that material in 1914 was a little over $1,000, in 1915 it went up to nearly $1,400, in 1916 it went up to nearly

$3,000, in 1917 it shaded off a little bit, in 1918 it went to $4,000, and those same materials in 1919 went up to $12,000.

Mr. Neumann: Yes, that is what we are talking about.

The Master: On another item, the labor increase from $1,256 in 1914 to over $2,000, in 1917, $3,500 in 1918, and it jumped to $6,000 in 1919. I do not think that proves very much.

Mr. Neumann: Well, I will leave the record stand as I have made it.

The Master: Some of them have gone down and some have gone up.

The Witness: Can I ask something?

The Master: No, you better not.

Q. Mr. Allison, it is a fact, is it not, that various parts of a gas plant have various costs, some greater than others?

Mr. Goetz: I object to that question. That is too simple.

Mr. Neumann: It is too what?

Mr. Goetz: It is too simple a question. It is too simple-minded a question.

Mr. Neumann: I would like to know whether counsel meant that seriously or not.

The Master: Read that question.

(The stenographer repeated the question.)

2301 A. Certainly.

Q. For instance, a generator house, we will say for the purpose of this question, would be $10,000, a meter would be five or six.

Mr. Goetz: I object to that. That assumes costs that have not been shown.

The Master: Objection overruled. I want to see what Mr. Neumann is getting at. I cannot get it myself.

A. A generator house might cost $10,000, or it might be a little more than that now.

Q. Take, for instance, a year that a generator house had to be replaced as against a year that a meter had to be replaced, taking an extreme case, one year's replacement would be $100,000 and another year's replacement would be only $6, would it not, in that extreme case?

A. In your factors assumed, yes.

Q. Certainly, on that assumption.

A. Yes, certainly.

Q. That is a condition that might very well happen, although an extreme case?

A. I stated in one year there would be variations over a cycle of years, where prices had not changed, and I have in mind the level before the war. Over this cycle of years there would be a comparative level. It might be one, two, three, four, five years, and they will vary perhaps from year to year. Now, when prices change there

is a sudden rise in prices or a sudden lowering in prices, and if we get to a new price level there will of course be a change in the figure.

Q. In your opinion would it not be a good business judg-
2302 ment to provide for an equalization of these replacements year by year so far as an estimate can be made?

A. They are provided for year by year.

The Master: I am going to stop this. This witness was not called to give testimony or opinions of operating management or business judgment or matters of that kind. He was called to testify to a method of arriving at value.

Mr. Neumann: If the Court please, on the direct testimony you permitted this witness to testify to depreciation.

The Master: Yes, now get to depreciation.

Mr. Neumann: This is one part of it, and this is testing his theories on it. I claim I have the right to go into them fully.

The Master: Ask another question.

Q. Mr. Allison, is it not a fact then that a public utility can by having big retirements in one year and small retirements in the next year, show a large deficit in one year and a small deficit in the next year?

A. Well, that is possible, but it is not usual.

Q. That is true, isn't it, it could be done?

A. It is possible.

Q. Do you know of any case where such a situation has actually occurred?

Mr. Goetz: I object to that.

The Master: Objection sustained.

Mr. Neumann: Exception.

Q. In your judgment, Mr. Allison, isn't it good business policy and principle to have a depreciation reserve to equalize these replacements?

A. To equalize them——

2303 Mr. Goetz: I object to that, if your Honor pleases, no testimony has been offered——

Q. (continued). And provide for them when they become due?

Mr. Goetz: No testimony has been offered either by the complainant or the defendants that a depreciation reserve should be provided for an equalization of operating expense.

The Master: Objection overruled.

A. Yes, there should be something, there should be no permanent fund, that is, over this cycle of renewal, you should have enough money, except perhaps for obsolescent and perhaps for inadequacy, but for repairs, things that go out from wear and tear, you should have perhaps enough so you can get equal charges in your rates over a certain number of years. Now, that does not mean, however, that there is to be a large permanent fund created there. The fund to

useful must be used, and the fact is that there is a small accumulation in most companies, and then if there is a large replacement there is a deficit, and that is gradually made up, and it goes back and forth across the line.

Q. Your idea is that it should not be kept in idle cash?

A. No, my idea is that either in cash or anything else there should be no permanent fund for replacement. It must be a fund measured by what is going to be actually used for replacement at any one time.

Q. It may be reinvested in property again?

2304 A. It would not in my opinion be so large—it might be small or large—it might be invested any way you want to.

Q. Do you not know it to be a fact from your experience in these various commissions that they allow such a fund to be reinvested in the property?

Mr. Goetz: I object to that.

The Master: Objections sustained.

Mr. Neumann: Exception.

Q. Have you ever heard of a plant being blown up, a gas plant?

Mr. Goetz: Objected to. That has nothing to do with depreciation.

The Master: Objection overruled.

A. I do not recall any plant being blown up.

Q. Have you ever heard of a plant where there was a fire?

A. There are fires, but that is covered by insurance.

Q. Do you know it was testified to in this case that there was a fire at one of the Brooklyn Union plants——

Mr. Goetz: Objected to. It all relates to all property, whether it is new or old or second hand, no matter what condition it is in, if a fire breaks out the lack of newness or the newness, will not affect the value of the plant.

The Master: What is the point, what are you trying to get at?

Mr. Neumann: The point I am trying to get at is this, and I don't think the witness has quite yet stated it: I want him to state

2305 definitely whether in his judgment the plant should be replaced immediately when it goes out of existence by any cause, or for any reason, and at that particular time.

Mr. Goetz: By explosion or fire? They carry insurance for that.

The Master: What is the point of that?

Mr. Neumann: The point is something that the Master must know from these cases by this time.

The Master: I can't get it.

Mr. Goetz: That is an insurance reserve, not a depreciation reserve.

The Master: I can't understand what you are getting at; I will sustain the objection.

Mr. Neumann: Exception.

Q. Is it your idea, Mr. Allison, that the moment a plant goes o of existence it must be charged up at that particular time that goes out of existence, for any particular reason?

A. A plant does not go out of existence.

The Master: Oh, I am going to stop these questions about boo keeping matters. The witness was called on the question of valu

Mr. Neumann: What is that?

The Master: I am not going to take any more testimony on kee ing books. This witness was called in rebuttal of your testimon that depreciation must be deducted.

Q. You stated, Mr. Allison, in answer to a question, part of yo answer was that valuation has nothing to do with value?

Mr. Goetz: I object to that; he made no such statement th valuation has nothing to do with value.

2306 The Master: Answer it if you can, Mr. Allison. Did yo say that?

The Witness: I made no such statement as that.

Q. If that is in the minutes——

Mr. Neumann: I made a note of it as he made the statement.

The Master: Next question. He says he never said it.

Q. If the record shows you made such a statement, what did yo mean by that?

Mr. Goetz: I object to that.

The Master: Objection sustained. He can't tell you what h meant by it if he never said it.

Mr. Neumann: Suppose the record indicates that he did say tha then I have been deprived of my right to cross examine him as t what he meant.

The Master: No, you have not. He said he never said it. D you understand what that means?

The Witness: I think what I did say——

Mr. Neumann: He did say it; he may not have meant it.

The Master: Do you understand what that means?

The Witness: I might have meant this, that the term "valuation is often used in the sense that does not arrive at values at all. If did say it that is what I meant.

Q. Did you say that cost establishes value?

A. At the time of the cost, the cost is an exchange, and establishe value at that time for that particular piece of property.

2307 Q. That is exchange value, is it not?

A. That is all the value there is. Value is a relation i exchange.

Q. That is what you deal with?

A. The only thing that the word "value" unqualifiedly should b applied to.

Q. Now, take your illustration of your watch. Would you pa

as much for your old watch after you had worn it for twenty years as you would for a new watch?

A. No, but I would pay as much for an old building that was just as good as a new one in its earning power.

Mr. Neumann: I move to strike out the answer as not responsive.

The Master: Yes, strike it out all except the statement "No."

Q. You testified in the Consolidated Gas Company case, did you not, Mr. Allison?

A. One of them; I think perhaps two of them.

Q. I mean the one last year?

The Master: He means the one before the same Master.

A. Yes.

Q. Do you remember this question being asked you by one of the counsel: "How often would you renew, say, the boilers used in the manufacture of gas?" Do you recall that question?

A. No, I don't recall it.

Q. And your answer to it was this: "There are very few boilers used in the manufacturing of gas, but a boiler is rather an exceptional machine, and it is after a while weakened, and on account of keeping up the pressure it will go. It is not subject to the
2308 same amount of repairs and the constant repairs as the other machinery." Do you recall that answer?

A. I remember that.

Q. Do you recall the question now?

A. Well, I recall the answer.

Q. That was correct when you gave it, wasn't it?

A. That is correct in regard to boilers, in my opinion.

Q. And that is correct now, too, isn't it?

A. Yes.

Q. So that is at least one part——

The Master: Next question, don't argue. It is getting too late for that.

Q. The next question was: "When a boiler weakens and goes it is all gone, isn't it?" and your answer was "Yes."

Mr. Goetz: I object to that. We have admitted again and again that items of properties go out of service.

A. Yes.

The Master: The witness admits he said that.

Q. The next question is: "How long would you say a boiler was useful?" and your answer was, "It would depend a good deal on its treatment. I have been a boiler inspector, and that is a pretty long question." Do you recall that?

A. No, but I have no doubt I gave it.

Q. Then, to summarize your testimony——

The Master: No, don't summarize any testimony. Ask another question.

Q. Then you do not consider, Mr. Allison, that the consumer should put aside a fund for the replacement of any property,
2309 any item of property as it goes out of business?

A. Not calculated on a falsely estimated life of that item. The consumer should furnish to the company enough to keep its property intact, and that is what they need——

The Master: For ordinary repairs, renewals and replacements?
The Witness: Yes.
The Master: But not amortization of plant.
The Witness: Yes.
The Master: That is where you draw the line of distinction, between amortization of plant and keeping it up.
The Witness: Yes.

Q. And the result of that would be that the investment would not be kept at 100 per cent?
A. It surely would be kept at 100 per cent.

The Master: Anything else?
Mr. Neumann: As I stated at the beginning, I have a lot more, but I could not prepare it in this time.
The Master: Go ahead, I will stay here all night if necessary.
Mr. Neumann: I can't stay here all night. I have not had time to prepare. I had no reason to assume that Mr. Allison would be brought back in rebuttal.

Q. Do you know, Mr. Allison, of any commission or of any court——

The Master: Don't finish that question. I won't allow a witness to be asked whether he knows what any court or commission has ruled.
2310 Mr. Neumann: That is not what I am going to ask him.
The Master: What?

Q. Do you know whether any court or commission has ever accepted or followed your theory?

The Master: That is the same thing as I have already said. Objection sustained.
Mr. Neumann: Exception.
The Master: Anything else now. You are excused, Mr. Allison. Next witness.
Mr. Goetz: That is all, unless something develops.
The Master: Then the case is closed except for the cross-examination of Mr. Spear on that table?
Mr. Goetz: Yes.

Adjourned to Monday, June 28, 1920, at 9.30 a. m.

2311 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 28, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of counsel for Defendant Newton.
Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

MAYNARD H. SPEAR, recalled for cross examination.

Cross-examination.

By Mr. Neumann:

Q. Mr. Spear, Plaintiff's Exhibit No. 115, was that prepared by you?
A. Prepared under my direction, yes.
Q. What do you mean by that?
A. I had Mr. Foy prepare it, and then I went over it and checked it.
Q. Checked all of it?
A. Yes.
Q. Is this prepared from your books?
A. It is.
Q. And the items as you set them out here will be found in the books?
A. Yes.
2312 Q. In those particular amounts?
A. Yes.
Q. There are no adjustments of any kind or anything?
A. No.
Q. Identically as you set the amounts here they will be found in the books?
A. Well, there are some changes in the amounts as set in the books in order to conform to Mr. Cohen's statement. We made this statement up so that it would conform exactly with his.
Q. You do not find any bad debts on Mr. Cohen's statement, do you; bad debts written off?

Mr. Ransom: You mean uncollectible bills.
The Witness: The uncollected bills are set on here.

Q. Mr. Spear, you understood me to say, "bad debts written off," did you not?

A. Not the bad debts written off; they are not set out separately.
Q. Where are they set out?

The Master: Where is the item, "bad debts" on Exhibit No. 115?
The Witness: They are in the——
The Master: I am asking Mr. Neumann.
Mr. Neumann: I am asking the witness where they are; that is what I am asking.
The Master: I am asking you. What item of "bad debts" on Exhibit 115 are you referring to?
Mr. Neumann: I am referring to an item of $91.51 that evidently he has included in some account somewhere, probably in General and Miscellaneous Expenses.
The Witness: That is right; that is in there.

2313 By Mr. Neumann:

Q. You do not find any such item in Mr. Cohen's statement?
A. I presume he must have had it in his statement.
Q. Were you here when Mr. Cohen was cross-examined?

Mr. Ransom: I object to the question.
Mr. Neumann: Were you?
The Master: Objection overruled.
Mr. Ransom: Exception.

A. Yes.
Q. Didn't you hear Mr. Goetz ask him whether he had included bad debts written off, and he said, No?
A. I do not recall that; the item is only $95——
Q. You read the record every day, the stenographic minutes?
A. Oh, yes.

Mr. Ransom: Mr. Goetz calls my attention to the fact that the question was not asked with respect to these three months, the three months' statement covered by Defendants' Exhibit A-20.
Mr. Neumann: The record will speak for itself. I think counsel is going off on a tangent on this very point.
The Master: Proceed now.

Q. Now, Mr. Spear, did your company grant any increases in wages during the last two or three months of 1920?
A. Yes; I think some increases in the office force and some in the shop.
Q. To quite some extent, did they not?

Mr. Ransom: Objected to as vague and meaningless.
The Master: Objection overruled.

2314 A. Not to any very large extent.
Q. How about the works?
A. There may have been some slight adjustment in the works.
Q. What do you mean by adjustments?
A. Increases in wages.
Q. Is that what you call an adjustment?
A. Yes, because they were underpaid before and still are.

Q. How about the superintendent?
A. No increase there.
Q. How about the boiler house labor?
A. I do not recall just what individual increases were made, but some of them were made.
Q. I now show you Plaintiff's—Complainant's Exhibit 54 and direct your attention to page 6. What was the amount for boiler labor in May?
A. $926.15.
Q. And in April?
A. $768.25.
Q. And in March?
A. $787.11.
Q. And in February?
A. 749.03.
Q. And in January?
A. $779.44.
Q. Now, take generator labor, page 10. What was the amount in May?
A. $1,698.44.
Q. And in April?
A. $1,405.07.
Q. And in March?
A. $1,104.16.
Q. And in February?
A. $1,222.19.
2315 Q. And January?
A. $1,489.51.
Q. $200 in one month?
A. That might have been due to the running——
Q. One moment.

Mr. Ransom: Let him answer.
Mr. Neumann: You can get him on redirect examination if you want to.
Mr. Ransom: You can conceal all the facts you want to now.

By Mr. Neumann:

Q. Miscellaneous labor, on page 18 of the same Exhibit 54, under May 31st, Payrolls, $293.58.
—. You have another item, "Accounts Payable, $138.39." What is that Accounts Payable?
A. That is probably some outside labor that we hired.
Q. Miscellaneous labor?
A. Yes.
Q. The total therefor would be those two amounts, $293.58 and $138.39; is that correct?
A. Yes.
Q. That would be for May?
A. Yes, but that might not all apply in May. It might have been a bill for March or April and passed in May.
Q. What was the amount in April?
A. $344.14—no; two items in there. That would be $612.76.

Q. 612.76 in April?
A. Yes.
Q. What was it in March?
A. $173.69.
Q. And what was it in February?
A. $141.10.
2316 Q. What was it in January?
A. $101.51.
Q. You have a cashier there, have you not?
A. Yes.
Q. What is the name of the cashier?
A. Miss Oddy.
Q. Has she been with you since January, 1920?

Q. The same one?
A. Yes, a number of years.
Q. What was her salary for the month of May?
A. I think she gets either $23 or $25.
Q. I now show you Exhibit 54 and direct your attention to page 186, what is the amount?
A. $120.36.
Q. What was it for the month of April?
A. $120.37.
Q. And what was it for the month of March?
A. $115.20.
Q. And what was it for the month of February?
A. 88.10.
Q. And what was it for the month of January?
A. $90.
Q. Exhibit 54, page 172, "Commercial Department Collections Prepayment Meters." How much is the total from the book for the five months of 1920, I mean for the first five months?
A. $1,013.92.
Q. How much is the total for the first five months of 1919 in the same account?
A. $711.97.
Q. Now, page 176 of the same exhibit. That contains "Commercial Department Meters Readers," is that correct?
2317 A. Yes.
Q. The total for the five months of 1920 is how much?
A. $1,622.67.
Q. And the total for the first five months of 1919?
A. $1,093.01.
Q. Page 182, "Commercial Department, Supplies and Expenses" is that correct?
A. Yes.
Q. What is the amount there for the first five months of 1920?

The Master: Can't you read them; can't you say the amount for the first five months is so much.
Mr. Neumann: It is all figured out.

A. $1,410.01.
Q. No—$1,437.63.

A. There is a credit in there which brings that to $1,410.01.
Q. What is the first five months of 1919?

The Master: Give him the figures.
Mr. Neumann: $730.68.

A. That is right.
Q. Mr. Spear, will you turn to the monthly reports for the year 1919, the monthly office reports—I am not sure that I have correctly described that, but the books are before you—will you tell me from them how much generator coal was used for the first three months of 1920 per M; turn to page 27.
A. Generator coal?
Q. Yes.
A. In three months of 1919, $3,137,000—oh, you want per M?
2318 Q. Yes.
A. $1.236 is the cost per cubic foot——
Q. No.
A. 34.2688.
Q. 34.2688.
A. That is the three months of 1919.
Q. Now give me the three months of 1920?
A. 36.5768.
Q. Now, give me the month of April, 1920.
A. Wait a minute, I gave you—I did not give you the right figure; I gave you the five months ending May 31st. You wanted the three months, didn't you?
Q. Yes.
A. 35.9775 is for the first three months of 1920.
Q. Now, give me April, 1920.
A. 36.3842—wait a minute; the month of April was 37.7357.
Q. Give me the month of May, 1920.
A. 37.3648.
Q. You have already given me the figure for the three months of 1919, have you not?
A. Yes.
Q. Now, give me the figure for the whole year 1919.
A. 34.5906.

Mr. Ransom: Don't you want the figure for April and May, 1919?
Mr. Neumann: If the Court please, I would like to try my own case.
The Master: Nobody is stopping you.

Q. Mr. Spear, what explanation have you for the fact that you used three pounds more per thousand in the year 1920; that is, that part of the year that has already passed, as against the same period
2319 for 1919, and also for the entire year of 1919; what explanation is there.

Mr. Ransom: I object to the question; it does not accurately state what he just brought out. He has shown April, 1920, and May, 1920, and has very carefully refrained——

Mr. Cummings: Let the witness answer.

Mr. Neumann: One minute; go ahead with your objection because it is false and you know it. I brought out the first three months of 1920 and the first three months of 1919.

The Master: Let us get this record straight; what is the generator coal used for the five months of 1920?

The Witness: 36.5768.

Q. That is a couple of pounds more?

A. And the five months of 1919 is 34.7380; that is a difference of about 1.8 pounds.

By the Master:

Q. Now, likewise there is a couple of pounds more, or approximately that, for your 1919, entire year.

A. Yes.

Q. Now, what is the explanation?

A. During that period we had some very poor coal.

Q. What period?

A. 1920 as against 1919.

By Mr. Neumann:

Q. What did you do to correct it?

A. We had during the time we were using that coal, the results were naturally poor——

Q. I did not ask you that, Mr. Spear, I asked what you did to correct the fact that you were getting poor coal?

2320 A. We could not do anything about it; that is the only coal we could get.

Q. That has been true of other years, too, has it not?

A. Yes, but this was particularly bad.

Q. How do you explain that the month of April, 1920, was higher than the three months of 1920 that you used 37 plus instead of 35 plus for the previous three months?

A. That was about the time we got that coal in.

Q. Then the 35 plus that you were using for the first three months of 1920 was good coal; is that correct?

A. No.

Q. It was also poor coal?

A. Some of it was, yes.

Q. How do you explain the fact then that in May, 1920, you were still using 37 plus per thousand—still poor coal?

A. We got a cargo of coal in; we usually get between 600 and 700 tons, and that will last us about a month and a half.

Q. I have taken you now over a period of five months; that would be at least three carloads or more?

A. Well, there is only a difference of 1.8 between the five months of 1919 and the five months of 1920.

Q. Do you know what you were using per M in 1918?

A. No, I do not recall now. If you will notice that boiler coal it is less in 1920 than in 1919.

Q. Your books indicate that in that year 1919 the amount used per M was 34.69?

A. For the year 1919?

2321 Q. 1918; that was the year that the Fuel Administrator had the coal situation in hand, was it not?

A. Yes.

Q. And is it not the fact that it was the year that you were getting the poorest coal in the history of gas making companies?

A. I would not say that.

Q. Pretty close to it?

A. We got some poor coal, we got some good coal, but the poorest coal we got was the boiler coal, not so much the generator coal.

Q. The poorest coal you got was not generator?

A. Was boiler only.

Q. How do you explain the fact that you were using so much coal per thousand if you were getting good generator coal?

A. I am speaking now of 1918.

Q. Oh, 1918?

A. You asked me if that was not the poorest coal in the history; I say that the poorest coal we got at that period was boiler coal rather than generator coal.

Q. Are you getting any better treatment than any of the other companies, any preferential treatment?

A. No, I do not think so.

Q. Your situation with reference to coal was the same as all the rest of the gas companies?

A. I think so.

The Master: What do you say it ought to be for generator coal, Mr. Neumann?

Mr. Neumann: I say that it should be not any more than—and possibly less than Mr. Wood said 32½.

The Master: He said 34.

2322 Mr. Neumann: He said in the Consolidated case 32½, and he says that that did not make any difference, whether it was one million or two million or a ten million plant.

Mr. Ransom: Counsel could not have stated that correctly.

Mr. Neumann: Don't say that, because I will show it to you in the record.

The Master: What his statement here is, he says 34——

Mr. Neumann: That may be, but he admitted that he said 32½ in the Consolidated and I confronted him with his testimony that it did not make any difference whether it was one million, two million or ten millions; he said that was immaterial. That point was brought out very materially if any point was.

Mr. Ransom: Mr. Woods' testimony was it would affect a plant of ten million and upwards, and that that was the figure at the time he testified.

By Mr. Neumann:

Q. You have three holders at Flushing, have you not, Mr. Spear?

A. Yes.

Q. And what is their capacity?

Mr. Ransom: Objected to as not cross examination.

Mr. Neumann: I am laying the foundation for some cross amination.

The Master: On this Exhibit?

Mr. Neumann: Yes.

Mr. Ransom: It has been testified to many times, by both s that there are three holders.

2323 The Master: 190,000 gallons.

Mr. Neumann: There seems to be some question ab it.

The Master: I will let you ask him.

A. One holder is 100,000 cubic feet, another 250,000 feet, a another one one million cubic feet capacity.

Q. When was the million cubic foot holder painted last?

A. This spring.

Q. 1920?

A. Yes.

Q. Did you understand Mr. Miller to testify that that hol was painted in 1919?

A. I do not recall that.

Q. When was it painted previous to that spring?

A. Parts of it had been painted——

Q. When?

A. One lift was painted, part of the tank, in 1919, and previ to that when it was built in 1915.

Q. 1915?

A. Yes.

Q. So that from 1915 down to date it has been painted twice cluding this spring of 1920; is that correct?

Mr. Ransom: He has not so testified. He said one lift painted last year; part of it had been painted other times.

The Master: Is that correct?

The Witness: Previous to that, there may have been parts painted. If we see that a certain part of the holder needs paint we paint it, and do not necessarily paint the whole holder unt needs it.

2324 By Mr. Neumann:

Q. Did you understand Mr. Miller to testify—you were her court when he testified that it would only take 6,000 to have plant in condition as good as new?

Mr. Ransom: I object to that.

The Master: I cannot understand how this is cross examinat

Mr. Neumann: I will show by the next question.

Q. I now show you Complainant's Exhibit 54, and call you tention to page 54, "repair works and station structures materi You have there under the date of April 30, 1920, "Painting ho $5,775." Is that the holder you were just describing?

A. Yes, sir. This is painting holders, but it is not an accurate statement, because it included apparatus and buildings as well as the holders.

Q. How do you know that?

A. Because I gave out the contract and watched it while it was being done.

Q. Well, the total amount for that item is $665.14, isn't that correct?

A. Of repairs, yes.

Q. And alongside of that is "Painting holders, $5,775," is that correct?

A. Yes, but——

Q. And do you now say that that $5,775 includes other things besides holders notwithstanding the entry in your book?

A. Oh, yes.

The Master: How have the sales continued during the five months of 1920, compared with 1919, have they increased right along?

2325 The Witness: I think it is an average increase for the first five months of about 22 per cent, or something like that.

The Master: And the ratio seems to be keeping up, does it?

The Witness: No, it is falling off this month.

Q. Mr. Spear, in order that there may be no question about it, you testified, did you not, that this one million cubic foot holder was fully and completely painted in the spring of 1920?

A. Yes.

Q. And the other parts were painted at other times?

A. Yes.

Q. But the whole holder was fully and completely painted in the spring of 1920?

A. That is right.

Q. Now, directing your attention to Complainant's Exhibit 54, and calling your attention particularly to page 58, "Repair Power Plant Labor," is that correct?

A. That is right.

Q. Now, what is the amount there for May, 1920?

A. $356.88.

Q. For April, 1920?

A. $253.30.

Q. For March, 1920?

A. $241.23.

Q. For February, 1920?

A. $63.38.

Q. For January, 1920?

A. $289.79.

The Master: Give me May again.

2326 The Witness: $356.88.

The Master: Well, that is a small bill.

Mr. Neumann: Well, lots of these small items go to make a very

large item if there are enough of them, and there are plenty of them here.

Mr. Ransom: Even salaries of assistant counsel to the Commission have been increased during that time.

The Master: I hope Mr. Neumann was in on it.

Mr. Ransom: He surely was; a much larger ratio than that.

Q. Page 62, "Repair Power Plant Material for May," what is the amount?

A. $202.75.

Q. For April.

A. $219.48.

Q. For March?

A. $119.94.

Q. For February?

A. $63.90.

Q. For January?

A. $200.03.

Q. Page 130, "gas mains," how much for May?

A. $367.92.

Q. How much for April?

A. $2,442.41.

Q. What is that amount of $2,248.85, there, that is in April?

A. That is repairs to gas mains on account of building the Myrtle Avenue sewer.

Q. Well, how about March?

A. $340.01.

Q. How about February, the amount for February?

2327 A. $35.05.

Q. And how about January?

A. $117.56. There is not much repairing done in those months, you know, on account of the ground being frozen.

Q. Now, take page 130, meters?

The Master: What do you think, Mr. Spear, will be the average increase in sales during the year, based upon your experience up to this time?

The Witness: I think probably about between 15 and 20 per cent for the year.

The Master: What were the total sales for 1919?

Mr. Ransom: 336,000 ms.

Q. Mr. Spear, page 138, "Repair Meters." I see that uniformly through that account you charge up $350 a month marked "Suspense." What do you mean by that?

A. When the bills come in each month from the repair shop we put them in suspense, and then charge up a uniform amount so that it spreads it over the period more equally.

Q. In other words, irrespective of what the particular amount may be for that month for repair meters, you charge up $350 for each month, is that correct?

A. Yes.

Q. Do you have to make any adjustments at the end of the year?
A. Yes, we do.
Q. Either for or against, whichever way it happens to be?
A. Yes, sir.
Q. So that those figures are an estimate and not actual figures?
2328 A. That is an estimate, yes.
Q. Well, are there any other repairs where you use the same method?
A. I cannot recall any just now.
Q. I understood you to say that the reason you put in this estimated figure is to spread it over, is that correct?
A. Yes, sir.
Q. Well, why did you do that in this particular account and not in other accounts?
A. Well, we did this—we have been doing this for some years, that is the reason we continue to do it.
Q. Well, this is exceptional in this case?
A. Yes.
Q. Now, page 149, that page is "Repairs to Appliances," is it not?
A. It is.
Q. Now, what is the total amount for the five months of 1920?
A. $834.69.
Q. What is the total amount for the first five months, the same corresponding period in 1919?
A. $479.33. The reason for that is——
Q. Take page 150——

Mr. Ransom: Don't you want his statement of why?
Mr. Neumann: What is that?
Mr. Ransom: Don't you want the facts? What page was the last one you were referring to?
The Witness: 148.
Mr. Neumann: 148 and 149.
The Witness: Here it is.

Q. Take page 156, Commercial Department Labor, the five months of 1920, the total is how much?
2329 A. $2,359.20.
Q. What is the total for the five months of 1919?
A. $1,117.55.
Q. Now, take page 160, Commercial Expenses, what is the total for the five months of 1920?
A. $3,389.73.

Mr. Neumann: I will withdraw that, I must have given you the wrong page.

(Discussion off the record.)

Q. That was the correct page. Now, what is the total for the first five months of 1920?
A. $3,389.73.

Q. Now, the same total for the first five months of 1919?
A. $2,002.17.
Q. What is the total for the month of May, 1920?
A. $845.35.
Q. What is the total for April, 1920?
A. $673.81.
Q. For March, 1920?
A. $600.45.
Q. For February, 1920?
A. $597.58.
Q. And January, 1920?
A. $672.54. One reason for that is that we have been doing—

Mr. Neumann (interrupting): I move to strike that out.

The Master: Let me ask you, Mr. Spear: some of these expen such as Repair Expense, won't show up again during the balance the year, will they?

The Witness: On the painting, but we will still have s
2330 repairs on apparatus as we go along. For instance, in Ja we just relined our No. 3 set.

Q. Now, page 164, Commercial Department Contracts, 1920, total for the five months is how much?
A. $203.23.
Q. For the first five months of 1919?
A. $142.88.
Q. Now, take page 194, Canvassing and soliciting, what is total for the first five months of 1920?
A. $1,047.70.
Q. What is the total for the five months of $1919?
A. $826.93.
Q. Now, take——
A. (Interrupting.) You will find that that difference is refle in the other income.
Q. What do you mean by that?
A. In your statement there of the other revenues, you will that we ran something like $4,000 more in the sale of appliance 1920 than we did in 1919.
Q. And spent one hundred per cent more in repairing them
A. Not in repairing them; this is soliciting them.
Q. But your repair bills went up of every kind?
A. Yes.
Q. Including repairs to appliances?
A. Yes.
Q. Enormously. Take page 209, Vacations and Sickness, is correct?
A. Yes.
Q. What was it in 1920, five months?
A. $177.48.
2331 Q. I see that you only have two months there?
A. Yes, we only started the account at that time.

Q. That is a new account, is it?
A. Yes.
Q. Absolutely new in 1920, and in April it began?
A. Yes; we wanted to separate it and see how it came out.
Q. Now, take page 254, Relief Department and Pensions, is that correct?
A. Yes.
Q. Does that include Vacations and Sickness?
A. No.
Q. Did it in the year 1919 contain it?
A. No.
Q. Didn't it in any year?
A. No—well, only in the—no, it does not.
Q. I am talking about 1919.
A. So am I.
Q. Well, where did you take care of vacations and sickness in former years, prior to the time you opened that account, Vacations and Sickness, in your Ledger for 1920?
A. In the office payroll. We opened that now so as to see what the sickness amounted to in our weekly salaried people.
Q. And prior to that time you had never had any account showing vacations and sickness?
A. No.

The Master: Did you pay the employees whenever they were sick and on vacations?
The Witness: Yes, weekly employees.
The Master: Just ran it through as a regular pay?
The Witness: Yes.

2332 Q. Now, take the account that you have before you at page 254, what is the total for the five months of 1920?
A. $859.77.
Q. What is the total for the five months of 1919 for the same period?
A. $187.30.
Q. Now, take page 215, the total amount of that account is how much, that is entitled Rate Case?
A. Do you mean for the five months?
Q. Yes, for the five months.
A. $2,448.85.
The Master: For 1920?
The Witness: In 1920.
The Master: And in 1919 how much?
The Witness: $15,518.73.
Mr. Tobin: That is the entire year?
The Witness: No, it is only a three months' entry here, October, November and December.
The Master: But you did not have any for the first five months of 1919?
The Witness: No; that is for work done during 1919.
The Master: Well, $2,000 for five months is much less than that proportion would represent for a year, last year?

The Witness: There are a lot of bills we have not received yet that belong in that rate case. There is nothing for counsel in there yet.

Mr. Ransom: I can testify that that amount is very incomplete.

Q. Mr. Spear, that amount of $2,498.85 in 1920 contains a bill of $500 for the Heller Agency. What is that, do you know?

2333 A. Halleren Agency?

Q. No, Heller.

A. I do not recall the Heller Agency at all; I don't know any such concern.

Q. Well, Halleren agency, what is the Halleren Agency?

A. Well, it is probably appraisals on the property and testifying.

Q. How about C. J. O'Connor, he was the witness who testified here?

A. Yes, P. J. O'Connor.

Q. How much did you pay him?

Mr. Ransom: I object to that.

The Master: I will take it, if Mr. Spear remembers.

The Witness: Oh, I think he charged us $30 or $40 for an appraisal and $15 a day for testifying.

Q. What was that amount paid the Bartlett-Hayward Company, $1,707.73?

A. That is for work that Col. Miller and his staff did.

Q. What year?

A. Which amount is that?

Q. $1,707.73. That is paid in 1920.

A. Well, my recollection is, I would say it is work done in 1920.

Q. Take page 221, Law Expenses Connected with Claims and Arrears, what amount is that?

A. For the five months?

Q. Yes.

A. $264.68.

Q. What kind of claims are those?

A. Against final bills of consumers.

Q. What, suits that you had to bring?

2334 A. No; that might be going out to collect them after they had moved away, following up their new addresses to get them.

Q. Who is that amount paid to?

A. The Consolidated Gas Company, their Claims and Arrears Department. Any final bills that we cannot collect we send over to them.

Q. How long were those bills standing, do you know?

A. Oh, I would say probably six months or more.

Q. And is that your usual practice, when you cannot collect a bill to send it over to the Consolidated Arrears and Collections Bureau, or whatever it is called?

A. Yes.

Q. That has been so for years, has it?

A. Several years, yes.

Q. Now, take page 222. That account is insurance, is it not?

A. It is.

Q. And this book runs back as far as 1919?

A. Yes.

Q. Uniformly you have been charging $275 per month for insurance, have you not?

A. Yes, with an adjustment——

Q. (Interrupting.) During the year 1919?

A. Yes.

Q. That has also been true during the years 1918, 1917 and 1916, is that correct?

A. I do not recall about that.

Q. Well, it has been your uniform practice to charge $275 a month for insurance, is that correct?

A. Well, I would not say that it was prior to 1919.

2335 Q. Well, would you want to look up your other books so that there can be no question about it?

A. I do not think it would be fair because there is an adjustment made in December here of $698.01, showing there was a charge too little in those previous months.

Mr. Neumann: I move to strike the answer out as not responsive.

The Master: Motion denied.

Mr. Neumann: In other words, may a witness come here and volunteer any information that is not in answer to any question and the Master permit it to stand on the record?

The Master: No.

Mr. Neumann: Exception.

The Master: But this statement I will allow to stand.

Q. Now, take the year 1919 on this account here at page 222, uniformly you have charged $275, and then at the end of the year, December 31, 1919, you have charged $678.01, is that correct?

A. Yes.

Q. And, by the way, that figure has been charged out, the original figure that was there, and another figure written in there, is that correct?

A. Yes.

Q. Now, then, beginning with 1920, you paid insurance $275 each month, including January to April?

A. Yes.

The Master: Including April.

Q. Including April. And May 31, 1920, $275 written in there originally, then striken out with red ink and $510 written over it, is that correct?

2336 A. That is right.

Q. Now, what is that $510 in May, 1920?

A. Well, we found that we were charging too little for the first four months, after we got our bills, and then figuring up what our insurance would be.

The Master: That would indicate that that insurance would probably be a little over $6,000 a year; is that correct?

The Witness: A little less than $6,000.

The Master: $510?

The Witness: But there is $275 charged for four months. We cannot always tell at the beginning of the year, until we get our bills and then figure it up.

The Master: I see.

Q. Well, now, tell us why you did not wait until December in order to adjust this account, as is indicated by your previous account in 1919?

Q. Well, now, tell us why you did not wait until December in order to adjust this account, as is indicated by your previous account in 1919?

A. Because I think it is better accounting to get it as near as possible, without a large adjustment at the end of the year.

Q. You did not think so in 1919, did you?

A. I did think so, yes, but I did not pay any attention to it.

Q. And you did not think so in 1918? I mean you did not adjust it until the end of the year 1918?

A. I do not recall.

Q. Well, have you your books here?

A. No.

Q. Have you your books here for 1917 or 1916?

A. No.

2337 Q. Well, the fact is that you did the same thing identical in 1918, 1917 and 1916 as you did in 1919?

The Master: Is it?

Mr. Neumann: Yes, it is.

The Master: I am asking Mr. Spear.

Mr. Ransom: We have here only the books that Mr. Neumann called for.

Mr. Neumann: Adjusted at the end of the year.

The Witness: It may have been.

Q. And in those years you did not consider it necessary to make an adjustment in the month of May?

The Master: That is quite consistent and that is possible. He may have found as he was going through 1917, 1918 or 1919 that the amounts charged off would be approximately correct, and it only required an adjustment of $600 at the end of the year, and when he got his bill here in May he found it was too small, and he started to readjust right away.

Mr. Neumann: Well, isn't it also conceivable that it might have been thought necessary in view of the rate case and in view of the fact that they wanted to get a statement that would show very large expenses for the year 1920?

The Master: Certainly.

Mr. Neumann: That is just as consistent, and probably more so, than the other suggestion.

The Master: Well, you have a basis for argument.

2338 The Witness: At the same time, that is not a fact, Mr. Neumann.

Mr. Neumann: And probably the most significant indication of the whole thing is that all of these accounts have suddenly increased in April and May, 1920.

The Master: Well, I think——

Mr. Ransom (interrupting): Continuously increased.

The Master: You have got to assume that business men are not inclined to take it for granted that all courts are stupid and that courts can be foiled by something of this kind, if it is not a fact and a necessary expense. Now, personally, I am inclined to view the situation from a coincidental basis; in other words, that it is a coincidence that these items have increased so substantially in the latter two months or the last two months or the first five months of this year. I am not disposed, ordinarily, to assume that people are crooked or dishonest.

Mr. Neumann: There was nothing like that in my suggestion.

The Master: Well, that is bound to follow. If they deliberately raised salaries——

Mr. Neumann: No, I say this——

The Master (interrupting): And painted holders——

Mr. Neumann: I say this, that even assuming that they did it in absolute good faith, that it is not a safe basis; it is an abnormal year.

The Master: That is a different thing. If you want to argue the proposition with me that I ought not to take the five months
2339 of 1920 as a basis of calculation, then you will lead to the point where you have got to tell me to disregard three months of 1920.

Mr. Ransom: Five months is certainly better than three.

The Master: I don't know about that. It may well be that in these last two months you have put in expenses necessarily coming at that particular time, and items in good faith incurred and moneys expended——

Mr. Neumann (interrupting): We have been yelling all along while the complainant was putting in their three months' exhibits that nothing less than a year is a safe criterion.

Mr. Ransom: We put in no three months' exhibits; they brought them in.

Mr. Neumann: That is certainly incorrect, because Mr. Spear introduced an exhibit——

The Master: You men don't have to argue what happened here.

Mr. Neumann: Well, I hate to have counsel say a thing that he knows is wrong.

The Master: Well, here is the situation, take the year 1919, it is conceded by the defendants that based upon the books of the complainant company they lost five cents on every thousand cubic feet of gas they sold. Start off with that——

Mr. Neumann: Well, we should have their books, because there are many items that we dispute.

The Master: I understand that, but based on their books, your exhibit, Exhibit 120, indicates——

Mr. Ransom (interrupting): A-20.

2340 The Master: Your Exhibit A-20 indicates that they actually lost five cents on each thousand cubic feet of gas sold. Now, I start off with that as a basis, having in mind that you question some of the items included there in the year 1920. It would appear pretty clearly that certain salaries have been increased. I do not believe the Gas Company has deliberately increased the salaries of employees for the sake of making evidence in this rate case. I think that those salary increases probably were necessarily and reasonably made. On the other hand, it is quite apparent that the sales this year will increase, which will proportionately decrease their per-thousand-cubic-feet operating expenses, that is commercial expenses and matters of that kind, and taxes, per thousand cubic feet.

Mr. Ransom: Many expenses go up in proportion to sales, and Mr. Neumann fails to take that into account. The commercial expenses and the expenses in connection with the plant department go up with sales.

The Master: Yes, but when you spread some of those items over the sales, you reduce the cost per thousand, there is no question about that. What I am confronted with is the question of reaching a conclusion based upon the 1919 full year in the light of what has happened in 1920, taking everything into consideration, as to what the net result is going to be for the whole year 1920. What I have got to contend with——

Mr. Neumann: Does not your Honor overlook the fact that the burden is cast upon the complainant as to showing that their
2341 plant is economically and efficiently operated?

The Master: Yes, I understand that.

Mr. Neumann: It is not up to us to show that this is done, that is up to them to show that it is in the beginning.

The Master: The trouble with that is, Mr. Neumann, I have been giving it some thought this morning, and if I were to take 1919 as the basis, where the generator coal was pretty close to where it should be over there, about 34 pounds, having in mind some other items that must be adjusted, there were one or two items that appear from the books to be in excess of what Mr. Woods testified they ought to be, possibly because there was a laying-in of supplies or some extra repair work done, I won't get a correct result because it is quite apparent that the sales have increased this year, and will continue to increase, and the average during the year, as Mr. Spear says, will be fifteen to twenty per cent; it may be a little more when they get through with the Douglaston Extension and get it in operation.

Mr. Ransom: There is no evidence that it will be more than that.

The Master: Well, I say—I do not say that there is evidence, but I say it may be for all I know; but Mr. Spear says that based on five months it would indicate that an increase in sales of fifteen to twenty per cent.

Mr. Ransom: The sales manager always thinks he is going to have very large sales.

2342 Mr. Cummings: Well, don't dispute Mr. Spear now on that.

The Master: I am assuming that Mr. Spear knows his business well enough to give me a fair estimate.

Mr. Ransom: But there is no evidence that he has not understated or overstated.

The Master: That may be true, *eys*, but it does vary the conditions I find for 1919 somewhat. I am also satisfied that there has been an increase in expenses, especially as to labor.

Mr. Ransom: And coal.

The Master: And as to material.

Mr. Ransom: As to coal, much more than the increase in sales.

The Master: And it makes it very difficult to get at any definitely accurate figures. Go ahead and finish your case.

Mr. Tobin: In this discussion the defendant Newton does not want to have it said that we are taking any one year 1919 or 1920 as the basis to establish a rate. We maintain that it should be taken over the period of years.

The Master: Go ahead, Mr. Neumann.

Q. Turn to page 236, Stable Expense, 1920, how much?
A. $1,725.62.

The Master: For five months?
The Witness: $1,542.01.

Q. For five months?
A. Yes, for five months.
Q. 1915, five months?
A. $880.48.

2343 Q. Page 242?
A. That stable expense, you know, feed is more than double, horses and gasoline——

Mr. Neumann: I move to strike out the witness' answer. He has already given his answer complete, and this is something new.

Mr. Cummings: Did you say the horses ate more, Mr. Spear?

The Master: I will let it stand.

Mr. Neumann: In other words, the purpose here is quite clear, that any witness for the complainant can make any statement even after a question is closed, and the answer given, and the rest of the answer afterwards volunteered will not be stricken out.

Mr. Ransom: I object to the statement as an unwarranted reflection on this Court, and intended to be so.

The Master: You will notice he carefully refrained from saying I did not give their witnesses the same opportunity, so there was no reflection on me.

Mr. Neumann: I simply stated what the facts were, and I am in the habit of stating them fairly.

The Master: It might be criticised as not a full and complete statement of the Master's attitude, that is all.

Q. Pages 242 and 243, what is the amount, "Repair Automobiles"?

The Master: You know, after all, Mr. Neumann——

Mr. Neumann: One minute, until I finish this question.

The Master (continuing): After all, the purpose of a trial is to elicit the truth.

2344 Mr. Neumann: Yes.

The Master: Rules of evidence are simply for that purpose.

Mr. Neumann: And to see that we do not get very far afield.

The Master: It makes very little difference whether a witness volunteers an explanation following a question on cross examination, or whether it is reserved for redirect examination and then we get it.

Mr. Neumann: But it certainly is not orderly procedure in accordance with the rules.

The Master: Well, I should prefer that Mr. Spear did not volunteer, and that Judge Ransom bring out the explanation on his redirect, but when he does volunteer in that way, it does no harm and simply saves a redirect question.

Mr. Neumann: I would like to call the Master's attention to this, that there are several instances in this record where we endeavored to bring out the explanation of a thing right there, and the Master directed us to bring it out in our part of the case.

The Master: Well, I do that now as to Judge Ransom, but I do not believe in striking things out. I think it is a waste of time.

Q. What is the amount, Mr. Spear, of these repairs autos for the five months of 1920?

A. $2,184.41.

Q. And for the same period of 1919?

A. $1,327.03.

Q. Now, Mr. Spear, in your Exhibit 115, there is reflected the unaccounted for gas, is there not?

A. How do you mean, reflected?

2345 The Master: You take into account unaccounted for gas.

The Witness: Well, this is all showing the gas sales, not the gas made. Of course, the unaccounted for is the difference between the gas made and the gas sold.

Q. Well, does this statement in any way reflect the unaccounted for?

A. The unaccounted for cannot be figured from this.

Q. It could not?

A. No.

Q. Have you the unaccounted for in any book before you?

A. Yes, I think it is in the report.

Q. Now, take the month of May, 1920, what is the unaccounted for for the month of May, 1920? I mean the percentage of unaccounted for?

A. The unaccounted for uncorrected is 8.42, and corrected 10.50.

Q. For May?

A. For May.

Q. Well, you are reading 1919, and I am talking about 1920?

A. No, 1920, I am reading, and that is five months. I beg your pardon 17.29 uncorrected and 16.66 corrected.

Q. Now, what is it for the month of April, 1920?

A. 5.15 and 8.66.

Q. Now, what is it for the month of March?

A. Nothing uncorrected and 4.75 corrected.
Q. What was it for the month of February?
A. 3.8 and 11.04.
2346 Q. And what was it for the month of January?
A. 10.84 and 11.59.
Q. Now, what was it for the first four months of 1920, corrected?
A. $9.06.
Q. What was it for the entire year 1919?
A. 11.02 and 9.59.
Q. 11.02 is uncorrected and 9.59 corrected.
A. Yes.

The Master: How did it run up as high as 16 per cent in May?
The Witness: Well, I don't know any specific reason for it. The unaccounted for will vary.
Mr. Neumann: Your Honor notices that that is almost four times as much as in March.
The Master: Four times and 400 per cent means nothing to me; I have noticed the figures.

Q. You know Mr. Charles Thomas, do you not?
A. I do.
Q. Is he one of the directors and officers of your company at the present time?

Mr. Ransom: Objected to, that has already been testified to two or three times.
The Master: What is the purpose of it?
Mr. Neumann: Well, the next question will show it:

Q. Mr. Thomas is the same man who was one of the officers of the Newtown & Flushing Gas Company that we are speaking of?

Mr. Ransom: Objected to; that has already been gone into weeks and months ago.
The Master: I will allow it.

A. Yes.
2347 Q. He is still alive, isn't he?
A. He is.
Q. You have seen him around here in court even during the trial of this case?
A. Yes, occasionally.
Q. You did not keep the minutes of the Board of Directors in 1904, did you?
A. No, but there is one question unanswered there; you asked me if Mr. Thomas was an officer or director of our company. He is not.
Q. I understood you to answer that way.
A. There was an objection; that is the reason I did not answer.
Q. Well, is he in any way connected with your company?
A. He is not.
Q. When did he sever his connection with your company?
A. In 1907.

Q. You know where to reach him, do you not, if you want him?
A. Why, I don't know at the present time. If I had to reach him I would reach him at the Consolidated office when he is there.
Q. Yes. I mean you could reach him there or through the Consolidated; he is connected with the Consolidated Company, is he not?
A. Yes, Vice-President.
Q. Mr. Gawtry, who testified here as to the price of coal, he was one of the directors or officers of either the Newtown & Flushing or the New York & Queens in the year 1904—that is the same Mr. Gawtry?
A. Yes.
2348 Q. And you know where he is and where you can reach him?
A. Yes.

Redirect examination.

By Mr. Ransom:

Q. What was the unaccounted for gas, Mr. Spear, for the five months of 1919, corrected?
A. 8.52.
Q. Five months of 1920?
A. 10.50.
Q. Is that corrected?
A. Yes.
Q. What was the unaccounted for corrected for May, 1919?
A. 16.66—no——
Q. Take your time and don't be confused by all those men at your elbow.

Mr. Neumann: Let the record show that Mr. Cohen and Mr. Neumann are standing at his elbow.
Mr. Cummings: And that Mr. Spear has trouble finding his record.
Mr. Ransom: I should think he would under those conditions.
The Witness: 2.71 corrected.

Q. You started to make some explanation with respect to pages 148 and 149 of the operating expense ledger when you were shut off?
A. I was going to say that the figures——
Q. What is that item?
A. That is repairs of appliances.
Q. Yes.
A. I was going to say that the increase in the cost this year as against last year is due to a considerable extent to the fact that we have brought in more of the rental appliances this year than
2349 last year in that same period.

The Master: For repair?
The Witness: Yes. Every time a rental appliance is brought in, it is repaired and overhauled.

Q. Page 160, you started to make some explanation about that?
A. That is Commercail Department accounting. I was going to say that a part of that increase for the five months of 1920 over the same period for 1919 is due to the fact that we are paying our bookkeepers this year for overtime, which we did not do last year.
Q. Is this Mrs. Oddy, the cashier, paid on a monthly or weekly basis?
A. A weekly basis. She is also paid for overtime this year as against not receiving any last year.
Q. During this time she has been doing regular office work which could not be done within the usual working hours by one person?
A. Yes.
Q. And if she had not done this overtime work would you have had to employ an additional person?
A. Yes.
Q. And you regarded it as more economical to pay her for overtime than to put in — additional employee?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, and that is for the Master to find and not for this witness to say.

The Master: Well, I will let him say.

2350 Mr. Neumann: Exception.

The Master: Would it be more economical to hire some one else?
The Witness: No, it would not.
The Master: By that I mean, would it cost more to hire an outside person than to pay her overtime?
The Witness: Yes, it would.
Mr. Neumann: The objection to this thing is that there is nothing here to show what they pay out, what she does and what they could get somebody else to do the same work for, whether they are paying her more than they could get anybody else, and that is all left without explanation.
The Master: What salary did you pay her?
The Witness: It is either $23 or $25 a week.
Mr. Neumann: The salary jumped from $90 to $120 from January to April.
Mr. Ransom: No, she is paid on a weekly basis, and there are an uneven number of pay days in a month.
The Witness: And she is underpaid, too. In fact, all of our salaried employees are underpaid. Take, for instance, at the plant, we have an engineer there now getting $5.25 a day, and he has been with us a number of years, and right outside of our plant they are place during this year?
Q. Street work?
A. Yes.
Q. Is it your judgment that you could have maintained your labor forces without the increases in compensation that have taken place during this year?

2351 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, wholly speculative about

something which the Master himself will have to determine himself, and not the subject of expert testimony.

The Witness: No, we could not, and it is an awful job to hold them today at the boost in prices. We are paying common labor at our plant $4 a day, 50 cents an hour, and as I said before, they are paying $6 a day for common labor right outside the plant.

Q. In connection with sewer work?

A. Yes, the contractors in Flushing are all paying $6 a day.

By Mr. Ransom:

Q. Have your insurance rates for 1920 increased substantially as compared with your rates in previous years?

A. I could not state positively in regard to the rates.

Q. Your total payments for insurance?

A. Yes, that is much higher, and then another thing that would increase that, we revalued our buildings and plants.

By Mr. Neumann:

Q. When?

A. This year, we revalued it a couple of years ago and revalued it again this year.

Q. What time did you do it this year?

A. I think it was about February or March.

The Master: You do not claim that that is poor business, do you, Mr. Neumann?

Mr. Neumann: I will let the facts speak for themselves.

2372 The Master: Well they speak very loudly to me, because I know as a matter of practical everyday experience that I am advising my clients to keep watch on this insurance of theirs, have it reappraised.

Mr. Neumann: That item standing by itself might not be significant, but when you co-relate it with twenty or thirty different items, as I have shown on the record here, and show substantial increases, and the fact that they have come into operation this particular year, and in February, March, April and May, I think they speak very loudly.

The Master: But you do not answer my inquiry, whether you think there is any vice to be charged to the Complainant company in having their plant reappraised, and carrying more insurance.

Mr. Ransom: It would be negligent if they did not do it.

Mr. Neumann: I answer that by stating what I said.

The Witness: I received a regular printed letter from the insurance agents, Owen & Phillips, who carry the insurance on my house——

Mr. Neumann: I move to strike out the witness' statement with reference to his house; it has nothing to do with this case.

The Master: That motion will be granted.

Mr. Ransom: Exception; that has much to do with the basis of the witness' judgment.

By Mr. Ransom:

Q. In previous years your insurance had cost you a little under $4,000, $275 a month, about $600 additional at the end of the year in 1919——

2353 The Master: Those figures speak for themselves.

A. I do not recall just what the figures show.

The Master: I have already asked Mr. Spear about that.

Mr. Ransom: It showed about $2,000 increase.

The Master: Not necessarily, he explained that. He said it does not mean $6,000, just because he started with $500. You take 7 times 500 is 3,500, and 5 times 300 would be 1,500—it would be about $5,000.

Mr. Neumann: One of our exhibits shows insurance year by year.

Q. Who had the contract for this painting of the holders and the apparatus?

A. That is Vasseleros Contracting Company.

Q. Your attention has been called to an entry in the Operating Expense Ledger of painting of holders, an item of approximately $6,000 which you said included under the contract painting also of certain apparatus——

Mr. Neumann: One moment; that is objected to on the ground that it is incompetent, immaterial and irrelevant.

Mr. Ransom: I have not asked a question yet.

Mr. Neumann: Since it now appears there is a contract, the contract is the best evidence, not what this witness says.

By Mr. Ransom:

Q. Is that one of the vouchers which is in evidence?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

2354 A. Yes.

Q. And as a matter of fact, was there an adjusting entry in the following month, the month of May, which transferred part of that sum of painting holders to the account of painting apparatus?

A. Yes.

Q. Can you find it in the Operating Expense Ledger?

Mr. Neumann: That is on page 68; we will give you the page.

A. On page 54 of Exhibit 54, Repairs to Works, Stations, Structures, in April is a charge, painting holders of $5,775, and in May there is a credit of $3,975 to the Repairs to Works, to Stations, Structures, and a charge on page 73 to Repairs to Gas Apparatus, $3,975.

Q. Representing the part of that work which had been done upon apparatus?

A. That is right; instead of on buildings.

Q. How much of a supply of coal has your company now on hand?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant and not proper rebuttal; not proper cross-examination.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. At present about 600 tons.

Q. That is generator coal?

A. Generator coal. We are trying to get 2,000 tons of coal by the first of August because the sewer contractors figure that they will have our street open at that time, and it will probably be
2355 closed for two or three months, so that they cannot get in or out, and we are finding it the hardest job in the world to get the coal.

Q. That is because of the general shortage in this vicinity?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant and not proper for the witness to say, he not being qualified.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes. I wanted to get the Lehigh & Wilkes-Barre——

Mr. Neumann: I move to strike out the witness' answer; this is all voluntary; there is no question before the Court now.

The Master: Motion granted.

Mr. Ransom: He has not finished his answer.

The Master: He is volunteering.

Q. What price are you now paying for generator coal?

Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. About $10.25 a ton.

Q. That is with or without——

A. At the dock.

Q. What do the stevedores charge?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant and for the reason that it is
2356 indefinite and vague; there are a great many elements that counsel has not put in his question.

Objection overruled.

Mr. Neumann: It is incompetent for this witness to answer that question in the form as stated.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: There is the further objection that the contracts themselves would indicate the prices, and not what this man testifies to. The testimony here is that the coal year runs from April to April.

The Master: The testimony likewise is that coal years are up in the air now.

A. Approximately $1.25 a ton.

The Master: To get them from the dock to your works?

The Witness: Yes.

Recross-examination.

By Mr. Neumann:

Q. Now, is that Journal entry that you referred to, Claimant's Exhibit 53, page 288?

A. The second entry from the bottom, yes.

Q. $3,975, and the reading, "For painting done on holders and other gas apparatus in April, and charge to account 8 in error"?

A. Yes.

Q. That is at the bottom of the page?

A. Yes.

By Mr. Tobin:

Q. What amount is included in your Schedule last presented by you for fees or compensation paid to auditors or to the directors of the company?

2357 A. You mean in this exhibit introduced this morning?

Q. Yes; Exhibit 115.

A. It is included in General and Miscellaneous Expenses?

Q. Yes.

A. $180 a month, including the auditors.

Q. $180 a month?

A. Yes, so that would be $900 for five months.

Q. Does it not show some increase over the five months of 1919 in that particular item?

A. I do not see how it could.

Q. The compensation is exactly the same?

A. Yes, since last year.

By Mr. Ransom:

Q. What are the Directors' Fees?

A. $140 a meeting, one meeting a month, unless we call a special meeting, which is very rare.

Q. And what is the compensation of the Auditing Committee?
A. $40—$20 a piece.

By Mr. Tobin:

Q. That is $20 a piece?
A. Yes.

By Mr. Ransom:

Q. Two members of that committee each get $20 a month for thi audit?
A. Yes.

By Mr. Neumann:

Q. Mr. Spear, can you refer to that readily in the books whic you have before you to verify it, whether there has been an increase you said you do not recall?

Mr. Ransom. He said he did not see how that could be.

2358 A. No, I cannot refer to the details of that now.
Q. Are not these amounts charged up in your regula books?
A. Yes.
Q. And haven't you your books here?

Mr. Ransom: We have all the books that counsel for the Commis sion called for.

Mr. Cummings. By reference to the bookkeeper you can deter rmine that if there is any question about it.

A. I do not know whether I could pick it out of the General Ledger or not. It would be under General Miscellaneous Expenses but I do not know as I can pick it out.

Mr. Neumann: You have the black book before you; that book will show it.

Mr. Ransom: Are those Directors' Fees paid through the petty cash?
The Witness: Yes.

By Mr. Neumann:

Q. You have the black book before you; that will show it?
A. That will not show the details.
Q. Show the amount?
A. No.

Mr. Neumann: Will you let me have the black book?

By Mr. Ransom:

Q. If a director is absent is he paid?
A. No.

By Mr. Neumann:

Q. Have you got the Minutes of the Directors' Meetings?
A. No, not now.
2359 Q. How do you know then that a director is absent?
A. Because I attend the meetings.
Q. Are you one of the directors?
A. No.
Q. In what capacity do you attend the meetings?
A. As general manager.
Q. Of the company?
A. Yes.
Q. And you do not keep any minutes of the directors' meetings?
A. No. I go over the minutes after the meeting with Mr. Raynor.
Q. Mr. Raynor is the man who keeps the minutes?
A. Yes.

The Master: Are we all through now?

Mr. Ransom: I had arranged yesterday to have Mr. Addicks here and he has agreed to be here, but he got called into a conference on this coal situation, due to the jeopardy in which the public utilities find themselves, he said that he would be through so that he would be here by eleven o'clock.

Mr. Tobin: I ask that these remarks of Mr. Ransom as far as the coal situation is concerned be excluded from the record.

The Master: I do not think that will do you any good to exclude that from the record, it is still in my mind. The articles in the public press are authentic, apparently.

Mr. Ransom: If the counsel for the Public Service Commission will produce a copy of the telegram which the defendant Public Service Commission sent to the Interstate Commerce Com-
2360 mission I will withdraw my application to have Mr. Addicks' testimony taken.

Mr. Tobin: All stage play.

Mr. Ransom: Have you got the telegram?

Mr. Neumann: I do not know what to say to counsel, former counsel to the Public Service Commission, except to say that I thought he was a lawyer. I am satisfied he is not.

Mr. Ransom: That is a high compliment from such a source.

The Master: Is there anything else?

Mr. Ransom: I hoped to close with Mr. Addicks' testimony.

The Master: Is there any way of finding out whether he will be down here?

Mr. Ransom: He was called into this coal conference. He said yesterday he had nothing in the way and then they had this conference called suddenly and he said he would be here by eleven o'clock.

The Master: Can you reach him on the 'phone?

Mr. Goetz: He said he would be here between eleven and twelve.

The Master: I will wait a few minutes; I am not going to adjourn the matter for him.

While we are waiting to dispose of the Addicks' situation, I take it

that that will end the case with Addicks, will it, with or without Addicks?

Mr. Neumann: Your Honor of course will stand by your ruling that you will not permit those exhibits in which you have stricken out from the record.

2361 The Master: The opinions or decisions of the Public Service Commission?

Mr. Neumann: Where they set forth the various proceedings, setting forth the various proceedings that this company took. It would simply mean that we would have to comb all the records of the County Clerk's office and bring over here voluminous records to fill up this record, where the various facts are stated in the opinion.

The Master: I think you have got enough on the record to make your contention that this company fought off the Douglaston Extension by every legal means at their command for years.

Mr. Neumann: Over a period from 1915 to 1919.

The Master: I said four years.

Mr. Neumann: And took the case right through to the Court of Appeals and to the Supreme Court of the United States.

The Master: Yes; as they had a perfect right to do.

Mr. Neumann: And thereafter began two certiorari proceedings.

The Master: As they had a perfect right to do.

Mr. Neumann: Beginning the entire thing over again.

The Master: As they had a perfect right to do, so long as they felt that the Commission's orders were unjust.

Mr. Neumann: But after the Supreme Court of the United States had decided against them, then the litigation should have ended even there.

2362 The Master: Not necessarily.

Mr. Tobin: Then, there is also, we would like the Master to again rule on the reports of the company to the State Board of Tax Commissions, and the complaints filed with said Commissioners on the question of franchises.

The Master: No; I will not consider that.

Mr. Tobin: For this reason. You allowed the complainant company to put into the record all of the incorporations, the mergers, the deeds, the leases, and all else which had to do with the activities of this company, that is the predecessor company, and still you refuse to us to put in here the records which are of a similar kind and similar character, and which are the records of the company itself.

The Master: I do not think they are similar.

Mr. Tobin: I do not know how you can draw any line, if the Master please, how we are going to attack, with the record, the facts which preceded the merger of this company with the Newtown & Flushing Gas Company.

Mr. Goetz: I have called up Mr. Addicks; Mr. Addicks can start out in ten minutes from 15th Street; he will be down here by 12 o'clock.

The Master: Have you any suggestions about the submission of this case, by oral argument or by proposed findings?

Mr. Ransom: I have proposed findings which I can send to your

Honor in the course of the day. I would like to look them over.

2363 The Master: There are some points I am puzzled about, and if I thought there would be any effort on the part of counsel to really discuss the matter and try to help me reach a conclusion rather than make speeches and call each other names, I think an oral argument might be of some use.

Now, there are some questions that I have disposed of it in my own mind and which I have announced as we went along. I fixed the land value as $44,000 as already stated on the record.

Mr. Ransom: That is over our objection.

The Master: I know it is. I have ruled against the defendants on the question of candle power. I have rather definite views about the working capital item. I think I would prefer to hear some discussion of it before I reach a firm conclusion.

I am puzzled somewhat as to just what basis I can figure the cost of making and distributing gas, having in mind the 1919 figures as a basis, together with Woods' testimony. But I am puzzled because of the apparent increase in sales this year, and apparently a different result will be reached.

Now, I have got to guess at what the repairs and other items will be for the balance of the year, and I am a little bit puzzled about that. My recollection is that there is no dispute as to the estimated cost of the property now on hand.

Mr. Neumann: What does your Honor mean by that?

The Master: I have not finished. Property on hand now
2364 that was on hand or has been on hand since 1904. In other words, that two hundred and some odd thousand dollar item that Hine assumed to be correct—

Mr. Neumann: Hine assumed to be correct, and the only point of difference between them was that Miller allowed no depreciation and Hine allowed depreciation.

The Master: Well, that is a matter of law that I am going to pass on.

Mr. Ransom: I find that Mr. Addicks if called would only corroborate the testimony of Mr. Spear as to the price.

The Master: 10¼ plus.

Mr. Ransom: As to the coal situation, and I think I will not call him out of the conference.

The Master: I do not think we need that.

Mr. Cummings: We object to it, then.

The Master: I would like to have some light and get the views of counsel as to the going value item, as to the development item, that preliminary development expense. There seems to be an agreement.

Mr. Tobin: As to what?

The Master: That unless I can say that the New York & Queens bought the proposition as a going proposition, at a price, and can determine that price, then I have got to work back and get my estimated cost of the property on hand August 1, 1904, and still there, plus a going value, plus development expenses, and plus

property added since and subsequently withdrawn, to arrive at cost.

Now, the reproduction cost, there apparently has been no issue made.

Mr. Ransom: Uncontradicted testimony.

2365 The Master: That seems to stand uncontradicted. Miller testified to the reproduction cost, and you have called no witness to contradict him.

Mr. Ransom: Reproduction cost now and the reproduction cost in 1914 is uncontradicted.

Mr. Tobin: That is not a fact.

The Master: Wait a minute. I am not asking for discussion now.

Mr. Neumann: These are only the Master's views.

The Master: Those are the things I have got to make my mind up about and dispose of.

Now, of course, I am not going to change the ruling I made in the Consolidated Gas case on depreciation. I think the evidence in this case confirmed what I said in my opinion in the Consolidated Gas case that this property is worth at least what it cost this company without depreciation from any angle.

If I am to make a finding as to reproduction cost, then I shall have to take Miller's testimony on reproduction cost, and there again, I have no necessity for decreasing this depreciation because I won't value the property on a reproduction cost. The most I will do there is simply say that the uncontradicted evidence shows the reproduction cost to be so much according to Miller's testimony.

I should imagine that if counsel really wanted to help me, a couple of hours' discussion might clear up some of these
2366 points in my mind, but if I am going to have spread-eagle speeches and quotations from the record and a lot of nonsense like that, that is a perfect waste of time and I will have to do the best I can. What do you think about it, Mr. Neumann; do you think that an oral presentation will be of any avail?

Mr. Neumann: If the Master thinks in view of the attitude that we have taken through this case that we are not going to assist the Master, I feel that I am not going to attempt to try and assist him, if that is his frame of mind. I have tried in this entire case to be helpful. I have tried to develop the facts, and I regret that the Master should have made any such statement, but having made it——

The Master: To be perfectly fair to Mr. Neumann, I want to confirm what he has just said with this limitation, and this only. That when it comes to asking counsel a direct question as to what you claim the testimony may prove or disprove, you do not meet me directly. You have co-operated in putting in the case. It has been a real pleasure to have you put in the case.

Mr. Neumann: That applies equally to counsel for the complainant, because there has never been a direct question that he has answered directly.

The Master: If I were to ask Judge Ransom what he claims is the generator coal, necessary to be used at this time, I know he will come back and say 37 pounds, and he will say, "I base that

upon their actual results now." If I were the defendants I
2367 would be prepared to say, "Why, our contention is that it ought to be 32½ or it ought to be 34 or it ought to be 30, and I base that contention upon this proof."

Now, when I asked you before, What do you claim should be the figure for generator coal, you started to make a speech.

Mr. Neumann: Quite the contrary. I said that the records of this company even in 1919 indicated 34. In the years prior it was less, running down as low as 31. Now, Woods in the Consolidated testified that 32½ pounds of generator coal was sufficient.

The Master: You are doing the very thing I do not want done. For instance, I say to you, Mr. Neumann, what is your contention as to the amount of generator coal that ought to be figured in the cost of producing gas at this plant. Now, Mr. Neumann has been in this case for several months, and he has given it careful consideration, he knows his case, and he ought to be able to say to me without making a speech, "I contend that you must not allow more than 32 or 31½ or 31 or 30½," and then I can say, Mr. Neumann, what do you base that on? Then Mr. Neumann can come back and say, On this. But when I ask a question, How much oil do you claim—I will ask it now—How much oil do you say should reasonably be required for a thousand feet of gas in this plant?

Mr. Neumann: 4 gallons.

The Master: What do you base that on?

Mr. Neumann: I base that on the operations of this company on the prior years and I base it on Woods' testimony.

2368 The Master: He said 4.20.

Mr. Neumann: No; he said 4.1 or 4.2.

The Master: That is 4.20.

Mr. Neumann: And then we come back again to his own testimony in the Consolidated, where he said 4, and he also said right there that it did not make any difference with reference to the size of the plant.

Now, with reference to the coal, here is the situation: If you analyze the figures for the year 1919, and back of those years, you will find 1919 they used 34—1918 they used less. They run back as far as 31. Now, then, why isn't Mr. Woods' figure that he testified to in the Consolidated, 32½, and which he stated would apply to a plant, whether it was one million, two million or ten million, an estimate of what is really correct?

The Master: What is the contention?

Mr. Neumann: I say based on that, 31 would be correct; based on that all the way back, the average over a number of years, whatever the figures would show.

Take, for instance, what it was over a period of years——

The Master: I think perhaps an afternoon's session or a morning's session may help me somewhat. If at that time I have before me the findings proposed by either side.

Mr. Ransom: Or have them in advance.

The Master: I would rather have them before me as part of the

discussion if I can have them. Can you have your findings ready by Thursday?

2369 Mr. Neumann: I doubt if I could, because in addition to this case as your Honor well knows I have been taking care of a number of other cases, and appearing before other courts with the result that I would not want to go into any discussion of the facts or make up any findings which would be helpful to the Master unless I had an opportunity to re-read the whole record.

The Master: How long will that take you?

Mr. Neumann: I should say I would be prepared a week from today to go on with the findings.

The Master: You could not do it Thursday?

Mr. Neumann: No.

The Master: I am not coming back to the City of New York a week from today.

Mr. Neumann: Is that a holiday? Make it Tuesday.

The Master: I am not coming back for this case at all.

Mr. Ransom: The Consolidated argument is on the 6th.

Mr. Tobin: I do not think it is possible to get the findings before you.

Mr. Ransom: The findings were to be submitted on the day of the close of the case.

Mr. Neumann: And you have not closed until today, and you were still open today to try and call another witness.

Mr. Ransom: The instructions were that the findings should be submitted on the day of the closing of the case.

Mr. Tobin: There is no such instruction.

2470 Mr. Neumann: Even up to the last minute you tried to introduce another witness. The case has been tried over a period of months. The evidence comprises if I recall correctly, pretty nearly 3,000 pages of printed typewritten minutes, and it is unfair to say the least to ask us to get ready in two or three days to orally argue it and submit findings in advance.

The Master: You ought to have the case as clearly in your mind as I have it in my mind.

Mr. Neumann: My mind may not operate as quickly as the Master's does. I am trying to comprehend this case as best I can.

Mr. Ransom: Of course, the complainant will be glad to do anything that your Honor may deem helpful with respect to oral argument or anything of the sort, supplementing findings. For my own part I doubt very much whether oral argument would get very far; I do not think it did in the Consolidated case.

Mr. Tobin: Well, representing the Attorney General, we want to be just as helpful as we can. All we ask is some time so as to properly put together the facts the Master desires.

The Master: Have you got an application for an injunction in this case?

Mr. Neumann: No. As a matter of fact, the fact is this; that in order for me to prepare anything that would be helpful for the Master I would have to go to the company's books, because there were

a number of pages of the company's books that were intro-
2371 duced in evidence, and there was a discussion as to whether we were to be furnished with copies of them, and the result is that we have not been. I do not blame them at all, I am not censuring them, but I am simply showing that the time we are asking is not unreasonable under the circumstances.

The Master: I have got to submit a preliminary report in this case. I will tell you what I will do. You say you will have your proposed findings ready by Tuesday?

Mr. Neumann: How about you, Mr. Tobin; can you stay down here and work with me?

Mr. Tobin: Yes.

Mr. Neumann: So that we can both prepare them?

Mr. Tobin: Yes.

The Master: Will you send a messenger up to Warwick with them, it is only a couple of hours' run. He would have to stay overnight probably, he would only have to stay overnight. He could drive of course to Goshen probably and go down that way.

Mr. Neumann: Where would we get the expense from?

The Master: I do not know.

Mr. Neumann: We have not any money to spend for any such expense as that.

Mr. Ransom: If the defendants are willing I will furnish a messenger who will deliver them, if they are sealed, and they can be delivered in that condition.

The Master: What I had in mind was this: If I can get these findings any any memorandum, because I will take a memo-
2272 randum instead of oral argument, Tuesday night, I will probably arrange to have a stenographer come up on Wednesday and then I could not get it out by Thursday, could I? I have got to be here on the 8th.

Mr. Ransom: You could hardly get it out that fast.

The Master: I will tell you what to do. The defendants will send all of their findings and any memorandum they want to submit to me to Judge Ransom on the 6th. You get them up to me on the 6th.

Mr. Ransom: That would mean that they would have to be in my hands at least by two o'clock.

The Master: They will have to be in your hands if your messenger wants to get the 2.15 train. Now, my address is: Red Swan Inn, Warwick, New York.

Now, there is a train that leaves Chambers street at 2.15, with a change at Greycourt; he can go to Greycourt, and then go southwest again to get back to Warwick. There is a train at 4.30.

Mr. Neumann: Isn't there a train from Goshen over?

The Master: There is no connection there at Goshen over or down—it is down from Goshen. You have got to take an automobile from Goshen there down; you can take an automobile from Greycourt up. They have a lot of trains on the Erie that stop at Greycourt but do not connect with the Lehigh & Hudson up to Warwick

or down to Warwick, and they have a lot of trains to Goshen, but there is no connection.

2373 Now, if I can have them there the night of the 6th, I will spend the 7th all day and try to dictate it while I am down here on the 8th, and just as fast as it is ready I will send the preliminary reports around and then they will be sent back to me to Warwick with any suggested changes. I will have a stenographer come up there and work it into shape and send them down for final discussion. I will try to get it out so that you will have it by the middle of July.

Mr. Ransom: You mean the final report.

The Master: Yes. That will give you to about the first week in August to move to confirm, and you can probably have it on for confirmation the second or third week in August. If anybody wants to communicate with me with reference to anything, just write me at the Red Swan Inn.

Vol. III

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 296.

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, AND ALFRED M. BARRETT, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT, APPELLANTS,

vs.

NEW YORK & QUEENS GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 11, 1921.

(28,225)

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VOLUME III.

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114—New York & Queens minutes of first directors' meetings	2708	1720
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Defendants' Exhibit A—Record of manufacture, January, 1919	2723	1729
B—Record of manufacture, February, 1919	2724	1729

VOLUME III.

374 COMPLAINANT'S EXHIBIT #1.

Certificate of incorporation of New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #2.

Certificate of incorporation of Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #3.

Certificate for the extension of the existence of the Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #4.

Certificate of incorporation of the Flushing Gas and Electric Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #5.

Certificate of incorporation of New York and Queens Gas and Electric Company.
Not printed.

COMPLAINANT'S EXHIBIT #6.

Certificate of association of the College Point Gas Company.
Not printed.

5 COMPLAINANT'S EXHIBIT #7.

Certificate of incorporation of the Whitestone Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #8.

Certificate of incorporation of the Long Island Illuminating Company.
Not printed.

COMPLAINANT'S EXHIBIT #9.

Certificate of incorporation of the Newtown and Flushing Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #10.

Deed of Flushing franchises and plants from the Flushing Gas Light Company to Flushing Gas and Electric Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #11.

Certificate of merger of Flushing Gas and Electric Light Company into New York and Queens Gas and Electric Company.
Not printed.

COMPLAINANT'S EXHIBIT #12.

Assignment of gas plant and franchises from the New York and Queens Gas and Electric Company to Newtown and Flushing Gas Company.
Not printed.

2376 COMPLAINANT'S EXHIBIT #13.

Assignment of certain franchises from the Whitestone Gas Company to the Newtown and Flushing Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #14.

Certificate of merger of the College Point Gas Company into the Newtown and Flushing Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #15.

Certificate of merger of the Newtown and Flushing Gas Company into the New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #16.

Acts relating to Gas Corporation, dated February 16, 1848.
Not printed.

2377 COMPLAINANT'S EXHIBIT 17.

Laws of 1906, *State of New York.*

Chapter 125.

An Act in Relation to Illuminating Gas in the City of New York and Regulating the Quality and Pressure Thereof and the Price to Consumers Other Than said City and Providing a Penalty for Violation.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. A corporation, association, copartnership or person engaged in the business of manufacturing, furnishing or selling illuminating gas in the city of New York, except in the fifth ward of the Borough of Queens and in that portion of the borough of the Bronx formerly contained in the towns of Eastchester and Pelham, shall not charge or receive for gas manufactured, furnished or sold in said city a sum per one thousand cubic feet in excess of the following rates:

1. In the borough of Manhattan, in the first ward of the borough of Queens, in the borough of Brooklyn, except the thirtieth and thirty-first wards thereof, and in the borough of the Bronx, except that portion of it formerly contained in the town of Westchester outside of the villages of Wakefield and Williamsbridge, eighty cents.

2. In the second and fourth wards of the borough of Queens, and in the thirtieth ward of the borough of Brooklyn, one dollar.

3. In the third ward of the borough of Queens, in the thirty-first ward of the borough of Brooklyn, and in the borough of Richmond, one dollar and twenty-five cents for the remainder of the year nineteen hundred and six; one dollar and twenty cents during the year nineteen hundred and seven; one dollar and fifteen cents during the year nineteen hundred and eight; one dollar and ten cents
2378 during the year nineteen hundred and nine; one dollar and five cents during the year nineteen hundred and ten; and one dollar thereafter.

4. In that portion of the borough of the Bronx, formerly contained in the town of Westchester, outside of the villages of Wakefield and Williamsbridge, one dollar and fifteen cents during the years nineteen hundred and six, nineteen hundred and seven and nineteen hundred and eight; one dollar and ten cents during the year 1909; one dollar and five cents during the year nineteen hundred and ten; and one dollar thereafter.

2. The illuminating gas furnished by any such corporation, association, copartnership or person shall have an illuminating power of not less than twenty-two sperm candles of six to a pound, burning at the rate of one and twenty grains of spermaceti per hour tested at a distance of not less than one mile from the distributing holder by a burner consuming five cubic feet of gas per hour and each one hundred cubic feet of gas shall not contain more than five grains of ammonia nor more than twenty grains of sulphur nor more than a trace of sulphuretted hydrogen. The pressure of illuminating gas in any service mains in the said city at any distance from the place of manufacture shall not be less than one inch, nor more than two and one-half inches.

3. Any corporation, association, copartnership or person violating any provisions of this act shall forfeit the sum of one thousand dollars for each offense to the people of the state.

4. This act shall not apply to gas furnished or sold to the city of New York.

5. Chapter three hundred and eighty-five of the laws of eighteen hundred and ninety-seven, entitled "An Act to regulate the price of illuminating gas in cities of fifteen hundred thousand inhabitants," and all other acts or parts of acts inconsistent herewith are hereby repealed.

2379 6. This act shall take effect on the first day of May, nineteen hundred and six.

2380 COMPLAINANT'S EXHIBIT 18.

Chap. 612, Laws of 1916, State of New York.

An act to amend chapter one hundred and twenty-five of the laws of nineteen hundred and six, entitled "An act in relation to illuminating gas in the city of New York and regulating the quality and pressure thereof and the price to consumers other than said city and providing a penalty for violation," in relation to metering of gas.

Became a law May 20, 1916, with the approval of the Governor. Passed, three-fifths being present.
Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Sections three, four and five of chapter one hundred and twenty-five of the laws of nineteen hundred and six, entitled "An act in relation to illuminating gas in the city of New York and regulating the quality and pressure thereof and the price to consumers other than said city and providing a penalty for violation," are hereby renumbered, respectively, five, six and seven.

§2. Such chapter is hereby amended by inserting in place of sections three and four hereby renumbered five and six two new sections, to be sections three and four thereof, to read, respectively, as follows:

§3. Every such corporation, company, association, joint stock association, partnership or person, their lessees or trustees, manufacturing, furnishing or selling gas in the city of New York,
2381 shall meter all gas used by it or him in the conduct of its or his business and shall keep an accurate record thereof, and shall include it in their annual report to the public service commission. The amount of gas so consumed shall be charged in such manner and to such accounts as prescribed by the public service commission.

§4. Every agent, servant or employee of any such corporation, association, partnership or person on reading the mater of any consumer shall, upon written request of the consumer or if made at the time of reading such meter, make out and leave with such con-

sumer a card or record showing the index of the meter at time of such reading.

§3. This act shall take effect immediately.

2382 COMPLAINANT'S EXHIBIT 19.

Chap. 666, *Laws of* 1917, *State of New York.*

An act to amend chapter one hundred and twenty-five of the laws of nineteen hundred and six, entitled "An act in relation to illuminating gas in the city of New York and regulating the quality and pressure thereof and the price to consumers other than said city and providing a penalty for violation," in relation to the price of and the agency for supplying gas to consumers in certain territory now in the borough of Brooklyn and formerly in the borough of queens.

Became a law May 26, 1917, with the approval of the Governor.
Passed, three-fifths being present.
Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions one and two of section one of chapter one hundred and twenty-five of the laws of nineteen hundred and six, entitled "An act in relation to illuminating gas in the city of New York and regulating the quality and pressure thereof and the price to consumers other than said city and providing a penalty for violation," as amended by chapter six hundred and four of the laws of nineteen hundred and sixteen, are hereby amended to read, respectively, as follows:

1. In the borough of manhattan, in the first ward of the borough of Queens, in the borough of Brooklyn, including also the territory added to the county of Kings and made part of the borough of Brooklyn by chapter four hundred and ten of the laws of nineteen hundred and fifteen, as amended by the laws of nineteen hundred and seventeen, and the borough of the Bronx, except that
2383 portion of it formerly contained in the town of Westchester outside of the villages of Wakefield and Williamsbridge, eighty cents.

2. In the borough of Richmond and in the second, third and fourth wards of the borough of Queens, except that part of the second ward of the borough of Queens which was added to the county of Kings and made part of the borough of Brooklyn, by chapter four hundred and ten of the laws of nineteen hundred and fifteen, as amended by the laws of nineteen hundred and seventeen, one dollar.

§2. This act shall take effect July first, nineteen hundred and seventeen.

2384 COMPLAINANT'S EXHIBIT #20.

Franchise from Commissioners of Highways, Town of Newtown to Charles F. Smith.
Not printed.

COMPLAINANT'S EXHIBIT #21.

Assignment by Charles F. Smith of franchise in foregoing exhibit #20 to the New York and Queens Gas and Electric Company.
Not printed.

COMPLAINANT'S EXHIBIT #22.

Petition and franchise from highway commissioners of Town of Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #23.

Copy of minutes to trustees of the village of Flushing, granting franchise in the village to the Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #24.

Agreement between Flushing Gas and Electric Light Company and Village of Flushing, dated, November 23, 1897.
Not printed.

COMPLAINANT'S EXHIBIT #25.

Franchise from Board of Trustees of the Village of Whitestone to Flushing Gas and Electric Light Company.
Not printed.

2385 COMPLAINANT'S EXHIBIT #26.

Franchise from the trustees of the Town of Flushing to the College Point Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #27.

Consent covering the franchise in the foregoing exhibit #26, dated May 5, 1866.
Not printed.

COMPLAINANT'S EXHIBIT #28.

Franchise from Board of Highway Commissioners of the Town of Jamaica to the Long Island Illuminating Company.
Not printed.

COMPLAINANT'S EX. #29.

Franchise, Town Board of Jamaica to Long Island Illuminating Company.
Not printed.

2386 COMPLAINANT'S EXHIBIT #30.

Assignment of Franchise from the Long Island Illuminating Company to the Newtown and Flushing Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #31.

Deed from Charles Miller to Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #32.

Deed from Thomas Leggett to Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #33.

Deed from Robert Haydock to Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #34.

Deed from W. Downing to the Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #35.

Deed from John Griffin to Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #36.

Deed from Patrick Clark to Flushing Gas Light Company.
Not printed.

COMPLAINANT'S EXHIBIT #37.

Deed from Henry R. Wilson to Newton and Flushing Gas Co.
Not printed.

2387 COMPLAINANT'S EXHIBIT #38.

Deed from Mary E. Rogers to New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #39.

Deed from Elizabeth J. Kirby to New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #40.

Deed from John F. Rogers to New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #41.

Deed from Celia F. Rogers to New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #42.

Deed from Mary Powers to New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #43.

Deed from Flushingside Realty and Construction Company to New York and Queens Gas Company.
Not printed.

2388 COMPLAINANT'S EXHIBIT #44.

Deed from William P. McMahon, et al., to New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #45.

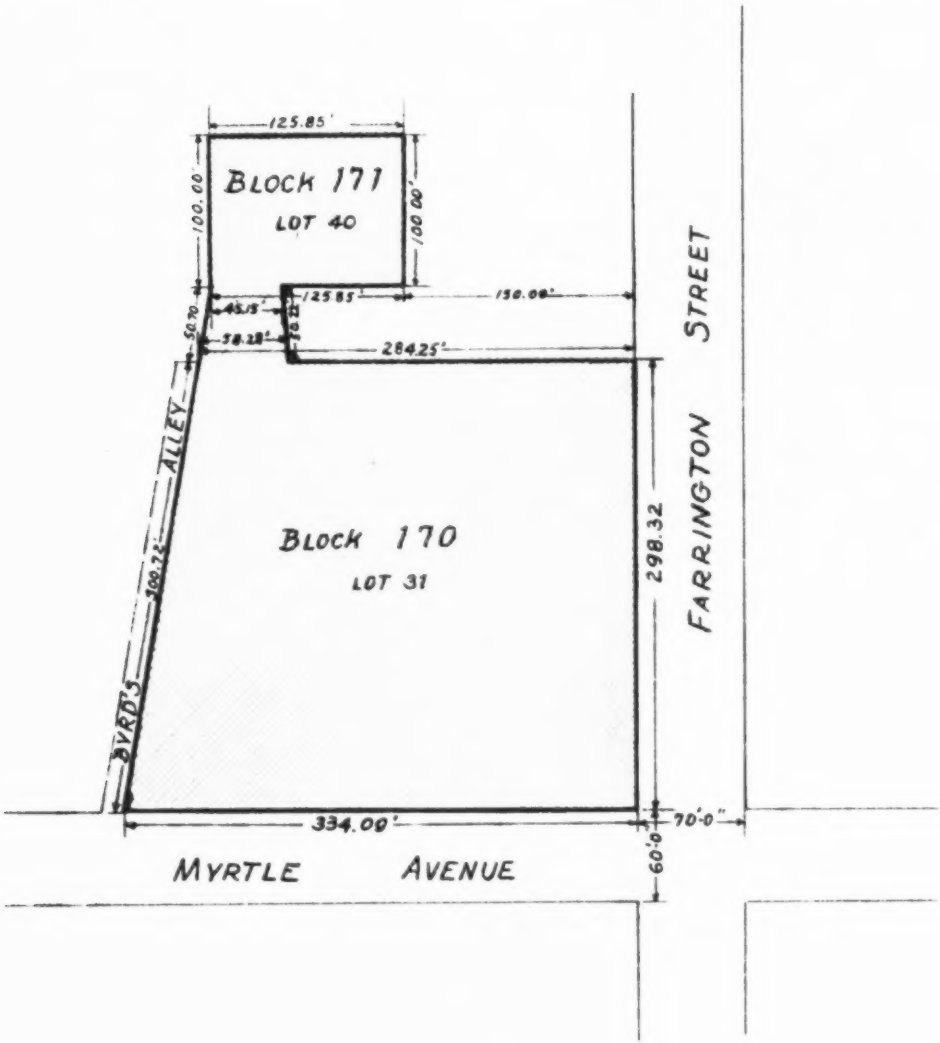
Deed from William Raynor to New York and Queens Gas Company.
Not printed.

COMPLAINANT'S EXHIBIT #46.

Deed from George Pople to New York and Queens Gas Company.
Not printed.

(Here follow reproductions of Complainant's Exhibits Nos. 47 and 48, marked pages 2389 to 2406, inclusive.)




125.85'
BLOCK 171
LOT 40
100.00'
100.00'
125.85'
150.00'
45.15'
50.70'
76.15'
38.28'
284.25'
ALLEY
2YRD'S
188.28'
BLOCK 170
LOT 31
298.32'
FARRINGTON STREET
334.00'
70'-0"
60'-0"
MYRTLE AVENUE

Complainants Exhibit 47

NEW YORK & QUEENS GAS CO.

OF FLUSHING

REAL ESTATE IN BLOCKS

Nos. 170, 171

BOROUGH OF QUEENS

SCALE 1 INCH = 80 FEET

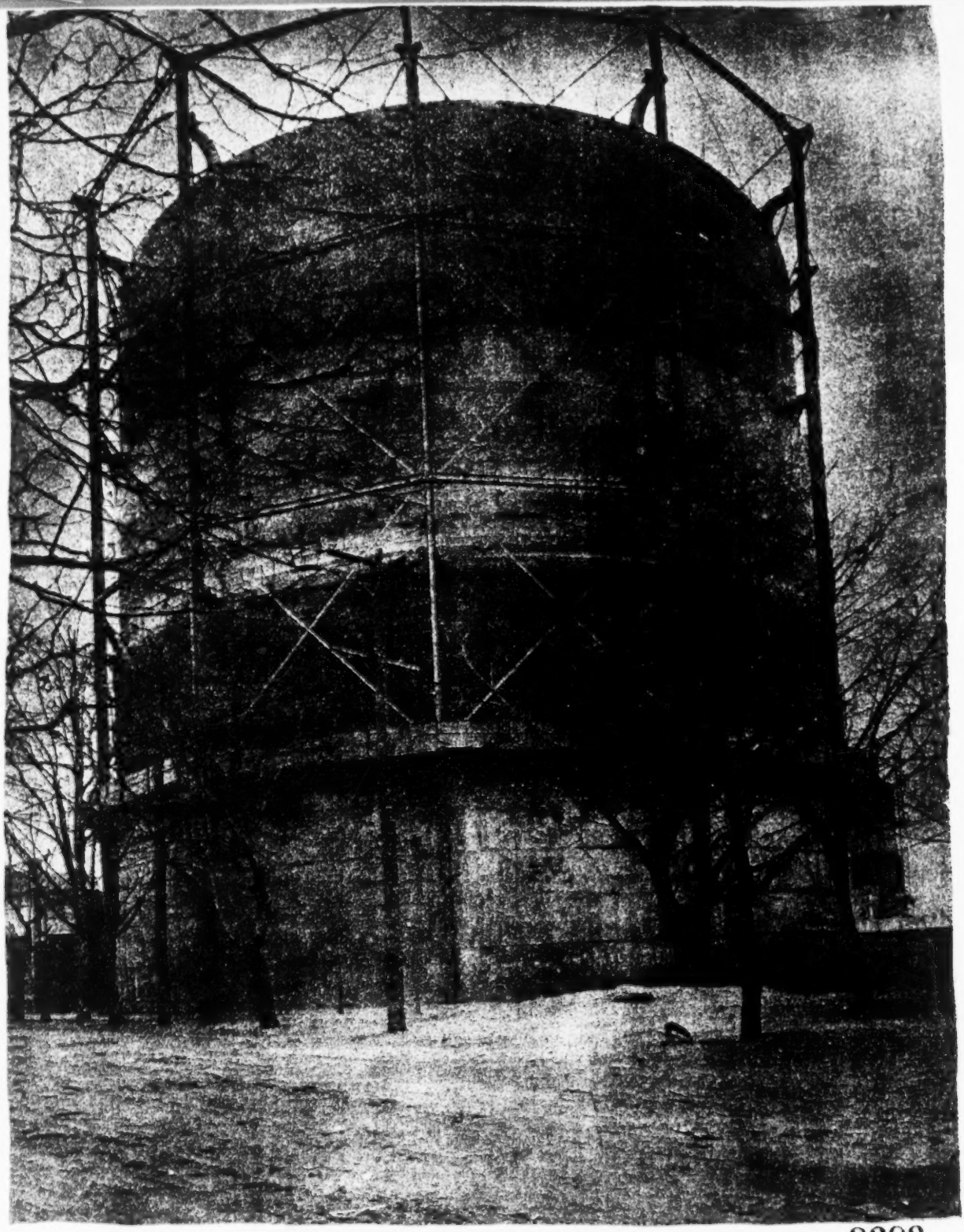
9

2390

Complainant's Exhibit #8

Complainant's Exhibit 40





2393

2894

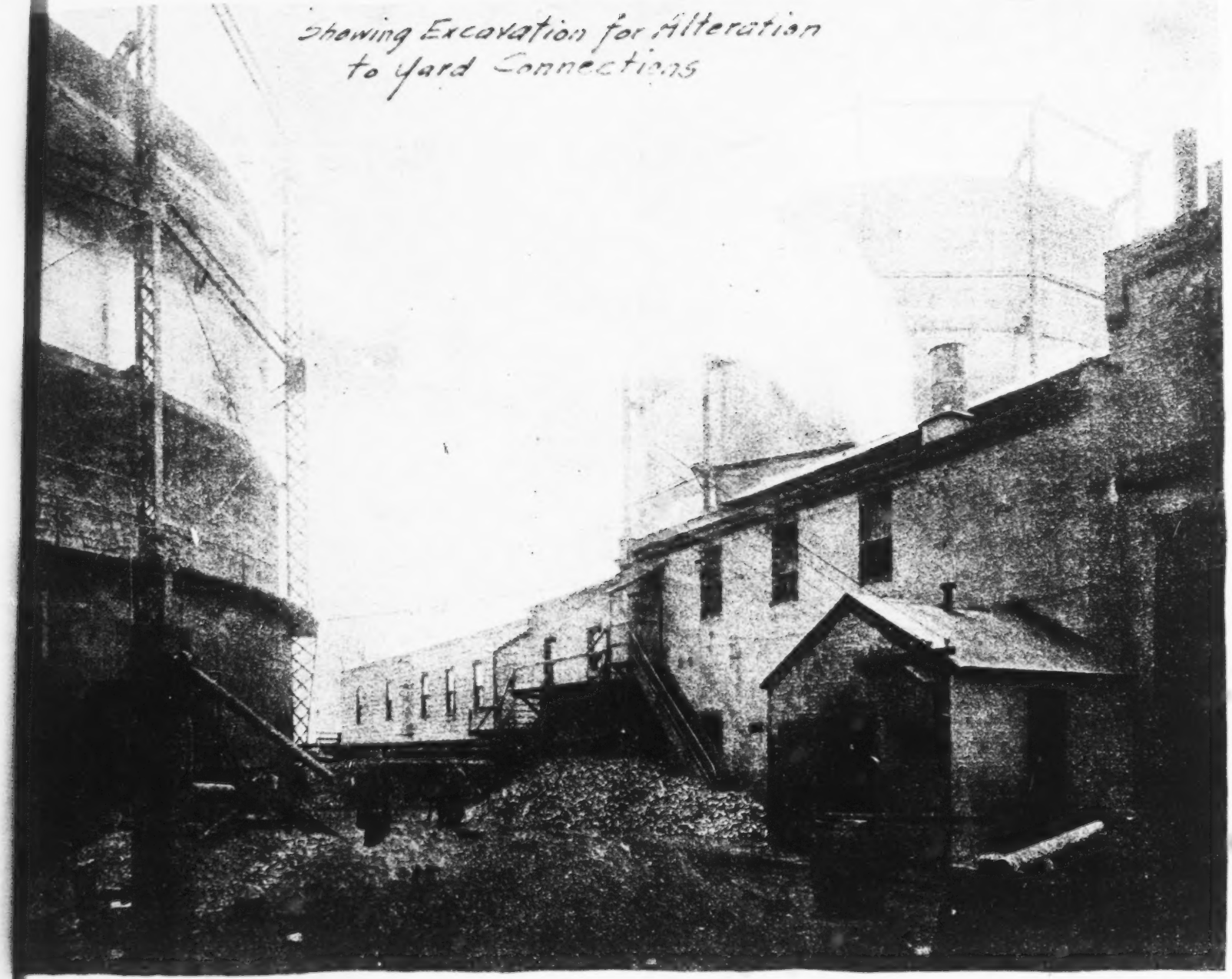
Confederate Soldiers' Graves

Compensating Gasholder No. 1

Complainant's Exhibit 48

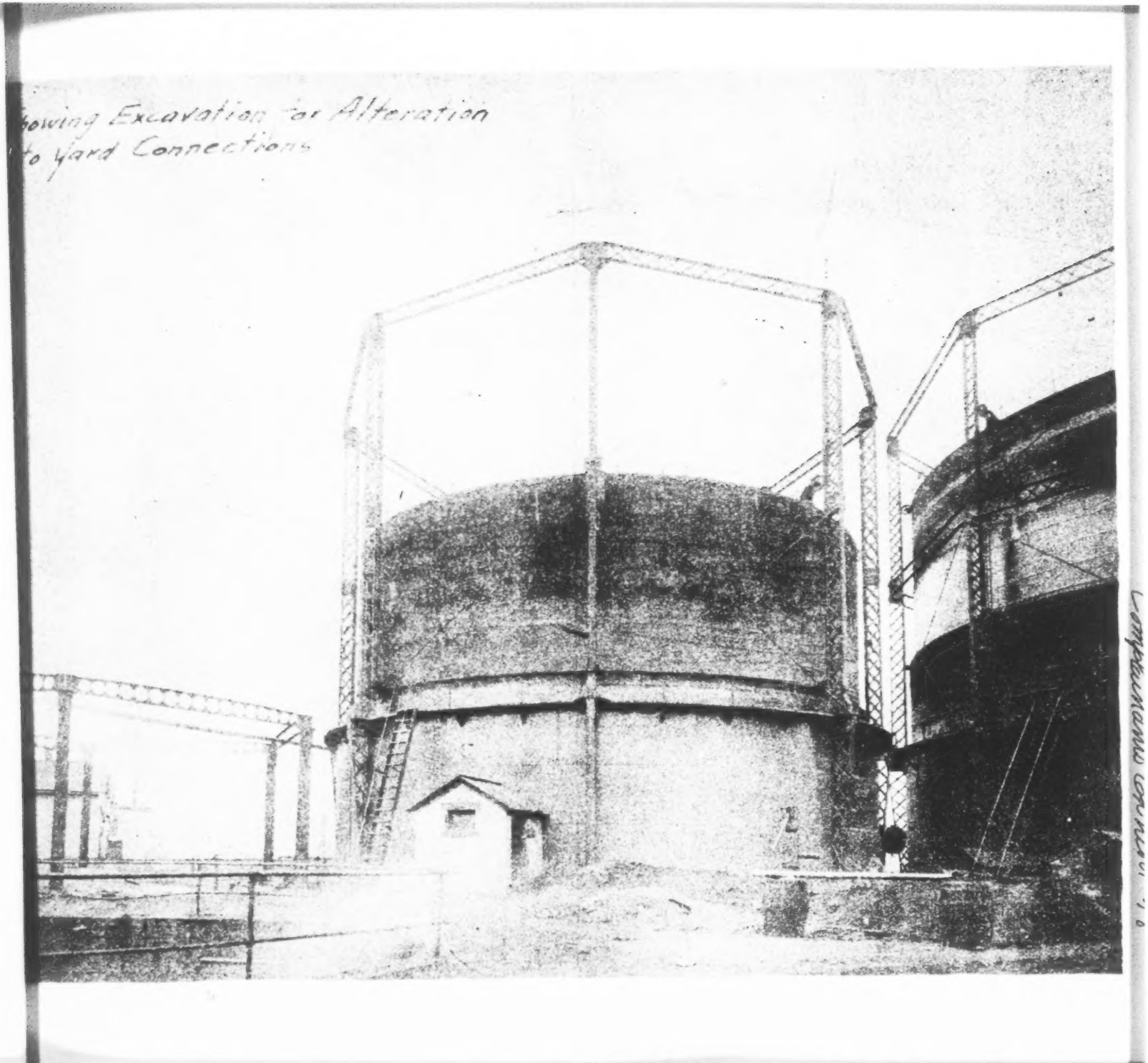
Compliments of Jackson Hy





Showing Excavation for Alteration to Yard Connections

Completed Sept. 44



Showing Excavation for Alteration
to Yard Connections

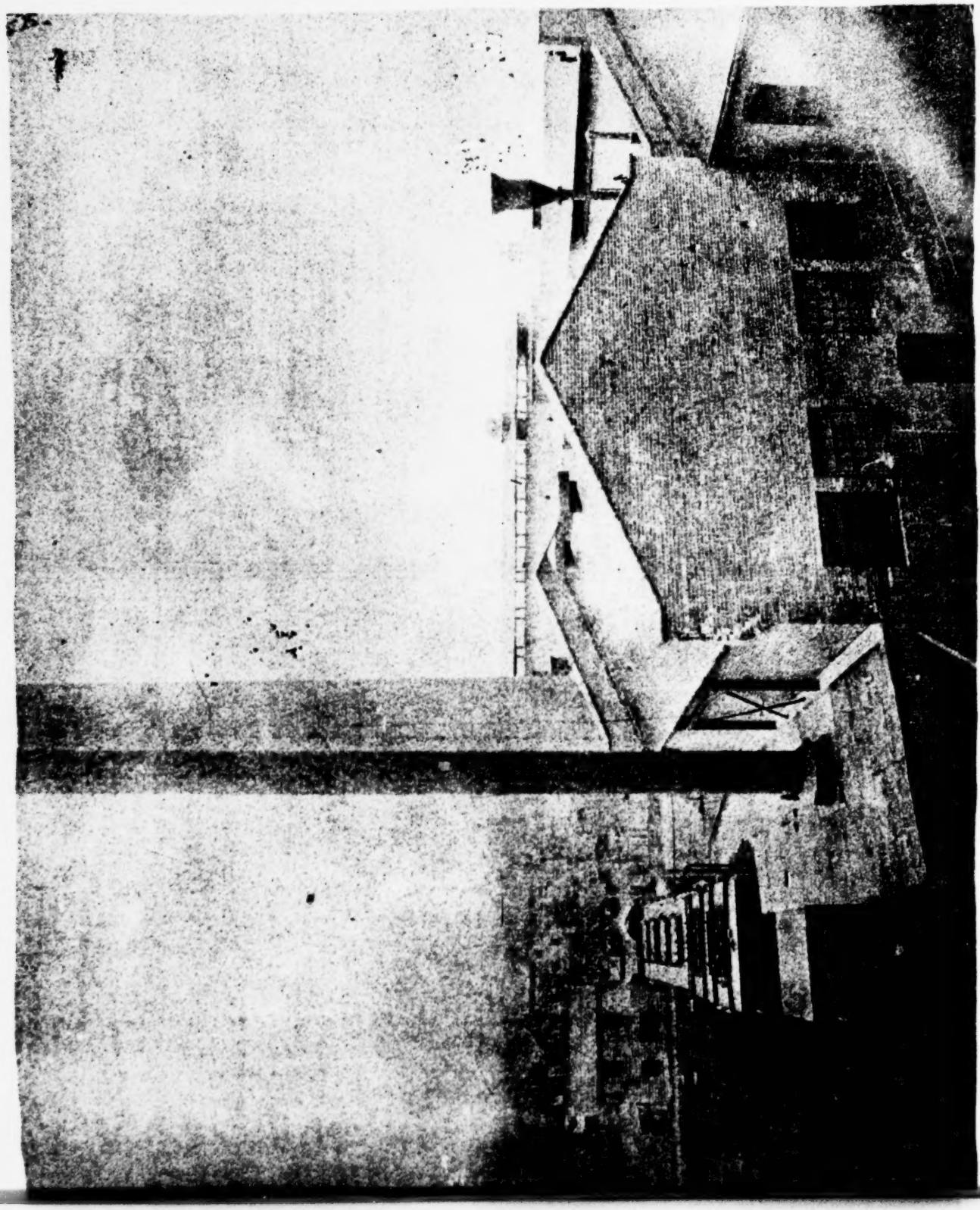
Compressed Gas Co.

Compliments of Mr. Johnson

Complainant's Exhibit 48

2401

Complainant's Exhibit 48



Compliments of Fred Kuhn Jr.

2407 COMPLAINANT'S EXHIBIT 49.

Uniform System of Accounts for Gas Corporations as Prescribed by the Public Service Commission for the First District, State of New York.

Final Order and Modifying Order (Case 578).

2408 Contents.

Final Order Adopted December 8, 1908..... 3
Modifying Order Adopted June 29, 1917..... 65

2409 State of New York.

Public Service Commission for the First District.

Uniform System of Accounts Prescribed for Gas Corporations, in Effect January 1, 1909.

New York City.

1908.

2410 At a Session of the Public Service Commission for the First District, State of New York, Held at its Office, 154 Nassau Street, in the City of New York, on the 8th Day of December, 1908.

Present:

William R. Willcox, Chairman;
William McCarroll,
Edward M. Bassett,
Milo R. Maltbie,
John E. Eustis,
Commissioners.

The Public Service Commission for the First District, being authorized by Section 66 of the Public Service Commissions Law, to prescribe, whenever it deems advisable, uniform methods of keeping accounts for gas corporations subject to its jurisdiction, and it appearing advisable at this time to establish a uniform system of accounts for all such gas corporations, it is hereby

Ordered: That, except as hereinafter provided:

1. On and after January 1, 1909, every gas corporation shall keep upon its books the accounts prescribed or defined in the hereto annexed schedules, marked "Schedule A" and "Schedule B," so far as the said accounts are pertinent to the facts and circumstances of the said corporation.

2. No such gas corporation shall hereafter charge to any account representing cost of property any discount or commission on se-

curities issued by the said corporation, but shall charge all such discounts, commissions, and other expense connected with the issue of securities subsequent hereto, in accordance with the directions contained in the definitions of the account named Organization, and the account named Unamortized Debt Discount and Expense, in the said "Schedule A."

3. During the year beginning January 1, 1909, any said corporation may for purposes of comparison with prior years keep on its books any account pertaining to revenues, revenue deductions, income deductions, and appropriations (as defined in the said "Schedule B") which it had on its books during the year begun January 1, 1908; provided, that on or before January 1, 1909, there be filed with the Public Service Commission a statement
2410*a* containing a list of the said accounts pertaining to the year begun January 1, 1908, and definitions of such accounts.

4. For purposes of improving the efficiency of administration and operation, any corporation may, unless or until otherwise ordered, keep upon its books any temporary or experimental accounts and any accounts covering particular divisions of its operations, provided that in respect of each such temporary, experimental, or divisional account, the said corporation shall file with the Public Service Commission, at least ten days in advance of the time when the said account is to be instituted, a statement showing the name of the said account, the date when it is to be instituted, the purpose for which it is to be kept, the period of time during which it is to be kept, and a clear and accurate definition of the classes of items and facts to be contained in the said account; and in case of a divisional account, the definition of the division covered. Upon compliance with the provisions of this paragraph, any account prescribed or defined in either said "Schedule A" or said "Schedule B" may be subdivided.

2410*b* SCHEDULE A.

Balance Sheet or Indicant Accounts.

1. Gas Corporations and Gas Operations Defined.—Section 2 of the Public Service Commissions Law defines gas corporation as follows:

Sec. 2. * * * The term "gas corporation" * * * includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, managing or controlling any plant or property for manufacturing and distributing and selling for distribution or distributing illuminating gas (natural or manufactured) for light, heat or power.

Gas operations, as the term is hereinafter used, include all acts and transactions directly connected with the operation of a plant for the production of gas (whether natural or manufactured), the

transmission thereof and the supply thereof to consumers for light, heat, or power, and all operations incident thereto, including the collection of revenues therefor and the disposition of byproducts produced in connection therewith.

2. Accounts to be kept by double-entry method.—All accounts kept by any corporation or person within the scope of the present order shall on and after January 1, 1909, be kept by the double-entry method.

NOTE.—This requirement is not intended to apply to purely statistical accounts.

Capital Accounts. [Paragraphs 3-26.]

3. Capital Defined.—As the term is used herein, by capital of a corporation is meant all property devoted to the rendering of the services or the production of the commodities which are within the purposes of the corporation.

4. Fixed Capital Defined.—Capital which has an expectation of life in service of more than one year (exception being made of hand and other small portable tools liable to be lost or stolen[1]) is called fixed capital.

5. Floating Capital Defined.—Capital other than fixed capital is called floating capital.

6. General Capital and Departmental Capital Defined.—Fixed capital is divisible into general capital and department capital, general capital being that which is indiscriminately available for the uses of two or more classes of operations, while departmental capital is that assigned solely or principally to a single class of operations.

2410c 7. Landed Capital and Non-landed Capital Defined.—Fixed Capital is also divisible into landed capital and non-landed capital. Landed capital includes all interests in land (exclusive of improvements thereon) the term of which is more than one year. All other fixed capital is herein called non-landed capital.

8. Intangible and Tangible Capital Distinguished.—Non-landed capital is divisible into intangible and tangible. Intangible capital comprises organization, franchises, patent-rights, and all other intangible property within the definition of fixed non-landed capital as above stated. Tangible capital comprises structures and equipment having an expectation of life in service of more than one year. Because of their liability to loss or theft, hand and other small por-

[1] Hand and other small portable tools liable to be lost or stolen shall, when first acquired and before issued for use, be carried in a suitable Materials and Supplies account; when issued they shall be charged to the appropriate expense account. Portable tools and apparatus of special value may, however, be charged to the appropriate tangible capital account, and remain therein so long as a record is kept of the persons to whom such tools and apparatus are issued and such persons are made responsible therefor.

table tools are excepted from tangible capital, and the cost of such tools when issued is required to be treated as a part of the operating expenses.[1]

9. Further Classification of Capital.—Capital is also divisible into original capital, additions, betterments, and renewals and replacements, as defined below. Charges to capital accounts shall show these divisions as set forth in paragraph 21, infra.

10. Original Capital Defined.—Original capital is that put into service at the outset of an enterprise.

11. Additions Defined.—Additions include additional structures, facilities, or equipment not taking the place of anything previously existing.

12. Betterments Defined.—Betterments include the enlargement or improvement of existing structures, facilities, and equipment.

13. Renewals Defined.—Renewals include all extensions of terms of years in land and tangible fixed capital, and all extensions of the life period of franchises and other intangible fixed capital.

14. Replacements Defined.—Replacements include all substitutions for capital exhausted or become inadequate in service, the substitutes having substantially no greater capacity than the things for which they were substituted. When a substitute has a substantially greater capacity than that for which it was substituted, the cost of substitution of one of the same capacity as the thing replaced should be charged as a replacement, and the remaining portion of the cost of the actual substitute should be charged as a betterment.

15. Repairs Defined.—When through wear and tear or through casualty it becomes necessary to replace some part of any structure, facility, or unit of equipment, and the extent of such replacement does not amount to a substantial change of identity in such structure, facility, or unit of equipment, the replacement of such part is to be considered a repair, and the cost of such repair is
2410*d* to be treated as an operating expense and must not be charged as a replacement in any capital account.

16. First entries must enable identification.—Throughout all capital accounts, the first entry in respect of any particular thing shall describe it with such particularity as to enable its identification, and shall give it a distinguishing name, number, or other designation by which it shall thereafter be designated in every entry in any capital account which in any way concerns it. In the case of continuous structures like railroad track, or electric line, or pipe line, such struc-

[1] Hand and other small portable tools liable to be lost or stolen shall, when first acquired and before issued for use, be carried in a suitable Materials and Supplies account; when issued they shall be charged to the appropriate expense account. Portable tools and apparatus of special value may, however, be charged to the appropriate tangible capital account, and remain therein so long as a record is kept of the persons to whom such tools and apparatus are issued and such persons are made responsible therefor.

res shall be itemized to the extent that no item shall contain more an one operating division or more than one type of construction, d the first entry in relation to any item shall describe the size, eight, type, and other principal physical characteristics of the chief nstituent parts, together with their spacing if discontinuous.

17. Costs of new capital to be actual money costs.—All charges ade to capital or other accounts on or after January 1, 1909, shall the actual money cost of the things in respect of which they are ade. When the consideration actually given for the thing in reect of which a charge to a capital account is made is anything ther than money, the actual consideration shall be described in the ntry with sufficient fullness and particularity to identify it, and he amount charged shall be the actual money value of such conideration at the time of the transaction.

18. Discounts upon securities not to be charged to capital accounts.—Discounts upon securities and other commercial paper ssued in payment for capital are to be provided for in other accounts and must in no case be charged to the capital accounts.

19. Costs of labor, materials, and supplies.—Cost of labor (employed in construction) includes not only wages, salaries, and fees paid employees, but also such personal expenses of employees as are borne by the corporation. Cost of materials and supplies consumed in construction is the cost at the places where they enter into construction, including cost of transportation and inspection when specifically assignable. If such materials and supplies are passed through storehouses, their cost entered in the account may include a suitable proportion of store expense.

20. Withdrawals or retirements.—When anything is withdrawn or retired from service, the amount at which such thing stood charged in the capital account shall be credited to the capital account in which it stood charged at the time of withdrawal, and the entry of such credit shall cite by name and page of book or other record the original entry of cost of the thing withdrawn. If there is no such original entry, that fact shall be stated in connection with the credit entry, and the actual amount originally charged shall be credited. If such amount is not known, it shall be estimated, the facts upon which the estimate is based shall be shown, and the amount thus estimated to be the original charge in respect of such thing withdrawn shall be credited.

21. Particulars required to be shown in entries.—Every charge made to a capital account on or after January 1, 1909, shall
2411 show whether the thing in respect of which the charge is made is original capital, or an addition, a betterment, a renewal, or a replacement. If the thing is a betterment, the entry shall designate the thing enlarged or improved and shall cite by name and page of book or other record the original entry of cost of such thing enlarged or improved. If the thing to which any charge hereafter made relates is a renewal or a replacement, the entry made

in respect thereof shall designate the thing renewed or replaced and shall cite by name and page or book or other record the original entry or entries of cost of such thing renewed or replaced. If there is no entry in the accounts of the corporation showing the cost (to the corporation) of the thing bettered, renewed, or replaced, that fact shall be stated in the entry describing the betterment, renewal, or replacement, and the original cost of such thing to the corporation shall be stated. Such cost shall be estimated if not known, and when estimated the basis of such estimation shall be shown.

22. Betterments involving partial destruction of thing bettered.—If any betterment involves the partial destruction or partial reconstruction of the thing bettered, only such portion of the cost of the change shall be charged as a betterment as will when added to the original cost (estimated if not known) of the thing bettered give the cost of reconstruction or replacement of the thing as bettered, and the remainder of the cost of the change (account being taken of any salvage) shall be charged to the appropriate repair account.

E. g., a building, original cost unknown but estimated to be $15,000, is bettered by the construction of an elevator shaft, and its stairways are modified so as to be fireproof; the actual expenditure for these changes is $3,000; the estimated cost of replacement of the building (as modified) with one equally serviceable and with an equal expectation of life is $16,000; the charge to capital account as a betterment should be $1,000, and the remainder ($2,000) of the expenditure should be charged to the appropriate repairs account.

23. Plant and equipment and other capital purchased.—When any fixed capital in the form of a going or completed plant is purchased, an appraisal of such capital so acquired shall be made, and the different constituent elements of the plan (and equipment, if any) or other capital acquired shall be appraised at their structural value; that is to say, at the estimated cost of replacement or reproduction less deterioration to the then existing condition through wear and tear, obsolescence, and inadequacy. If the actual money value of the consideration given for the plant or other capital was at the time of the acquisition in excess of such appraised value, the excess shall be charged to the account "Other Intangible Gas Capital," and the appraised values of the constituent elements shall be charged to the appropriate accounts as designated in the following definitions of accounts for fixed capital. If the actual money value of the consideration given was not in excess of such appraised value, such actual money value shall be distributed through the said accounts in proportion to the said appraised value of the constituent elements appropriate to the respective accounts. Full report of the contract of acquisition, the consideration given therefor, the determination of the actual money value of such consideration, the appraisal, and the amounts charged to the respective accounts for each plant or other such fixed capital purchased, will be required to be made
2412 to the Public Service Commission, and the purchaser will be required to procure in connection with the acquisition of any such plant or other fixed capital all existing records, memoranda,

and accounts in the possession or control of the grantor relating to the construction and improvement of such plant, and to preserve such records, memoranda, and accounts until authorized by law to destroy or otherwise dispose of them.

24. Definitions of Fixed Capital accounts.—In the following definitions of accounts the letters and numbers prefixed to the titles are accrued to date of transfer of title, and all liens upon the title actitles or of the definitions:

(G100.) Fixed Capital, December 31, 1908.

Charge to this account all the Fixed Capital of the accounting person or corporation devoted to gas operations as such capital stood at the close of December 31, 1908. Such charges shall be made at the figures at which such capital was carried on the books of the said person or corporation on that date. When any capital included in such account is retired from service, the amount at which it is charged therein shall be credited to this account; the amount of depreciation or other amortization thereon applicable to the period subsequent to December 31, 1908, shall be charged to the account (No. 374), "Accrued Amortization of Capital," proper account shall be taken of any salvage, and the remainder of the amount originally charged to capital shall be concurrently charged to the Corporate Surplus or Deficit account (or equivalent account carried on the books on December 31, 1908), unless there was carried on the books at that date a reserve to cover retirement of capital from service, in which case the said concurrent charge shall be made to such retirement reserve account. If the amount at which the said capital in service on December 31, 1908, and subsequently retired from service, was included in the said account is not disclosed on the books and records of the accounting person or corporation and is not within the knowledge of such person or corporation or officers or other employees thereof, it shall be estimated, and such estimated amount shall be treated as is above directed for the actual amount, the fact of estimation being stated in the entry.

NOTE.—Corporations will be required to carry as sub-accounts of the account "Fixed Capital, December 31, 1908," the several accounts on their books on that date which are combined to make up the said account, and to furnish information concerning such subaccounts in their annual reports.

The following capital accounts are prescribed for transactions subsequent to December 31, 1908:

(G110.) Land Devoted to Gas Operations.

Charge to this account the cost of the accounting corporation's landed capital which is devoted to gas operations as hereinbefore defined. This includes land occupied by gas works and their appurtenances and rights of way for transmission and distribution lines

and other pipe lines, where such rights have lives in excess of one year from the date when such land is placed in service.

2413 Such cost includes, when assumed or paid by the purchaser in its own behalf, cost of registration of title, cost of examination of title, conveyancer's and notary's fees, purchasing agent's commissions or fees, or proportion of purchasing agent's salary, taxes accrued to date of transfer of title, and all liens upon the title acquired; also costs of obtaining consents and payments for abutting damages.

NOTE A.—Cost of buildings and other improvements must not be included in this account.

NOTE B.—If at the time of acquisition of an interest in lands it extends to buildings or other improvements thereon, which improvements are devoted by the corporation to its gas operations, and the contract of acquisition does not determine the price of such improvements, they shall be appraised at their fair cash value for use in such operations, and such appraised value shall be charged to the appropriate structures account, and excluded from the account "Land Devoted to Gas Operations." If such improvements are not devoted to gas operations but are devoted to other operations or held as investments, the cost (or appraised value if the cost is not determined in the contract of acquisition) shall be charged to the appropriate investment account or capital account for other operations. If the improvements are removed or wrecked, the salvage (less the cost of removal or wreckage) shall be excluded from the account "Land Devoted to Gas Operations." The entries in this account must be made in such wise as to enable the corporation to show in its annual report to the Public Service Commission the subdivision of the cost of its land devoted to gas operations into the following:

Land Occupied by Gas Works.
Land Occupied by Outside Holder Stations.
Water Rights.
Other Land Devoted to Gas Operations.

(101.) Organization.

Charge to this account all fees paid to governments for the privilege of incorporation, and all office and other expenditure incident to organizing the corporation or other enterprise and putting it in readiness to do business. This includes cost of preparing and distributing prospectuses, cost of soliciting subscriptions for stock (but not for loans nor for the purchase of bonds or other evidences of indebtedness), cash fees paid to promoters, and the actual cash value at the time of organization of securities paid to promoters for their services in organizing the enterprise, counsel fees, cost of preparing and issuing certificates of stock, and cost of procuring certificates of necessity from state authorities, and other like costs. Like costs incident to preparing and filing certificates of authorization of increase of capital stock, and to the negotiation and issue of stock thereunder, shall be classed as additions. Cost of preparing and filing certificates

of amendment of articles of incorporation shall be classed as a betterment. Cost of preparing and filing papers in connection with the extension of the term of incorporation or with reincorporation consequent upon reorganization shall be classed as a renewal. This account shall not include any discounts upon stocks or other securities issued, nor shall it include any costs incident to negotiating loans or selling bonds or other evidence of indebtedness.

2414 (G102.) Franchises (Gas).

To this account shall be charged "the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise or right" (section 69 of the Public Service Commissions Law) as is necessary to the conduct of the corporation's gas operations. If any such franchise is acquired by mesne assignment, the charge to this account in respect thereof must not exceed the amount actually paid therefor by the corporation to its assignor, nor shall it exceed the amount specified in the statute above quoted. Any excess of the amount actually paid by the corporation over the amount specified in the statute shall be charged to the account "Other Intangible Gas Capital." If any such franchise has a life of not more than one year after the date when it is placed in service, it shall not be charged to this account but to the appropriate accounts in "Operating Expenses," and in "Prepayments" if extending beyond the fiscal year.

Payments made to the State or to some subdivision thereof as a consideration for granting an extension for more than one year of the life period of a franchise shall be classed as renewals. Those made as a consideration for franchises or extensions thereof covering additional territory to be operated as a part of an existing system shall be classed as betterments. If the franchises cover separate and distinct new enterprises, the payments therefor shall be classed as original.

NOTE.—Annual or more frequent payments in respect of franchises must not be charged to this account but to the appropriate tax or operating expense account.

(G103.) Patent-rights (Gas).

Charge to this account the cost of all rights (having a life of more than one year from the date when placed in service) acquired by the corporation in or under valid patents granted by the United States to inventors for inventions and discoveries which are necessary to the economical conduct of the corporation's gas operations. If any such right is extended to cover a further period of time than that covered by the original grant, the cost of such extension shall be classed as a renewal. A patent-right acquired for use in an existing system and necessary to the economical operation thereof shall be classed as an addition.

(G104.) Other Intangible Gas Capital.

Charge to this account the cost of all other property coming within the definition of intangible capital and devoted to gas operations. All entries of charges to this account shall describe the acquired property with sufficient particularity clearly to identify it, and shall also show specifically the principal from whom acquired and all agents representing such principal in the transaction; also the term of life of such property, estimated if not known, and if estimated, the facts upon which the estimate is based.

2415 (G121.) General Structures.

Charge to this account the cost of all buildings and other structures of a permanent character devoted to general corporate purposes, not restricted to gas operations and not includible in any of the departmental accounts, also of all fixtures permanently attached thereto and made a part thereof, such as water pipes and fixtures, steam pipes and fixtures for warming and ventilating, gas pipes and fixtures for lighting, etc., electric wiring and fixtures for lighting, signaling, etc.; elevators, etc., and the engines and motors specially provided for operating them; furnaces, boilers, etc., specially provided for producing steam for such engines and for heating, electric generators specially provided for producing current for lighting such buildings, etc. This account includes such piers and other foundations for machinery and apparatus as are designed to be as permanent as the buildings in or in connection with which they are constructed, and to outlast the first machinery or apparatus mounted thereon.

NOTE A.—Among such buildings may be mentioned general office buildings, general shop buildings, general storehouses, general stable buildings, etc. Where general offices, shops, storehouses, stables, etc., are in buildings includible in a departmental account, as e. g., in a retort house no part of the cost of such building shall be charged to this account. This account is provided for structures of a general or miscellaneous character not assignable to any particular department.

NOTE B.—When furnaces and boilers are used primarily for furnishing steam for some particular department and only incidentally for furnishing steam for heating a general building and operating the equipment therein, the entire cost of such furnaces and boilers shall be charged to the appropriate departmental capital account, and no part to the account "General Structures".

NOTE C.—The cost of specially provided foundations, not expected to outlast the machinery or apparatus mounted thereon, should be charged to the same account as the cost of the machinery or apparatus for which they are provided.

(G122.) General Equipment.

Charge to this account the cost of all equipment of general structures, as provided under the following heads:

a. General Office Equipment.—This includes the cost of all equipment of general offices, such as desks, chairs, tables, movable safes, filing cases, drafting-room equipment, and other like office appliances and equipment; also engineering instruments.

b. General Shop Equipment.—This includes the cost of all equipment specially provided for general shops, such as furnaces, boilers, gas producers, engines, electric generators, and other power apparatus used in operating machinery in such shops; machine tools, cranes, hoists, shafting, belts and the like shop equipment; also such smithing equipment in general shops as is used principally for other general purposes than shoeing horses and repairing vehicles.

NOTE.—Hand and other small portable tools liable to be lost or stolen shall not be included herein, but portable tools and apparatus of special value may be charged to this account and remain herein so long as record is kept of the persons to whom such tools and apparatus are issued and such persons are made responsible therefor.

2416 *c.* General Store Equipment.—This includes the cost of all equipment of general store structures, such as movable counters, movable shelving, and other movable equipment of like nature, carts, barrows, trucks, etc., and other apparatus and appliances used in handling materials and supplies.

NOTE.—Counters, shelving and the like which are permanently attached to the structure shall be charged to the account (No. G121), "General Structures," and not to this account.

d. General Stable Equipment.—This includes the cost of all equipment of general stables, including horses, harness, drays, wagons, automobiles and other vehicles, equipment of shoeing shops, harness repair shops, vehicle repair shops, etc.

(221.) Works and Station Structures.

Charge to this account the cost of all structures at works devoted to the production of gas, including purification and all other processes performed upon such gas antecedent to its entrance into the station holder; also of all buildings and other structures at outlying holder stations, except the holders and their appurtenances as provided in the following account, "Holders." Such structures include retort houses, generator houses, purifier houses, engine houses, boiler houses, meter houses, coal sheds, coke sheds, tar houses, oil tanks, tar wells, and other structures for storage of fuel to be consumed or carbonized in the production of gas and the operations auxiliary thereto; structures for residuals and byproducts; appurtenant walks, fences, drives, tramways, trestle, etc., and all fixtures permanently attached to such structures and made a part thereof.

NOTE.—Such piers and other foundations for machinery and apparatus as are designed to be permanent and to outlast the first machinery or apparatus mounted thereon shall also be charged to this account; but short lived, temporary, or specially provided foundations and settings for furnaces and boilers, steam engines, gas engines, pumps, generators, benches, condensers, washers, scrubbers, purifiers, etc., shall go with the machinery and apparatus to which they are related. Gas holders are not included in this account.

(222.) Holders.

Charge to this account the cost of all holders at works and outlying stations, including tanks, foundations, holders, frame work, guides, pulleys, etc., and inlet and outlet of such holders.

NOTE.—Holder housings shall be charged to the account (No. 221), "Works and Station Structures."

(G141*a*.) Furnaces, Boilers, and Accessories.

Charge to this account the cost of all furnaces, boilers, and boiler apparatus and accessories devoted to the production of steam for use in producing gas and in furnishing motive power in gas works and stations. This includes boilers and valves thereto attached, appurtenant furnaces and grates, and flues leading to smokestacks and chimneys, and the specially provided foundations and settings of such boilers and appurtenances. It also includes mechanical stokers and other like apparatus for regulating the supply of fuel,
2417 etc., feed and hot water heaters and economizers, injectors, filters, feed pumps, blower engines, coal conveyors, ash conveyors, water pipes, steam traps, drains, and separators, and pipes for conducting steam from the boiler to the engine, to condensers, or to the gas producers, exhaust pipes, etc. It does not include steam pipes whose primary purpose is the heating of buildings.

(G141*b*.) Steam Engines.

Charge to this account the cost of all steam engines devoted to use as prime movers in gas works. This includes the settings and specially provided foundations of such engines. The engine, whether reciprocating or rotary (such as steam turbines), shall be considered to include the throttle or inlet valve and the governor; also condensers and air pumps, but not the steam pipe leading from the boiler, nor the exhaust pipe.

(G143*b*.) Gas Engines.

Charge to this account the cost of all gas engines devoted to use as prime movers in gas works and stations. This includes the specially provided foundations and settings of such engines. The engine includes the inlet valve and governor and ignition and starting apparatus, but not the pipe leading from the gas holder, nor the exhaust pipe.

(G145.) Miscellaneous Power Plant Equipment.

Charge to this account the cost of all miscellaneous power plant equipment at gas works which is not includible in any of the foregoing accounts. This includes such mechanical apparatus as belts, pulleys, hangers, countershafts, and other apparatus intermediary between the prime mover and the apparatus operated, cranes, hoists, etc., and machine tools and such other tools at power plants as are proper to be capitalized, etc.

(223.) Benches and Retorts.

Charge to this account the cost of all benches and retorts devoted to the production of coal gas. This includes the cost of specially provided foundations and settings and auxiliary piping.

(G143*a*.) Water Gas Sets and Accessories.

Charge to this account the cost of sets and accessories devoted to the production of water gas, including the cost of specially provided foundations and settings for such sets. This account includes not only generators, carbureters superheaters, seals and piping connected therewith, etc., but also blast apparatus, oil and steam supplying apparatus, oil heaters, etc. It does not include pipes whose primary purpose is the warming of buildings.

(224.) Purification Apparatus.

Charge to this account the cost of all purification apparatus, such as condensers, washers, scrubbers, purifiers, tar extractors etc., and their ancillary apparatus and piping, including the cost of specially provided foundations and settings.

2418 (225.) Accessory Equipment at Works.

Charge to this account the cost of all equipment at works and holder stations which is not includible under any of the foregoing accounts. This includes exhausters, station meters, governors, etc.; apparatus for charging retorts; conveyors for disposing of coke and other products and residuals; tar and ammonia apparatus, pumps, pipes, tanks, etc.

(231.) Trunk Lines and Mains.

Charge to this account the cost of all trunk lines and mains in place. This includes all pipe lines from the yard connections to district holders, and from the works governor to the beginnings of services, including the cost of all trenching, etc., necessary to the placing of the pipe, and the cost of filling trenches and restoring the surface to its former condition or to that required by the municipal authorities at the time the line is installed.

(232.) Gas Services.

Charge to this account the cost of the corporation's property in service pipes and appurtenances in or leading to consumers' premises. This includes the cost of material in place, cost of trenching for placing services, and of filling trenches and restoring surface to proper condition.

NOTE A.—When consumers are required to pay some or all of the cost of services, only that portion of the cost not chargeable to the consumer is chargeable to this account, and in all cases where only a portion of the cost of the service is chargeable to this account, the entry in this account shall show the entire cost of the service as well as the amount charged to this account.

NOTE B.—Where services extending only from main to curb (or to lot line) are placed before actually required for the purpose of supplying consumers, the entry of cost must show that fact. Such services will be required to be separately reported in the annual reports of corporations to the Public Service Commission.

NOTE C.—Cost of renewing or modifying services shall not be charged to this account.

(233.) Gas Meters.

Charge to this account the cost of the corporation's property in all meters and appurtenances used in measuring the gas delivered to consumers.

NOTE A.—This account does not include the cost of the corporation's meters at the works, which shall be charged to the account (No. 225), "Accessory Equipment at Works," or to a sub-account thereunder.

NOTE B.—Cost of setting, removing, or re-setting such meters shall not be charged to this account.

NOTE C.—Upon filing with the Public Service Commission a notice thereof, the accounting corporation may also include in this account the cost of consumers' meters temporarily withdrawn from service.

(234.) Gas Meter Installation.

Charge to this account the labor and materials cost (exclusive of cock and connections) of the first setting of meters for determining the amount of gas delivered to consumers, in case it is the policy of the corporation to capitalize the cost of such setting.

2419 NOTE A.—Cost of removing such meters and of setting other meters substituted for them shall not be charged to this account but to the account (No. 634*a*), "Gas Meter and Installation Work." (See page 44.)

NOTE B.—This account must not include at any time the cost of installation of a greater number of consumers' meters than are actually in service.

(235.) Municipal Street Lighting Fixtures (Gas).

Charge to this account the cost of the corporation's property in the lamps, posts, and ancillary apparatus and appliances used in lighting streets for a municipal corporation. Such cost includes not only cost of material but also cost of first setting and coupling up. It does not include cost of removal or change of position.

NOTE.—Where the municipality requires for its special benefit the extension of mains and services for street lighting, such extensions may, so long as used solely for street lighting, be charged to this account, provided a full description of the extensions so charged and the amounts charged in respect thereof be filed with the Public Service Commission on or before the date when the entry thereof is made upon the books of the corporation.

(236.) Gas Engines and Appliances.

Charge to this account the cost of the corporation's property in gas engines leased to consumers (including municipal corporations), but not of those held for purposes of sale. Such engines include all appliances for the production of mechanical motion through the consumption of gas. Also, charge to this account the cost of the corporation's property in all gas stoves and other heating appliances leased to consumers, but not of those held for purposes of sale. This includes stoves, ranges, heaters, hot plates, sadirons, tailor's irons and gooses, and other like devices and appliances consuming gas for the direct production of heat.

NOTE A.—The cost of setting and connecting such engines and heating appliances on the premises of consumers and the cost of resetting or of removal shall not be charged to this account.

NOTE B.—Upon filing with the Public Service Commission a notice thereof, the accounting corporation may also include in this account the cost of such gas engines and appliances temporarily withdrawn from service.

(237.) Gas Tools and Implements.

Charge to this account the cost of all tools and implements coming within the scope of the definition of fixed capital (see paragraph 4, page 5, ante) and not covered by any of the foregoing equipment accounts.

(238.) Gas Laboratory Equipment.

Charge to this account the cost of all physical and chemical apparatus used in testing and other technological work, and of all equipment in laboratories used for technological work, such as calorim-

etry, photometry, chemical analysis, and the like; also all equipment for testing building and other materials used in the engineering operations of the company.

NOTE.—This account does not include the cost of any chemicals or other supplies, such being chargeable to the appropriate subaccount in the account "Materials and Supplies"; as consumed they shall be charged thence to the appropriate expense accounts.

2420 (239.) Other Tangible Gas Capital.

Charge to this account the cost of all miscellaneous tangible gas capital not elsewhere provided for.

(6281.) Engineering and Superintendence.

Charge to this account all expenditures for services of engineers, draftsmen, and superintendents employed on preliminary and construction work, and all expenses incident to the work, when such disbursements cannot be assigned to specific construction.

NOTE.—When employees enumerated above are engaged in work not chargeable to construction, their pay and expenses shall be charged to the specific work on which engaged.

(6282.) Law Expenditures During Construction.

Charge to this account general expenditures of the following nature, incurred in connection with the construction of a gas plant, namely: the pay and expenses of all counsel, solicitors, and attorneys, their clerks and attendants, and expenses of their offices; printing briefs, legal forms, testimony, reports, etc.; payments to arbitrators for the settlement of disputed questions; costs of suit and payments of special fees, notarial fees, and witness fees, and expenses connected with taking depositions; also all legal and court expenses.

When any of the expenditures above enumerated can be charged directly to the account for which incurred, they shall be so charged and not to this account. Expenditures in connection with the acquisition of the right of way or other land shall be charged to the account (No. 6110), "Land Devoted to Gas Operations." Law expenditures in connection with the organization of the corporation shall be charged to the account (No. 101), "Organization."

(6283.) Injuries During Construction.

Charge to this account all expenditures incident to injuries to persons when caused directly in connection with construction of gas plant and equipment; proportion of salaries and expenses of physicians and surgeons; nursing and hospital attendance, medical and surgical supplies, artificial limbs, railroad and carriage fares for conveying injured persons and attendants; funeral expenses (in-

cluding payments to undertakers); proportion of pay and expenses of claim adjusters and their clerks, and pay and expenses of employes and others called in consultation in relation to the adjustment of claims coming under this head; also witness fees and amount of final judgments.

(G284.) Taxes During Construction.

Charge to this account all taxes and assessments levied and paid on property belonging to the corporation while under construction and before the plant is opened for commercial operation, except special taxes assessed for street and other improvements, such as grading, sewering, curbing, guttering, paving, sidewalks, etc., which shall be charged to the account to which the property benefited is charged.

2421 (G285.) Interest During Construction.

Charge to this account the interest accrued upon all moneys (and credits available upon demand) acquired for use in connection with the construction and equipment of the property from the time of such acquisition until the construction is ready for use. Interest receivable accrued upon such moneys and credits shall be credited to this account. To this account shall also be credited discounts realized through prompt payment of bills for materials and supplies used in construction unless such discounts are credited to the particular bills.

(G286.) Miscellaneous Construction Expenditures.

Charge to this account the salaries and expenses of executive and general officers of a gas plant under construction; clerks in general offices engaged on construction accounts or work; rent and repair of general offices when rented, with the office expenses; insurance during construction; also all construction and equipment items of a special and incidental nature which cannot properly be charged to any other account in this classification.

NOTE A.—This account may include a suitable proportion of store expenses when such expenses are not assignable to specific materials.

NOTE B.—This account shall not include any costs of organization, or any costs or discounts connected with the issue and disposal of stocks, funded debt, or other securities, and commercial paper.

(O110.) Land in Other Departments.

Charge to this account the cost of the corporation's interests in land (exclusive of improvements thereon) devoted to operations

other than electric operations, gas operations, railroad operations, and street railroad operations.[1]

Such cost includes, when assumed or when paid by the purchaser in its own behalf, cost of registration of title, cost of examination of title, conveyancer's and notary's fees, purchasing agent's commissions or fees or proportion of purchasing agent's salary, taxes accrued to date of transfer of title, and all liens upon the title acquired. If at the time of acquisition of such interest in lands, it extends to buildings or other improvements thereon, which improvements are devoted by the corporation to operations other than the four classes above mentioned, and the contract of acquisition does not determine the price of such improvements, they shall be appraised at their fair cash value, and such appraised value shall be charged to the appropriate accounts and excluded from the account "Land in Other Departments." If such improvements are held as investments, the cost (or appraised value at time of acquisition of title if the cost to the corporation is not determined in the
2422 contract of acquisition) shall be charged to the appropriate investment account. If the improvements are removed or wrecked, the salvage (less the cost of removal or wreckage) shall be excluded from the account "Land in Other Departments".

(0102.) Franchises in Other Departments.

Charge to this account "the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise or right" as is necessary to the conduct of the corporation's operations other than electric, gas, railroad, and street railroad.

(0103.) Patent-rights in Other Departments.

Charge to this account the cost of all rights (having a life of more than one year from the date when placed in service) acquired by the corporation in or under valid patents granted by the United States to inventors for inventions and discoveries which are necessary to the economical conduct of the corporation's operations other than electric, gas, railroad, and street railroad.

(0104.) Other Intangible Capital in Other Departments.

Charge to this account the cost of all property of the corporation coming within the definition of intangible capital devoted to its oper-

[1]NOTE.—Electric Capital, Railroad Capital, and Street Railroad Capital.—For the accounts to which shall be charged the cost of capital devoted to electric operations, see the Uniform System of Accounts for Electrical Corporations; for steam railroad operations, see the Uniform System of Accounts for Expenditures for Road and Equipment, etc., as established for Steam Railroad Corporations by the Public Service Commission; and for electric railroad and street railroad operations, see the Uniform System of Accounts for Street Railroad Corporations.

ations other than electric, gas, railroad, and street railroad, and not includible under any of the foregoing accounts.

(0120.) Tangible Capital in Other Departments.

Charge to this account the cost of all property of the corporation coming within the definition of tangible capital devoted to its operations other than electric, gas, railroad, and street railroad.

25. Floating Capital divided into two groups.—Floating capital is divided into two great groups, of which the first is herein called Materials and Supplies, and the second, Current Assets.

26. Definitions of Floating Capital accounts.—In the following definitions the letters and figures prefixed to the titles of the accounts are no part of the titles and are inserted merely for convenience of reference:

(G10.) Materials and Supplies.

Charge to this account the cost (including transportation) of all materials and supplies acquired by the corporation, regardless of whether the same are intended to be consumed in construction or in operation, or later to be sold. Where discounts recovered through prompt payment are not credited to the particular bills, the cost at which such materials and supplies shall be charged shall be the invoice cost, and any discounts recovered through prompt payment of bills for such materials and supplies shall be credited to the account (No. G285), "Interest During Construction," or to the account (No. G852), "Undistributed Adjustments—Balance," according as such materials and supplies are intended for construction or for operation.

2423 The scrap value of things retired from service shall be charged to an appropriate sub-account in this account, while such things remain the property of the corporation. If such scrap value is not known and cannot readily be determined it shall be estimated, and errors in such estimates when determined shall be adjusted through the accounts involved if during the year in which the estimates were made; if later, then through the "Corporate Surplus or Deficit" account.

Inventories of materials and supplies shall be taken at least annually, and any shortages or overages disclosed by such inventories shall be credited or debited to this account and debited or credited to the operating expense account (No. G852), "Undistributed Adjustments—Balance," in case they cannot be assigned to specific accounts. Shortages may, however, be charged directly to "Corporate Surplus or Deficit." Where such materials and supplies have been used in construction, a suitable proportion of such shortages or overages may be debited or credited to the account (No. G286), "Miscellaneous Construction Expenditures."

NOTE.—It is not required that the transportation element of cost shall be assigned with a greater degree of accuracy than to the nearest

cent per unit of material or supply. Where a single transportation item covers a multitude of things the portion of the expense not assigned to specific things should be charged to the same account that store expenses are charged to.

(1.) Cash.

Charge to this account all money coming into the possession of the corporation and in which the corporation has the beneficial interest. This includes coin of the United States, United States treasury notes, gold and silver certificates and greenbacks, and bank bills payable to bearer. Also charge to it all bank credits, checks and drafts receivable, subject to satisfaction or transfer upon demand (whether payable to bearer or to order). Credit this account with all cash disbursements of the corporation.

(2.) Bills Receivable.

Charge to this account the cost of all bills receivable (except as below provided) which are the property of the corporation and upon which solvent concerns are liable or which are sufficiently secured to be considered good. This account includes demand notes, drafts, etc., issued by others than banks, and time notes, drafts, etc., by whomever issued. This account does not include investments (for which see page 21); nor does it include interest coupons.

(3.) Accounts Receivable.

Charge to this account all amounts owing to the corporation upon accounts with solvent concerns (other than banks); also the cost of all accounts and claims upon which responsibility is acknowledged by solvent concerns or which are sufficiently secured to be considered good, and of all judgments against solvent concerns where the judgment is not appealable or suspended through appeal. This account does not include negotiables.

2424 (4.) Interest and Dividends Receivable.

Whenever the income account is stated the appropriate sub-account therein shall be credited and this account shall be charged with all accrued but not yet collected interest upon all commercial paper and accounts considered collectible held by or for the benefit of the corporation; also all dividends declared or guaranteed by solvent concerns but not yet collected, the right to which is in the corporation.

(5.) Other Current Assets.

Charge to this account the cost of all current assets of the corporation which are not includible under any of the last four foregoing accounts. By current assets are meant only those things which are readily convertible into money and which are held with the intent of being presently converted into money and not as investments.

27. Investments defined.—By Investments, as here used, are meant all properties acquired not for use in present operations, but as a means of obtaining or exercising control over other corporations, or for income to be derived from them, or for a rise in value, or for devotion to future operations at a time when it seems probable that they cannot be so advantageously acquired as at the time of actual acquisition. By bound investments are meant those held subject to a lien of some character; by free investments are meant those held free of all liens.

(300.) Investments.

The cost of the corporation's title to any property held as an investment shall be charged to an account entitled "Investments."

NOTE.—In the annual reports to be made to the Public Service Commission by the corporations and other persons engaged in gas operations, investments, whether bound or free, will be required to be classified with at least the following detail:

Bound investments will be required to be divided into the three classes: "Mortgaged or Pledged Investments," "Contractual Fund Investments," and "Other Bound Investments." Each of these three classes, and the class "Free Investments," will be required to be subdivided into the following: Funded Debt of Controlling Corporations, Funded Debt of Affiliated Corporations, Funded Debt of Controlled Corporations, Stocks of Controlling Corporations, Stocks of Affiliated Corporations, Stocks of Controlled Corporations, Advances to Controlled Corporations, Funded Debt of Other Corporations, Stocks of Other Corporations, Land, Improvements on Land, and Other Investments.

28. Special Deposits defined.—By Special Deposits, as here used, are meant amounts of money and bank credits in the hands of fiscal or other agents of the corporation for the payment of coupons, dividends, or other special purposes. Credits at banks subject to check of the corporation or its agents for general purposes, deposits at banks whether withdrawable at pleasure or after a specified time, amounts of money in safety deposit vaults, etc., so long as they are available for general purposes of the corporation, shall be excluded herefrom.

(311.) Coupon Special Deposits.

Charge to this account all moneys and bank credits specially deposited in the hands of fiscal agents or other agents of the cor-295 poration for the payment of interest coupons when presented. Such coupons when paid from such deposits shall be credited to this account and charged to the appropriate matured interest account. Payments to trustees (or other agents) of the holders of bonds or other securities of the interest accrued thereon which operate under the terms of the securities (or of mortgages supporting such securities) as a release of the paying corporation from further liability for such interest shall not be charged to this account, but to the appropriate "Interest Accrued" account.

(312.) Dividend Special Deposits.

Charge to this account all moneys and bank credits specially deposited in the hands of fiscal agents or other agents of the corporation for the payment of dividends upon the corporation's stocks. Such dividends when paid from such deposits shall be credited to this account and charged to the appropriate dividend account.

(313.) Other Special Deposits.

Charge to this account all moneys and bank credits deposited in the hands of fiscal agents or other agents of the corporation for other special purposes than the payment of interest coupons and dividends. Charges to this account shall specify the purpose for which the deposit is made. When such purposes are satisfied this account shall be credited with the amount specially deposited to provide such satisfaction.

29. Prepayments.—When payments for taxes, insurance, rents, and the like are made in advance of the actual accrual thereof, the amount of the advance payment shall be charged to the appropriate account in this group. As such taxes etc., accrue, the appropriate prepayment account shall be credited and the appropriate expense or other income account shall be charged.

NOTE.—By the accrual of taxes, insurance, rents, etc., is meant their accumulation when considered as spread uniformly over the period to which they apply. Thus, if the rent fixed by contract of lease for a certain property is $600 for a calendar year, this accrues at the rate of $50 each month (unless it is desired to base the accrual on days, when of course the varying lengths of the months would require to be considered), regardless of the actual times when the rent matures; $50 should thus (if the rent has been prepaid) be credited each month to the account "Prepaid Rents," and concurrently charged to the appropriate account in the "Income" account. Similarly in the case of other prepayments.

(321.) Prepaid Taxes.

When taxes are paid in advance of their accrual, the amount prepaid shall be charged to this account. As the taxes thus prepaid accrue, they shall be credited at monthly intervals to this account and charged to the appropriate taxes account. This account must not include any so-called taxes, like water taxes, drainage taxes, fire taxes, etc., which are payments for special benefits received. Such payments for special benefits, where finally chargeable to operating expenses, must, when prepaid, be charged to the account "Other Prepayments."

2426 (322.) Prepaid Insurance.

When premiums on insurance policies are paid in advance of their accrual, the amount prepaid (whether paid in cash or by the issue

notes or other negotiable paper) shall be charged to this account. s such premiums accrue, they shall be credited at monthly intervals this account and charged to the appropriate expense account.

(323.) Prepaid Rents.

When rents are paid in advance of the enjoyment of the term, the nount prepaid (whether paid in cash or by the issue of notes or her negotiable paper) shall be charged to this account. As the rm is consumed, this account shall be credited at monthly intervals d the appropriate rent account in the income account shall be arged.

(324.) Other Prepayments.

When prepayments are made for any other thing than taxes, insur-ce, and rents, above provided for, such prepayments shall be arged to this account; and as the purpose of the prepayment is tisfied, proportionate amounts shall be credited monthly to this ac-unt and charged to the appropriate expense or income account.

30. Suspense.—When any expenditure is made, the appropriate sposition of which is not yet determinable, or when any loss occurs hich under the rules of the Public Service Commission may be read over a period of time, or when any debit made for any other ason may be amortized through charges made to expense or other come accounts at intervals over a period of time, such expenditure, s, or other debit shall, except as herein otherwise directed, be arged to an appropriate account in this group of accounts.

NOTE.—By "amortization" of any charge or credit is meant its ctual extinction. The word is broader than the word "depreciation," since the latter is restricted ordinarily to tangible property. The rd "depreciation" also imports more of the idea of fluctuating ue and is complicated somewhat with the question of cost of re-acement at market prices. Because it is considered unnecessary connection with the gradual consumption or expiration of life of pital to consider the question of cost of replacement until the re-acement is actually made, at which time the cost of replacement is ly charged to the appropriate account, and because provision is cessary for the gradual extinction of certain charges (such as those some kinds of capital, those for extraordinary casualties, for dis-unt on debt, etc.), to which the term "depreciation" does not well ply, it is considered advisable to use the term "amortization" in nection with the extinction of such charges, and of certain corre-nding credits, such as premiums on debt outstanding.

(331.) Unamortized Debt Discount and Expense.

When funded debt securities and other evidences of indebtedness disposed of for a consideration whose cash value is less than the n of the par value of the securities or other evidences of indebted-s and the interest thereon accrued at the time the transfer takes

place, the excess of such sum of the par value and accrued interest over the cash value of the consideration received shall be
2427 charged to this account. To this account shall also be charged all expense connected with the issue and sale of evidences of debt, such as fees for drafting mortgages and trust deeds, fees and taxes for recording mortgages and trust deeds, cost of engraving and printing bonds, certificates of indebtedness, and other commercial paper having a life of more than one year, fees paid trustees provided for in mortgages and trust deeds, fees and commissions paid underwriters and brokers for marketing such evidences of debt, and other like expense. At or before the close of each fiscal period thereafter, a proportion of such discount and expense based upon the life of the security to maturity shall be credited to this account and charged to the account (No. 928), "Amortization of Debt Discount and Expense," in "Income" account. Such discount and expense may, if desired, be amortized more rapidly through charges of all or any part of it, either at the time of issue or later, to the account "Other Deductions from Surplus."

(332.) Other Suspense.

To this account shall be made all debits not elsewhere provided for and the proper final disposition of which is uncertain. This will include all such matters as expense of preliminary surveys, plans, investigations, etc., made for determining the feasibility of projects under contemplation. Should any such project later be carried to completion, such amounts shall be credited to this account and charged to the proper capital account; should it be abandoned, such amounts shall be charged to "Corporate Surplus or Deficit."

When the proper disposition of any matter charged to this account is determined, it shall be credited to this account and charged to the appropriate account.

31. Securities Actually Issued and Later Re-acquired.—For the case of securities actually issued by the corporation and later re-acquired by it, the following account is provided:

(340.) Re-acquired Securities.

When securities, whether funded debt or stocks, have been actually issued to bona fide holders for value (or after such issue by another corporation have been assumed by the accounting corporation), and after such issue (or assumption) have been acquired by the corporation under circumstances which require that they shall not be treated as paid or retired, they shall be charged at face value to this account.

32. Debt defined.—The word debt, as here used, covers all absolute obligations to pay money at a definite time or times, or at a time or times which are capable of being made definite by demand or other act of the creditor. It does not cover contingent obligations, such as obligations to pay rent for future enjoyment of the term, liabilities of indorsers upon paper not yet defaulted, etc.

Debt is divided into Funded Debt and Unfunded Debt.

33. Funded Debt defined.—Funded Debt comprises all debt which by the terms of its creation does not mature until more than one year after date of creation.

2428 34. Unfunded Debt defined.—Unfunded Debt comprises all debt which by the terms of its creation matures one year or less after the date of creation or after demand.

35. Funded Debt accounts.—Funded debt shall be divided in the accounts into classes, such classes being determined by the four characteristics: (1) mortgage or other lien or security therefor, (2) rate of interest, (3) interest dates, and (4) date of maturity. A separate subaccount shall be raised for each such class of funded debt, and no two amounts of debt not agreeing in respect of all four of the characteristics above named shall be included in the same sub-account. The title of each sub-account of funded debt shall express the four characteristics above stated, that is to say: mortgage or other lien or security, rate of interest, dates of maturity of interest, and date of maturity of principal; as e. g., "First Mortgage 5% QF 10, Aug. 10, 1928," which means funded debt secured by the company's first mortgage, bearing interest at the rate of 5 per cent per annum, interest maturing quarterly on February 10th, May 10th, August 10th, and November 10th of each year, principal maturing August 10, 1928.

Where any portion of the funded debt rests only on the general credit of the corporation and is not specially secured or supported by lien of any character, it shall for the purposes of these accounts be known as a "debenture." "Debentures" thus include promissory notes unsecured by mortgage or other lien, also those securities commonly known as "plain bonds."

To the appropriate sub-account in "Funded Debt" shall be credited when issued the par value of the amount of evidences of funded indebtedness issued. The entry shall show not only the amount issued but the purpose for which issued, and shall make intelligible reference to the book, page, and account whereon are shown any discounts or premiums realized on the amount issued. If the consideration received for the issue is anything else than money, the entry shall show further the principal to whom issued, and shall describe with sufficient particularity to identify it the actual consideration received for the issue. If the issue in any case is to an agent of an undisclosed principal, the name and business address of such agent and the fact of his agency shall be shown in the entry.

36. Unfunded Debt accounts.—The accounts for unfunded debt are defined as follows:

(351.) Taxes Accrued.

Credit to this account at the close of each month the taxes accrued during the month, and make corresponding charges to the

appropriate "Taxes" account. Credits to the account "Taxes Accrued" will necessarily be based upon estimate until the amount of tax levied for the tax period is known; such estimates shall be based upon the best data available, and as soon as the amount of tax for the period is known the account involved shall be adjusted to conform. When any tax is paid it shall be charged to this account and credited to "Cash" or other suitable account.

2429 (352.) Receiver's Certificates.

When any receiver acting under the orders of a competent court is in possession of the property of the corporation and under the orders of such court issues certificates of indebtedness chargeable upon such property, the par value of such certificates shall be credited to this account. Interest accruing upon such certificates shall also be credited monthly to this account.

(353.) Judgments Unpaid.

When any judgment of indebtedness is rendered by a court of competent jurisdiction against the corporation, or any fine or penalty requiring the payment of money is assessed by such a court against the corporation, and no appeal accompanied by stay of execution has been taken therefrom within the time allowed by law for such appeal, the amount of such judgment shall be credited to this account, and the entry shall designate the action or suit as a consequence of which such judgment is pronounced or such fine or penalty assessed. The designation of the action or suit shall show the court, the term thereof, the parties, and the character of the action or suit. Interest accruing upon any such judgment shall be credited monthly to this account.

NOTE.—In case of appeal and affirmance in whole or in part from which judgment of affirmance a further appeal lies, the same rule shall apply as upon entry of original judgment.

(354.) Interest Accrued.

Credit to this account at the close of each month the interest accrued during the month upon indebtedness of the corporation. When such interest is paid it shall be charged to this account and credited to "Cash" or other suitable account.

The account "Interest Accrued" does not include interest on judgments, nor that upon receiver's certificates. The interest accruing on any judgment against the corporation or upon any receiver's certificate shall be credited to the account to which such judgment or receiver's certificate stands credited.

NOTE.—When coupon interest matures it should be transferred from the sub-account "Unmatured Coupon Interest Accrued" to the sub-account "Coupon Interest Matured." When such interest is paid out of coupon special deposits the sub-account "Coupon In-

terest Matured" should be charged and the account "Coupon Special Deposit" credited.

(355.) Dividends Declared.

When any dividend is declared it shall be credited to this account and here remain until it is paid, when it shall be charged to this account and credited to "Cash" or other suitable account.

(356.) Bills Payable.

When any note, draft, or other bill payable which matures not later than one year after date of issue (or demand) or assumption by the corporation of primary liability thereon is issued or assumed, the par value thereof shall be credited to this account, and
2430 when it is paid it shall be charged to this account and credited to "Cash" or other suitable account.

(357*a*.) Consumers' Deposits—Gas.

Credit to this account, as such deposits are made, all cash deposited with the corporation by consumers as security for the payment of gas bills. Deposits refunded shall be charged to this account and credited to "Cash." Deposits applicable to uncollectible or worthless gas bills shall, at the close of the fiscal year (or earlier, at the option of the accounting corporation), be credited to the account of the consumer involved and debited to this account.

(357*b*.) Other Accounts Payable.

Credit to this account when incurred all liabilities of the corporation upon open accounts, except those provided for in the foregoing account "Consumers' Deposits."

(358.) Other Unfunded Debt.

Credit to this account at face value all unfunded debt upon which the corporation is liable and which is not elsewhere provided for.

37. Reserves.—Reserves shall be classified as Permanent and Temporary.

38. Permanent Reserves defined.—By Permanent Reserves are meant those that must be maintained intact during the life of the corporation. Permanent reserves shall be classified into the two classes: Premiums on Stocks and Other Permanent Reserves.

(371.) Premiums on Stocks.

Premiums on stocks shall be sub-classified with respect to the several classes of stocks, for definitions of which see accounts under the head "Stocks." A sub-account shall be kept for each particular class of stocks, and such sub-accounts shall be severally entitled:

Premiums on Debenture Stocks,
Premiums on First Preferred Stocks,
Premiums on Second Preferred Stocks, etc., and
Premiums on Common Stocks.

When a premium is realized upon an issue of any particular class of stock, such premium shall be credited to the sub-account above provided for such class of stock, and such credit shall remain in such account so long as such stock remains outstanding. By a premium realized (as the words are above used) is meant the excess of the actual money value (at the time of issue of the stock) of the consideration received for such issue over the par value of the amount of stock issued. If the stock is issued by the corporation to its treasurer or other agent, the excess of the actual money value of the consideration obtained by such agent in exchange for such stock over the par value thereof shall be considered the premium realized.

2431 (372.) Other Permanent Reserves.

Credit to this account all reserves not above provided for created to remain intact until the dissolution of the corporation. A separate sub-account shall be created for each particular purpose for which a reserve is raised, and the purpose of the reserve shall be designated in the title of the account thereof and shall be expressed in full in the first entry in such account.

39. Temporary Reserves defined.—By Temporary Reserves are meant those that are not intended to remain intact during the life of the corporation. Temporary Reserves shall be classified as Contractual Reserves and Non-contractual Reserves.

40. Contractual Reserves defined.—Contractual Reserves are reserves necessitated by contracts of the corporation, as e. g., reserves to cover sinking funds provided for in mortgages, etc. A separate sub-account shall be raised for each particular contractual reserve, and to such account shall be credited all appropriations and accumulations made in accordance with the contract provisions under which such reserve is created. The purpose of the reserve shall be designated in the title of the account thereof and shall be expressed in full in the first entry in such account.

41. Non-contractual Reserves defined.—Non-contractual Reserves are such temporary reserves as are raised without being required under any contract. Non-contractual reserves are divided into Required and Optional.

42. Required Reserve accounts.—Required reserves are provided for in the following accounts:

(374.) Accrued Amortization of Capital.

Credit to this account such amounts as are charged from time to time to "Operating Expenses," or other accounts to cover deprecia-

tion of plant and equipment, and other amortization of capital. When any capital is retired from service, the original money cost thereof (estimated if not known, and where estimated, that fact and the facts upon which the estimate is based shall be stated in the entry), less salvage, shall (except as provided in the account (No. G100) "Fixed Capital, December 31, 1908,") be charged to this account. The amount originally entered or contained in the charges to any capital account in respect of such capital so going out of service shall be credited to such capital account, and any necessary adjusting entry made to the appropriate sub-account under the account "Corporate Surplus or Deficit."

(375.) Unamortized Premium on Debt.

When funded debt securities or other evidences of indebtedness are disposed of for a consideration whose cash value is greater than the sum of the par value of such securities or other evidences of indebtedness and the interest thereon accrued at the time the transfer takes place, the excess of the cash value of such consideration received over the sum of the par value of the securities or other
2432 evidence of indebtedness and the accrued interest shall be credited to this account. At monthly intervals thereafter a proportion of such premium based upon the life of the security or other evidence of indebtedness to maturity shall be charged to this account and credited to "Amortization of Premium on Debt" in "Income" account; or at the option of the corporation the charge to this account may be delayed to a time not later than the date of maturity of the debt, in which case the proportion applicable to the period covered by the then current income account shall be credited to the account "Amortization of Premium on Debt," and the remainder of the credit shall be to the account "Other Additions to Surplus."

(376.) Other Required Reserves.

Credit to this account all required reserves not elsewhere provided for. The first entry of a credit to this account with respect to any particular reserve shall show the purpose of the reserve, and every subsequent entry with respect to that reserve shall designate the reserve to which it relates.

43. Optional Reserve accounts.—Optional Reserves are those the creation of which is solely within the discretion of the corporation. For such reserves the following two accounts are provided:

(381.) Casualties and Insurance Reserve.

When any admitted liability arises because of loss or damage to the property of others, or of injuries to employees or other persons, the amount of the liability may (if not previously provided for by insurance or self-insurance) be charged to the appropriate operating expense or other accounts and credited to this account, against

which (in such case) the actual cost of satisfaction of the liability shall be charged when the matter is determined. If the extent of the liability can not be ascertained promptly after the liability arises, it may be estimated as accurately as practicable for the purpose of determining the immediate charge to the expense or other appropriate account, in which case the matter shall be adjusted when the extent of the liability is definitely ascertained. If the loss is of such character that it is in the whole or in part indemnifiable under any contract of insurance carried by the corporation, the indemnifiable portion of the loss shall be charged to the insurer and credited to "Casualties and Insurance Reserve." Also credit to this account the amounts charged to the operating expense account "Insurance" to cover self-carried risks.

(382.) Other Optional Reserves.

A sub-account shall be raised for each particular reserve, and its title shall designate the purpose of such reserve and the first entry therein shall express in full such purpose.

44. Stocks defined.—By Stocks of a corporation, as the term is here used, are meant those securities which represent permanent interests in the corporation or interests which, if terminable, are so only at the option of the corporation.

2433 45. Stocks classified.—Stocks are classified as—
Debenture Stocks,
First Preferred Stocks,
Second Preferred Stocks, etc., and
Common Stocks.

46. Debenture Stocks defined.—Debenture Stocks are those issued under a contract to pay absolutely thereon at specified intervals a specified return.

47. First Preferred Stocks defined.—First Preferred Stocks are those which have the first claim upon such dividends as may be distributed. They may be cumulative or non-cumulative, participating or non-participating. If cumulative, the amount by which the dividend at any dividend period fails to reach the stipulated rate is carried forward to continue as a claim upon dividends until satisfied; if non-cumulative, such amount lapses. If a first preferred stock is participating, it is not limited to the stipulated rate in the amount of dividends which it may receive, but is entitled to participate, in accordance with the terms of the contract under which it is issued, in further dividends; if non-participating, it is limited to the Stipulated rate.

48. Second Preferred Stocks defined.—Second Preferred Stocks are those whose claims in the distribution of dividends are next after those of first preferred stocks. These stocks may also be cumulative or non-cumulative, participating or non-participating.

49. Common Stocks defined.—Common Stocks are those whose claims in the distribution of dividends are subordinate to the claims of all other stocks.

50. Voting Powers.—Stocks differ also in regard to the voting powers incident to ownership of them.

51. Retirement of Stocks.—Stocks are sometimes issued under contracts wherein the issuing corporation reserves to itself the right to retire them at its option, either absolute or subject to conditions expressed in the contracts whereunder the stocks are issued.

52. Separate account required for each class of stocks.—In the accounts of stocks outstanding, a separate account shall be raised for each class of stock issued, and no two stocks shall be considered of the same class unless they are equal in their interest or dividend rights, their voting rights, and the conditions under which they may be retired. The characteristics of any class of stocks in these three regards shall be designated in the title of the account raised to cover such stocks, and shall be clearly expressed in the first entry in such account. To the account for any class of stocks shall be credited when issued the par value of the amount of stock of that class issued. If such issue is for money, that fact shall be stated; and if for any other consideration than money, the person to whom issued shall be designated, and the consideration for which issued shall be described with sufficient particularity to identify it; if such issue is to the treasurer, or other agent of the corporation, to be by him disposed of for the benefit of the corporation, that fact and
2434 the name of such agent shall be shown; and such agent shall in his account of the disposition thereof show the like details concerning the consideration realized thereon, which account when accepted by the corporation shall be preserved as a corporate record. If the fair cash value of the consideration realized upon the issue of any amount of stock is greater than the par value of such stock, the excess shall be credited to the account "Premiums on Stocks," and the corresponding reference thereto shall be contained in the entry relating to such stock in the stock account.

2435 SCHEDULE B.

Income Account.

1. Income and Indicant Accounts Compared.—A comparison of the balances in the foregoing accounts (Schedule A) at any particular moment will, if the accounts have been properly kept, show the then existing conditions of a corporation's affairs so far as such condition can be shown through the accounts. The group of accounts just defined is sometimes called the Balance Sheet or Indicant accounts. Their balances indicate the condition of the corporation at any particular time. These accounts with their subsidiary accounts are all that are necessary prior to the time when the corporation becomes what may be called a "going concern."

When a corporation begins operations it requires an additional

group of accounts in which to classify in convenient form the accounting history of the various changes it undergoes. Such group of accounts brings together or accumulates the account of the various incidents of the corporation's history. This group of accounts may be called the Income account. They are made up usually on a yearly basis and are closed into one grand account called "Corporate Surplus or Deficit," which ties together this group of accounts and the preceding group.

2. Divisions of Income Account.—The principal divisions of this group of accounts are the Revenue accounts, the Revenue Deduction accounts, the Income Deduction accounts, and the Appropriation accounts.

3. Revenues Defined.—By Revenues, as the word is used herein, are meant all amounts of money which the corporation receives or becomes lawfully entitled to recover for services rendered, for products sold, as gross profits on merchandise sold, or as a return upon its property (or interests in property). Revenues are classified as Operating Revenues and Non-operating Revenues.

4. Operating Revenues Defined.—Operating Revenues are those derived from the sale of products and merchandise, from services rendered, and from return on property used by the person or corporation in its own operations.

5. Non-operating Revenues Defined.—Non-operating Revenues are those derived as a return upon the property of the corporation in the hands of others or from its interests in property in the hands of others. They may be sub-classified as Rents, Interest, Dividends, and Miscellaneous.

6. Revenue Deductions Defined.—Revenue Deductions include Expenses, Taxes, and Uncollectible Bills.

2436 7. Expenses Defined.—Expenses are those outgoes (including capital consumed) necessary to the production of the commodities sold and the services rendered, and to the collection of the revenues. They are divided into Operating Expenses and Non-operating Expenses. Operating Expenses are those incident to the operating revenues.

8. Taxes Defined.—Taxes are those annual or other payments exacted by governments for the purpose of raising funds for public uses.

9. Uncollectible Bills Defined.—When a corporation is engaged regularly in rendering to general consumers a service, or in supplying to such consumers a commodity (as e. g., electric energy or gas for light, heat, or power), current accounts or claims against such consumers for such service rendered or commodity supplied which are incapable of collection by the exercise of reasonable diligence are included under the name Uncollectible Bills.

10. Gross Income, Income Deductions, and Net Corporate Income Defined.—Revenues, diminished by expenses, taxes, and uncollecti-

ble bills, give an amount called Gross Income, which is applicable to corporate and leased properties. Gross income is subject to several compulsory deductions, mostly contractual, like rent, interest, etc., and the remainder after these are made is called Net Corporate Income, which being subject only to the discretion of the corporation is most conveniently carried directly to the corporate surplus. The accounts covering the compulsory deductions from gross income as above defined, are called the Income Deduction accounts.

11. Appropriation Accounts Defined.—The accounts covering the yearly changes in the corporate surplus are called the Appropriation accounts, since practically all of the matters covered by them are within the discretion of the corporation, although they also include certain adjustments made because of facts of previous years imperfectly accounted for at the time (whether through error or through lack of information), and certain other minor matters like extraordinary expenses not chargeable as deductions from revenues; also such matters as profits on the sale of capital, and profits and losses on the sale of investments.

12. Definitions of Gas Operating Revenue Accounts.—Credits to the various revenue accounts shall be made upon the basis of bills rendered or of gross prices. Discounts for prompt payment, corrections of overcharges, overcollections theretofore credited and afterward corrected, authorized abatements and allowances, and other corrections and deductions shall be charged to the revenue account to which they relate. In the following definitions of accounts the letters and numbers prefixed to the titles are inserted solely for convenience of reference and are no part of the titles or of the definitions:

(431.) Municipal Street Lighting—Gas.[1]

Credit to this account all revenues derived from lighting streets for municipal corporations by means of gas, or from supply-
2437 ing gas therefor.

NOTE.—In the foregoing account the word "streets" is to be interpreted to include parks, plazas, and all other public places not classified as buildings.

(432.) Lighting Municipal Buildings—Gas.

Credit to this account all revenues derived from lighting municipal buildings by means of gas, or from gas supplied for such purposes, or for heat or power in municipal buildings where such gas is supplied at lighting rates and is not separately measured.

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[1]Charges to this and the following revenue accounts must be made in such wise as to permit their classification in the annual report of the corporation to the Public Service Commission.

(433.) Municipal Heat and Power—Gas.

Credit to this account all revenues derived from municipal corporations for gas supplied at special heat or power rates to such corporations for the production of heat and power.

(434.) Miscellaneous Gas Revenue—Municipal.

Credit to this account all revenues derived from supplying gas to municipal corporations and not provided for in the foregoing accounts; also those from the letting of engines and other gas equipment to such corporations.

(435.) Prepaid Gas.

Credit to this account all revenue derived from the sale of prepaid gas delivered through so-called "prepayment meters."

(436.) Commercial Metered Lighting—Gas.

Credit to this account all revenues derived from all consumers except municipal corporations for gas measured through ordinary meters and supplied for lighting at lighting rates.

NOTE A.—Where gas flowing through any ordinary meter is used by any other consumer than a municipal corporation for lighting and incidentally for heating or power purposes, the revenues derived therefrom shall be credited to this account.

NOTE B.—This account does not include gas sold or supplied to other gas corporations for distribution; for such gas, see account (No. 438), "Other Gas Corporations."

(437.) Commercial Heat and Power—Gas.

Credit to this account all revenues derived from all consumers except municipal corporations for gas supplied for heat or power at special heat or power rates.

NOTE.—This account does not include gas sold or supplied to other gas corporations for distribution; for such gas, see the account (No. 438), "Other Gas Corporations."

(438.) Other Gas Corporations.

Credit to this account all revenues derived from gas sold or supplied to other gas corporations to be by them distributed through their own pipes to consumers. If any portion of such gas is incidentally consumed by such corporations for their own benefit, whether for light, heat, or power, it shall be included herein, if not separately measured, or if included under the same contract with that which is distributed by them to consumers.

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(439.) Commissions on Others' Gas.

Credit to this account all revenue accruing to the corporation for distributing gas of other companies through its pipes, selling the same, and for all other services performed in connection therewith.

NOTE.—In case the corporation distributes through its pipes the gas of another company, the corporation shall charge "Cash" or the appropriate sub-account (or accounts) under "Accounts Receivable" with the value of the gas of such other company, supplied by the corporation to consumers, and shall enter a corresponding credit to a clearing account "Gas Supplied by —— Company and Distributed by this Corporation [or, 'by ——,' naming the corporation keeping the account]" which account shall monthly be cleared by charging to such clearing account the amount necessary to balance, and crediting to the account "Commissions on Others' Gas" the Corporation's proportion of the total revenue, and to the account of the company supplying such gas to the corporation that company's proportion of such total revenue.

(440.) Rent of Gas Appliances.

Credit to this account all revenues derived from the letting of gas engines, heating appliances, lamps, and other gas apparatus and appliances (except meters) to others than municipal corporations. Where the contract of letting names only a single consideration for both the letting and the maintenance of the appliances so let, the entire revenue shall be included in this account.

(441.) Gas Merchandise and Jobbing Revenue.

Credit to this account all receipts from the sale of gas merchandise and from gas jobbing. Charge to this account the cost to the accounting corporation of gas merchandise sold, such cost including transportation charges paid on such goods.

Credit also to this account the profit or commission accruing to the corporation on all jobbing work performed by it as agent under agency contracts, whereunder it undertakes to do jobbing work for another for a stipulated profit or commission upon its actual expense for labor, materials, and supplies.

NOTE A.—In its annual reports to the Public Service Commission the reporting corporation will be required to analyze the credits and debits to this account.

NOTE B.—This account does not include receipts from the sale of superseded equipment, or of junk or other scrap or salvage.

(442.) Sale of Residuals and Byproducts.

Credit to this account all revenue derived from the sale of residuals and byproducts.

This account shall be so kept as to enable the corporation to show in its annual report to the Public Service Commission the amounts of revenue derived from the following sources:

2439 Sale of Gas Coke.
Sale of Coal-gas Tar.
Sale of Water-gas Tar.
Sale of Ammoniacal Liquor.
Sale of Other Residuals and Byproducts.

NOTE A.—The amount of revenue from the sale of any residual or byproduct shall be determined by the price received at the point of delivery to the purchaser, and any expense incurred by the corporation in effecting delivery shall be charged to the appropriate operating expense account.

NOTE B.—Residuals and byproducts consumed by the corporation shall not be credited to the account "Sale of Residuals and Byproducts."

(443.) Joint Gas Rent Revenue.

When any corporation engages in gas operations for the production of some of its product for the benefit of another or others under an arrangement for apportioning the expense upon the basis of the relative amounts of benefit to the several participants in the arrangement, if such arrangement provides for the receipt by the corporation of any profit or return upon its property, such profit or return upon property shall, as it accrues, be credited month by month to this account. Such profit or return must be over and above any provision for wear and tear and depreciation of plant involved in the said production, and the amount thereof must be as provided in the arrangement under which the joint production occurs.

(444.) Other Miscellaneous Gas Revenue.

Credit to this account all revenues derived from others than municipal corporations for the supply of gas and from other gas operations not includible in any of the foregoing accounts.

13. Revenue from Outside Operations.—The detailed revenue accounts for operations other than the above mentioned will be provided for elsewhere.

14. Operating Expenses Defined.—By the operating expenses of a corporation are meant such expenses as are necessary to the maintenance of the corporate organization, the rendering of services required or authorized by law, the sale of merchandise, the production (including herein capital consumed) and disposition of the commodities produced, and to the collection of the revenues therefor. Expenses directly incident to the collection of non-operating revenues and the maintenance of the property from which non-operating revenues are derived are excluded from operating expenses.

15. Definitions of Certain Terms Used in Connection with Expense Accounts.—Except where some other meaning is clearly specified in the definitions of the accounts, the following words, wherever used hereunder, have the meanings below stated:

Cost means cash or money cost, and not price based on a term of credit.

Labor means human services of whatever character.

Cost of labor includes wages, salaries, and fees paid to persons for their services.

2440 Cost of materials and supplies includes all specifically assignable transportation charges incurred in obtaining the delivery of such materials and supplies upon the premises of the purchaser, and cost of any special tests made thereon prior to their acceptance; and in case the accounting person or corporation desires, it may include a suitable proportion of store expenses (when the materials and supplies are passed through stores) and the cost of further transportation to the place of consumption, and a suitable proportion of the expenses of the purchasing department, in which case a corresponding credit shall be made to the suitable expense account as hereinafter provided.

Cost of repairs, when made by the accounting person or corporation, includes cost of labor expended and material consumed, less salvage, if any.

NOTE.—It is not required that the transportation element of cost shall be assigned with a greater degree of accuracy than to the nearest cent per unit of material or supply. Where a single transportation item covers a multitude of things the portion of the expense not assigned to specific things should be charged to the same account that other expenses are charged to.

16a. Classification of Gas Operating Expenses.—For the purposes of this classification gas corporations are divided into two classes designated respectively as Large Companies and Small Companies. The term "Large Companies" shall include all corporations having an annual revenue from gas operations of more than $500,000; all other corporations shall be classed as "Small Companies." Large companies are required to keep as primary accounts the accounts defined in the text below; while small companies may consolidate certain accounts in accordance with the following list:

Small Companies.	Large Companies.	
I. Production Expenses.	I. Production Expenses.	
(01) Gas Making Labor	(601a)	Works Superintendence.
	(601b)	Boiler House Labor.
	(601c)	Retort House Labor.
	(601d)	Generator House Labor.
	(601e)	Purifier House Labor.
	(601f)	Miscellaneous Labor at Works.
(02) Boiler Fuel.	(602)	Boiler Fuel.
(03) Water.	(603)	Water.
(04a) Fuel under Retorts.	(604a)	Fuel under Retorts

Small Companies.	Large Companies.
I. Production Expenses.	**I. Production Expenses.**
(604b) Coal Carbonized.	(604b) Coal Carbonized.
(605) Coal Gas Enricher.	(605) Coal Gas Enricher.
(606) Generator Fuel.	(606) Generator Fuel.
(607) Water Gas Oil.	(607) Water Gas Oil.
(608) Purification Supplies.	(608) Purification Supplies.
(609) Miscellaneous Works Expense.	(609) Miscellaneous Works Expense.
(610) Repairs of Works and Station Structures.	(610) Repairs of Works and Station Structures.
(610.5) Repairs of Power Plant.....	(G508) Repairs of Furnaces, Boilers and Accessories. (G509) Repairs of Steam Engines. (G511b) Repairs of Gas Engines. (G513) Repairs of Miscellaneous Power Plant Equipment.
2441	
(611.5) Repairs of Gas Apparatus.....	(611) Repairs of Benches and Retorts. (G511a) Repairs of Water Gas Sets and Accessories. (612) Repairs of Purification Apparatus. (613) Repairs of Holders. (614) Repairs of Miscellaneous Equipment.
(615) Repairs of Works Tools.	(615) Repairs of Works Tools.
(616) Gas Storage.	(616) Gas Storage.
(617) Gas from other Sources.	(617) Gas from other Sources.
II. Transmission and Distribution Expenses.	**II. Transmission and Distribution Expenses.**
(631) Transmission Pumping.	(631) Transmission Pumping.
(632) Distribution Superintendence.	(632) Distribution Superintendence.
(633) Distribution Supplies and Expenses.	(633) Distribution Supplies and Expenses.
(634a) Gas Meter and Installation Work.	(634a) Gas Meter and Installation Work.
(634b) Work on Consumers' Premises.	(634b) Work on Consumers' Premises.
(635) Repairs of Gas Mains.	(635) Repairs of Gas Mains.
(636) Repairs of Gas Services.	(636) Repairs of Gas Services.
(637) Repairs of Gas Meters.	(637) Repairs of Gas Meters.
(638) Repairs of Distribution Tools.	(638) Repairs of Distribution Tools.
(639) Repairs of Gas Appliances.	(639) Repairs of Gas Appliances.
III. Municipal Street Lighting Expenses.	**III. Municipal Street Lighting Expenses.**
(641) Street Lamp Operating.	(641) Street Lamp Operating.
(642) Street Lamp Repairs.	(642) Street Lamp Repairs.
IV. Commercial Expenses.	**IV. Commercial Expenses.**
(G551) Commercial Administration—Gas.	(G551) Commercial Administration—Gas.
(G552) Promotion Office Expense—Gas.	(G552) Promotion Office Expense—Gas.
(G553) Advertising—Gas.	(G553) Advertising—Gas.
(G554) Canvassing and Soliciting—Gas.	(G554) Canvassing and Soliciting—Gas.

Small Companies.	Large Companies.
V. General and Miscellaneous Expenses.	V. General and Miscellaneous Expenses.
(G833) Salaries and Expenses of General Officers.	(G833) Salaries and Expenses of General Officers.
(G834) Salaries and Expenses of General Office Clerks.	(G834) Salaries and Expenses of General Office Clerks.
(G835) General Office Supplies and Expenses.	(G835) General Office Supplies and Expenses.
(G836) General Law Expenses.	(G836) General Law Expenses.
(G841) Other General Expenses.....	(G837) Miscellaneous General Expenses.
	(G838) Insurance.
	(G839) Relief Department and Pensions.
	(G840) Gas Franchise Requirements.
(G842) General Amortization—Gas.	(G842) General Amortization—Gas.
(G845) Gas Expenses Transferred—Cr.	(G845) Gas Expenses Transferred—Cr.
(G846) Joint Operating Expenses—Cr.	(G846) Joint Operating Expenses—Cr.
2442	
(G847) Injuries and Damages.....	(G847*a*) Accidents and Damages.
	(G847*b*) Law Expenses connected with Damages.
(G848) General Stationery and Printing.	(G848) General Stationery and Printing.
(G850) Store Expenses.	(G850) Store Expenses.
(G851) Stable Expenses.	(G851) Stable Expenses.
(G852) Undistributed Adjustments—Balance.	(G852) Undistributed Adjustments—Balance.
(G853) Duplicate Gas Charges—Cr.	(G853) Duplicate Gas Charges—Cr.

16*b*. Definitions of Gas Operating Expense Accounts.—In the following definitions of accounts the letters and numbers prefixed to the titles are inserted solely for convenience of reference and are no part of the titles or of the definitions:

General Accounts.

I. Production Expenses.
II. Transmission and Distribution Expenses.
III. Municipal Street Lighting Expenses.
IV. Commercial Expenses.
V. General and Miscellaneous Expenses.

I. Production Expenses.

NOTE.—In case the accounting corporation operates two or more separate and distinct plants for the production of gas, it will be required to keep (with the detail herein prescribed) separate accounts covering production at the several plants. In case the circumstances of any corporation make it impracticable to allocate the cost of its works labor among the accounts below prescribed, it should petition the Public Service Commission for permission to consolidate two or more of them. Such application must set out in full the facts which in the judgment of the petitioner make such allocation impracticable.

(601*a*.) Works Superintendence.

Charge to this account the cost of labor of the engineer in charge of works and his assistants, also day and night foreman and station clerks.

(601*b*.) Boiler House Labor.

Charge to this account the cost of labor employed in weighing and handling coal, coke, and breeze from place of storage to boilers; labor employed in operating boilers and engines (including such labor as that of shovellers, weighers, boiler firemen and engineers, and oilers); and labor employed in pumping oil tar from generators through separators to storage tanks, and from storage tanks to boilers. Include also such labor as that of pump house men.

(601*c*.) Retort House Labor.

Charge to this account the cost of labor employed in firing benches, charging and re-charging retorts, patching and scurfing retorts, cleaning pipes and lids, quenching and handling coke
2442¼ used under benches, and handling coal from place of storage to retort house. This includes such labor as that of foremen, firemen, furnacemen, retort and boiler tenders, patchers, pipemen, lid cleaners, coke quenchers, guymen, riggers, shovellers, and wheelers.

(601*d*.) Generator House Labor.

Charge to this account the cost of labor employed in weighing and handling coal and coke from place of storage to charging floor, and in operating, firing, clinkering and cleaning generators. This includes such labor as that of shovellers, weighers, pumpers, generator firemen, and runners.

(601*e*.) Purifier House Labor.

Charge to this account the cost of labor employed in changing purifier boxes, revivifying oxide, and removing spent oxide to refuse pile. This includes such labor as that of foremen and laborers.

(601*f*.) Miscellaneous Labor at Works.

Charge to this account the cost of general labor in and about the works not specifically engaged in the manufacture of gas, such as that of watchmen, janitors, and messengers, laborers employed in cleaning up yards, removing snow, and cleaning out refuse pile.

(602.) Boiler Fuel.

Charge to this account the cost (in storage pile) of fuel used under boilers. This includes cost of fuel used, freight, demurrage charges,

labor employed in discharging and transferring fuel from point of shipper's delivery to place of storage, and cartage employed in discharging and transferring fuel from point of delivery to place of storage.

NOTE.—If boiler fuel is delivered from point of shipper's delivery to boilers by other than boiler house labor, cost of such labor should be added to cost of fuel.

(603.) Water.

Charge to this account the cost of water used for gas production.

(604*a*.) Fuel Under Retorts.

Charge to this account the cost (in storage pile) of fuel used under retorts. This includes cost of fuel used, freight, demurrage charges, and labor and cartage employed in discharging and transferring fuel from point of shipper's delivery to storage pile.

NOTE.—If fuel is delivered from storage to retort house by other than retort house labor, cost of such labor should be added to cost of fuel.

(604*b*.) Coal Carbonized.

Charge to this account the cost (in storage pile) of gas coal used in retorts. This includes invoice cost of coal used, freight, demurrage charges, and labor and cartage employed in discharging and transferring coal from point of shipper's delivery to storage pile.

NOTE.—If coal is delivered from storage to retort house by other than retort house labor, cost of such labor should be added to cost of coal.

2442½ (605.) Coal Gas Enricher.

Charge to this account the cost (in storage) of enricher materials used in enriching coal gas. This includes cost of enricher used, freight, demurrage charges, and labor and cartage employed in transferring enricher from point of shipper's delivery to storage.

(606.) Generator Fuel.

Charge to this account the cost (in storage pile) of fuel used in generators. This includes invoice cost of fuel used, freight, demurrage charges, and labor and cartage employed in discharging and transferring fuel from point of shipper's delivery to storage pile.

NOTE.—If generator fuel is delivered from storage to generator house by other than generator house labor, cost of such labor should be added to cost of generator fuel.

(607.) Water Gas Oil.

Charge to this account the cost (in storage tanks) of gas oil or naphtha used in making water gas. This includes invoice cost of oil used, freight, demurrage charges, and labor and cartage employed in getting oil from point of shipper's delivery to storage tanks.

(608.) Purification Supplies.

Charge to this account the cost of material used in gas purification. This includes the average cost of oxide actually used (the invoice cost and freight, plus shavings, plus labor and cartage necessary to store it, plus the cost of mixing it), and the invoice cost of lime actually used.

(609.) Miscellaneous Works Expense.

Charge to this account the cost of sundry supplies and expenses in connection with the works not includible in other accounts. This includes lubricating oil, waste and packing, and other small materials of like nature used in gas production; also incidental items, such as telephone, ice, brooms, mops, kerosene, soap, towels, and similar expenses.

(610.) Repairs of Works and Station Structures.

Charge to this account the cost of all repairs of works and station structures, including permanent piers and other foundations. Such structures include retort houses, generator houses, purifier houses, engine houses, boiler houses, meter houses, coal sheds, coke sheds, tar houses and wells, oil tanks, and other structures for storage of fuel to be consumed or carbonized in the production of gas and the operations auxiliary thereto; structures for residuals and byproducts; appurtenant walks, fences, drives, tramways, trestles, etc., and all fixtures permanently attached to such structures and made a part thereof; also all buildings, holding houses, and other structures at outlying holder stations, except the holders and their appurtenances.

2443 NOTE.—Repairs of short-lived and especially provided foundations and settings for furnaces and boilers, steam engines, gas engines, pumps, generators, benches, condensers, washers, scrubbers, purifiers, etc., shall not be included herein. Such foundations and settings and the apparatus and machinery to which they pertain are not intended to be included under the term fixtures as above used. Nor shall repairs of gas holders be included in this account.

(6508.) Repairs of Furnaces, Boilers, and Accessories.

Charge to this account the cost of repairing all furnaces, boilers, and boiler apparatus and accessories devoted to the production of steam for use in producing gas and in furnishing motive power in gas works and stations. This includes boilers and valves thereto

attached, appurtenant furnaces and grates, and flues leading to smokestacks and chimneys, and the specially provided foundations and settings of such boilers and appurtenances. It also includes mechanical stokers and other like apparatus for regulating the supply of fuel, etc., feed and hot water heaters and economizers, injectors, filters, feed pumps, blower engines, coal conveyors, ash conveyors, water pipes, steam traps, drains, and separators; and pipes for conducting steam from the boiler to the engine, to condensers, or to the gas producers, exhaust pipes, etc. It does not include steam pipes whose primary purpose is the heating of buildings.

(G509.) Repairs of Steam Engines.

Charge to this account the cost of repairing all steam engines devoted to use as prime movers in gas works. This includes the specially provided foundations and settings of such engines. The engine, whether reciprocating or rotary (such as steam turbines), shall be considered to include the throttle or inlet valve and the governor; also condensers and air pumps, but not the steam pipe leading from the boiler, nor the exhaust pipe.

(G511*b*.) Repairs of Gas Engines.

Charge to this account the cost of repairing all gas engines devoted to use as prime movers in gas works and stations. This includes the specially provided foundations and settings of such engines. The engine includes the inlet valve, governor, and ignition and starting apparatus, but not the pipe leading from the gas holder, nor the exhaust pipe.

(G513.) Repairs of Miscellaneous Power Plant Equipment.

Charge to this account the cost of repairing all miscellaneous power plant equipment at gas works which is not includible in any of the foregoing accounts. This includes such mechanical apparatus as belts, pulleys, hangers, countershafts, and other apparatus intermediary between the prime mover and the apparatus operated, cranes, hoists, etc., and machine tools and such other tools at power plants as are proper to be capitalized, etc.

2444 (611.) Repairs of Benches and Retorts.

Charge to this account the cost of all repairs of benches, including the retorts and their settings, and auxiliary piping, including ascension pipes, and foul and hydraulic mains.

(G511*a*.) Repairs of Water Gas Sets and Accessories.

Charge to this account the cost of repairing all water gas generators and accessories devoted to the production of gas, the specially provided foundations and settings for such water gas sets, and the flues leading therefrom to smokestacks and chimneys. This account

includes not only generators, carbureters, superheaters, seals, and piping connected therewith, but also blast apparatus, oil and steam supplying apparatus, oil heaters, etc. It does not include pipes whose primary purpose is the warming of buildings.

(612.) Repairs of Purification Apparatus.

Charge to this account the cost of all repairs of the apparatus for purifying gas, including condensers, washers, scrubbers, purifiers, tar extractors, etc., and their specially provided foundations and settings.

(613.) Repairs of Holders.

Charge to this account the cost of all repairs of gas holders and appurtenances at works and of those at district stations.

NOTE.—Repairs of holder housings shall be charged to account No. 610, "Repairs of Works and Station Structures."

(614.) Repairs of Miscellaneous Equipment.

Charge to this account the cost of repairing all accessory equipment and apparatus used in the production and storage of gas not specifically provided for in the foregoing accounts. This account includes repairs of exhausters, station meters, governors, etc.; apparatus for charging retorts; conveyors for disposing of coke and other products and residuals; tar and ammonia apparatus, pumps, pipes, tanks, etc.

(615.) Repairs of Works Tools.

Charge to this account the cost of repairing such tools and implements used in the production and storage of gas as have been capitalized.

(616.) Gas Storage.

Charge to this account the cost of labor and material (except repairs) employed in storing and regulating the flow of gas to distributing mains by holder pressure. This includes labor of firemen, engineers, valvemen, and superintendents when engaged on gas storage; and cost of coal, coke, water, and incidentals.

(617.) Gas from Other Sources.

Charge to this account the cash purchase price of gas bought from other companies for distribution through the system of the
2445 accounting corporation; also the corporation's proportion of the cost of production (including maintenance, but not including any pure rent or return upon the value of property employed) of gas produced by another concern for the use of the corporation under any joint arrangement for the sharing of expense

upon the basis of the relative amounts of benefit to the several participants.

II. Transmission and Distribution Expenses.

(631.) Transmission Pumping.

Charge to this account the cost of pumping gas through mains to the distribution system, including inspection and regulation of booster governors.

NOTE.—In gas operations, when gas is delivered to the supply system outside the works at substantially works pressure, the pipe system, including mains, feeders, and services (and supply pipes to outlying holders, if any), shall all be classed in the distribution system. When the pressure is raised by means of boosters and the gas is delivered to the pipes at higher than works pressure, and is later reduced in pressure and delivered to the distribution system proper, that portion of the pipe system used for conducting gas at the raised pressure shall be classed as the transmission system.

(632.) Distribution Superintendence.

Charge to this account the cost of all labor employed in superintending the operation of the street department, fitting and repair shops, including the salaries of superintendents, foremen, clerks, timekeepers, messengers, watchmen, and janitors employed in the distribution department.

(633.) Distribution Supplies and Expenses.

Charge to this account the cost of office maintenance and incidental expenses of the street and shop departments, including light, heat, telephone, water, ice, etc.

NOTE.—When the distribution office is combined with the works office or commercial office, charges like rent, light, etc., should be divided between them in a fixed ratio, based upon the relative amounts of use.

(634*a*.) Gas Meter and Installation Work.

Charge to this account the cost of labor employed and material used in locking and unlocking meters, building inspection, pumping drip, cleaning service or house pipe with pump; setting, removing, re-setting and changing position of meters, and temporary repairs of leaks in house piping.

(634*b*.) Work on Consumers' Premises.

Charge to this account the cost of installing gas stoves and other appliances on the premises of consumers, and of work done for con-

sumers in maintaining the efficiency of their service, including complaint work and other work done in houses beyond the end of the meter outlet connection. This includes the cost of adjusting or changing location of house pipes, gas burners, fixtures, stoves
2446 and appliances, and the cost of new pillars, tips, burners, or devices not chargeable to repair accounts; it does not include such installation expense items as are provided for in the preceding account.

Credit to this account the cost element of receipts for jobbing work which the accounting corporation has performed as agent, under agency contracts.

NOTE A.—Any profit or commission accruing to the corporation on jobbing work performed as agent shall be credited to account No. 441 "Gas Merchandise and Jobbing Revenue;" to that account shall also be credited all receipts from gas jobbing not done under agency contracts.

NOTE B.—Credits and debits to this account must be analyzed in annual reports to the Public Service Commission.

(635.) Repairs of Gas Mains.

Charge to this account the cost of labor and material employed in repairing mains. This includes labor of foremen, inspectors, caulkers, tappers, pavers, drillers, skilled laborers, general laborers, and similar workers on street department payrolls, while engaged in repairing, altering, overhauling, changing position of or removing street mains; protecting exposed or undermined mains, searching for and repairing leaks in mains, and paving over any of the above work; also material and cartage in connection with the above work.

NOTE.—This account must be so kept as to enable the corporation to show separately in its annual report to the Public Service Commission the cost of repairing trunk lines and mains used for transmission of gas, and the cost of repairing those used for distribution.

In gas operations, when gas is delivered to the supply system outside the works at substantially works pressure, the pipe system, including mains, feeders, and services (and supply pipes to outlying holders, if any) shall all be classed in the distribution system. When the pressure is raised by means of boosters and the gas is delivered to the pipes at higher than works pressure, and is later reduced in pressure and delivered to the distribution system proper, that portion of the pipe system used for conducting gas at the raised pressure shall be classed as the transmission system.

(636.) Repairs of Gas Services.

Charge to this account the cost of labor and material employed in repairing services. This includes the same classes of labor as shown in the account (No. 635), "Repairs of Gas Mains," while engaged in repairing, altering, removing, relaying, cutting off, increasing the size of and changing the position of services; searching for and

repairing leaks in services; and paving over any of the above work; also material and cartage in connection with the work shown above.

(637.) Repairs of Gas Meters.

Charge to this account the cost of testing and repairing consumers' meters.

(638.) Repairs of Distribution Tools.

Charge to this account the cost of sharpening and repairing tools and implements used in the street department and the fitting and repair shops and charged to capital accounts.

2447 (639.) Repairs of Gas Appliances.

Charge to this account the cost of repairs of gas lamps, stoves, engines, and other appliances owned by the corporation and rented to consumers.

III. Municipal Street Lighting Expenses.

(641.) Street Lamp Operating.

Charge to this account the cost of labor employed in cleaning and lighting street lamps, and extinguishing street lights; in inspecting and supervising the street lighting district; in reporting on re-lights and discontinues, and watching the hours of lighting and extinguishing; and the incidental expenses of street lamp operating.

(642.) Street Lamp Repairs.

Charge to this account the cost of labor and material consumed in fitting up new lamp posts, re-fitting standpipes, cleaning services, cutting off services, re-caulking columns, removing posts, re-setting posts, re-fitting columns, straightening posts, and all other work of a similar character necessary to maintain the street lighting system to the degree of efficiency required by the city; also re-paving over openings made necessary by such work.

IV. Commercial Expenses.

(G551.) Commercial Administration—Gas.

Charge to this account all matters provided for under the following heads:

a. Commercial Department General Labor.—This head includes the cost of labor of superintendents and assistants, chief clerks, stenographers, general clerks, high bill clerks, switchboard operators, messengers, janitors, and watchmen employed in the commercial department.

b. Commercial Department Accounting.—This head includes the cost of labor of bookkeepers and clerks employed on consumers' accounts.

c. Commercial Department Contracts.—This head includes the cost of labor of clerks and other employees in the application or contract bureau.

d. Commercial Department Collecting.—This head includes the cost of labor of regular and prepayment collectors.

e. Meter Reading.—This head includes the cost of labor of meter readers.

f. Commercial Office Supplies and Expenses.—This head includes the cost of supplies and the incidental expenses of the commercial office.

(G552.) Promotion Office Expense—Gas.

Charge to this account the matters prescribed under the following heads:

2448 *a.* Promotion Management.—This covers the cost of administration of the department maintained for the promotion or development of gas consumption, including that portion of the salaries and expenses of management and clerks in agency and contract departments assignable to new business.

b. Demonstrations.—This covers the cost of labor and expenses incurred in exhibiting and demonstrating the use of gas appliances for the purpose of obtaining new business.

c. Other Promotion Office Expense.—This covers the office expenses of the promotion or new business department.

(G553.) Advertising—Gas.

Charge to this account the matters prescribed under the following heads:

a. Advertising Salaries and Expenses.—This covers the salaries and personal expenses of the advertising manager and clerks.

b. Advertising Sundries.—This covers the cost of commercial advertising sundries, including booklets, dodgers, newspaper advertisements, posters, bulletins, and all related items.

NOTE.—This account does not include the expense of advertising residuals, such being chargeable to the proper residual expense account.

(G554.) Canvassing and Soliciting—Gas.

Charge to this account all expenses incurred in soliciting new business, including wages, commissions, and personal expenses of

canvassers, cost of preparing estimates, engineering advice on gas installation, etc., and office sundries in connection therewith.

V. General and Miscellaneous Expenses.

(G833.) Salaries and Expenses of General Officers.

Charge to this account the salaries and traveling and incidental expenses of the chairman of the board, president, vice-president, treasurer, secretary, comptroller, general auditor, general manager, assistant general manager, chief engineer, general superintendent, purchasing agent, and all other officers whose jurisdiction extends to the entire system and whose services can not be satisfactorily allocated to the several departments.

(G834.) Salaries and Expenses of General Office Clerks.

Charge to this account the salaries and traveling and incidental expenses of general office auditors, bookkeepers, cashiers, paymasters, stenographers, clerks employed in counting cash, and all other clerks employed in the general office.

NOTE.—Cost of labor of clerks in the commercial department shall be charged to the account (No. G551), "Commercial Administration—Gas." (See page 46.)

(G835.) General Office Supplies and Expenses.

Charge to this account the cost of office supplies, repairs of office furniture, and renewals of such furniture as has not been
2449 capitalized; wages of janitors, porters, and messengers; rent of rooms in office buildings, repairs of such rented rooms, and all other miscellaneous expenses of general offices. Office expenses of department officers must be charged to the proper departmental accounts.

NOTE.—Rents charged to this account will be required to be reported separately.

(G836.) General Law Expenses.

Charge to this account all law expenses except those incurred in the defense and settlement of damage claims. This includes salaries and expenses of all counsel, solicitors, and attorneys, their clerks and attendants, and expenses of their offices; cost of law books, printing briefs, legal forms, testimony, reports, etc.; fees and retainers for services of attorneys not regular employees; court costs and payments of special, notarial, and witness fees not provided for elsewhere; expenses connected with taking depositions, and all law and court expenses not provided for elsewhere.

NOTE.—The compensation of the general solicitor or counsel or other attorneys engaged partly in the defense or settlement of damage

suits and partly in other legal work, should be properly apportioned between this account and the account (No. G847b), "Law Expenses Connected with Damages."

(G837.) Miscellaneous General Expenses.

Charge to this account the cost of telephone service, telegrams, and other miscellaneous expenses (including all expense specially incurred in connection with the utilization and sale of residuals and byproducts, such as coke, tar, ammonia, carbon, and other residuals and byproducts, etc.) connected with the general management not otherwise provided for.

NOTE.—Charges to this account must be made in such wise as to enable the corporation to show separately the following matters:

a. Coke expense, including the cost of all labor and supplies specially consumed and expense specially incurred in the disposal of coke over and above what would be necessitated by such disposition if the coke were not sold. This includes the cost of any special preparation of the coke for sale and the cost of hauling such coke to points of delivery.

b. Tar expense, including the cost of all labor and supplies specially consumed and all expense specially incurred in the disposition of tar over and above the expense that would be involved if such tar were consumed by the corporation. If both coal gas and water gas are manufactured, and the resulting tars are separately disposed of, the tar expense shall be stated for each.

c. Ammonia expense, including the cost of all labor and supplies specially consumed and all expense specially incurred in the preparation and sale of ammonia or ammoniacal liquor over and above what would be involved if such liquor were consumed or wasted by the corporation.

d. Other residuals and byproducts expense, including the cost of all labor and supplies specially consumed and expense specially incurred in the preparation and disposition of other residuals and byproducts than those provided for under the foregoing three heads, over and above what would be involved if such residuals and byproducts were consumed by the corporation or wasted.

e. Other miscellaneous expense connected with gas operations and not elsewhere provided for.

(G838.) Insurance.

Charge to this account premiums paid to insurance companies for fire, fidelity, boiler, casualty, burglar, and all other insurance; also amounts set aside as an insurance reserve.

2450 NOTE.—In their reports to the Public Service Commission corporations will be required to report the charges made to

this account for the various kinds of insurance, and for self-insurance.

(G839.) Relief Department and Pensions.

Charge to this account all salaries and expenses incurred in connection with conducting a relief department; also contributions made to such department; also all pensions paid to retired employees, and expenses in connection therewith.

(G840.) Gas Franchise Requirements.

Charge to this account the cost of all gas and other materials and supplies furnished to municipal corporations in compliance with franchise requirements and for which no payment is received by the corporation; also of all direct expense, such as paving and other like matters, incurred in compliance with such requirements and for which no reimbursement is received by the corporation. Amounts charged to this account for which there is no direct money outlay shall be credited to the below provided account (No. G853), "Duplicate Gas Charges—Cr."

(G842.) General Amortization—Gas.

Charge to this account month by month the amount estimated to be necessary to cover such wear and tear and obsolescence and inadequacy as have accrued during the month in the tangible gas capital of the corporation; and such portion of the life of intangible fixed capital as has expired or been consumed during the month; and the amount estimated to be necessary to provide a reserve to cover the cost of property destroyed by extraordinary casualties; less the amounts charged for that month to the various repair accounts in Gas Operating Expenses. The amount charged (or credited) to this account shall be concurrently credited (or charged) to the reserve account (No. 374), "Accrued Amortization of Capital." (See page 28.)

NOTE A.—Until otherwise ordered, the "amount estimated to be necessary to cover such wear and tear and obsolescence and inadequacy as have accrued during" any month shall be based on a rule determined by the accounting corporation. Such rule may be derived from a consideration of the said corporation's history and experience during the preceding five years, and the accrual may be on the basis of amount of gas sold. Amortization of intangible capital shall likewise be based on rule. Whatever may be its basis, such rules and a sworn statement of the facts and expert opinions and estimates upon which they are based shall be filed with the Public Service Commission on or before January 1, 1909; each amendment of any such rule and a sworn statement of the facts and expert opinions and estimates upon which such amendment is based shall be filed with the Public Service Commission before it is used by the accounting corporation, and shall show the date when it is to be

effective. Such rules and statements shall be filed upon sheets 8½ x 11 inches or 9½ x 12 inches and shall be entitled "Rule of the (here naming the accounting corporation) concerning Amortization."

NOTE B.—When any capital is retired from service, the amount (estimated if not known) originally charged to a capital account in respect thereof shall be credited to such capital account, and (except as provided in the account (No. G100), "Fixed Capital, December 31, 1908") the original money cost of such capital, less salvage, if any, shall be charged to the reserve account, "Accrued Amortization of Capital," any necessary adjusting entry being made in the proper account under "Corporate Surplus or Deficit." Where capital is substantially continuous and can not be satisfactorily individualized, it shall be kept in efficient operating condition through repair, and the renewals and replacements of parts thereof shall be considered repairs. In the case of buildings, towers, bridges, trestles, and other separate structures capable of being readily individualized, charges to this account must be sufficient to provide (in respect of such capital and except as provided in the account (No. G100), "Fixed Capital, December 31, 1908") in the account "Accrued Amortization of Capital" by the time such structures go out of service a reserve equal to the original money cost thereof, less salvage, to which account such original cost, less salvage, shall be charged.

2451

(G845.) Gas Expenses Transferred—Cr.

Credit to this account the proportion of operating expenses (including depreciation and other amortization as well as repairs) chargeable to other coordinate departments (such as electric or street railroad) within the same corporation, but defrayed in the first instance by the gas department.

NOTE.—Do not credit to this account any allowance in the nature of rent or return upon the cost or value of property.

(G846.) Joint Operating Expense—Cr.

When any plant or equipment is maintained or operated by the accounting corporation for the joint benefit of itself and others under an arrangement for apportioning (on the basis of the relative amounts of benefit to the several participants) the operating expenses, the portion of such expenses chargeable to others under the arrangement shall be credited to this account. The portion so credited must not include any allowance for profit or return upon the value of such property.

NOTE A.—The foregoing should be read in connection with the definition of revenue account (No. 443), "Joint Gas Rent Revenue." (See page 36.)

NOTE B.—In the case of the production of gas part of which is transferred to another, if the arrangement under which such pro-

duction occurs does not provide for the apportionment of expenses, the entire amount charged for the portion supplied is to be credited to the appropriate revenue account covering the sale of gas. (See the account (No. 438), "Other Gas Corporations," page 34.)

(G847*a*.) Accidents and Damages.

Charge to this account all expenses (other than law expenses provided for in the succeeding account) on account of persons killed or injured and property damaged in connection with the operation of the plant, as enumerated under the following heads:

(*a*) Claim Department Expenses.—This head includes salaries and expenses of claim agents, investigators, adjusters, and others engaged in the investigation of accidents and adjustment of claims.

(*b*) Medical Expenses.—This head includes salaries, fees, and expenses of surgeons and doctors; nursing, hospital attendance, medical and surgical supplies; fees and expenses of coroners and undertakers; and contributions to hospitals.

(*c*) Injuries to Employees.—This head includes amounts paid in settlement of claims of employees for injuries arising in the course of their employment; also wages paid to disabled employees while off duty.

2452 (*d*) Other Personal Injuries and Property Damages.—This head includes amounts paid in settlement of claims of persons other than employees for personal injuries sustained in connection with the operation of the plant, and amounts paid in settlement of claims for damage to property not owned by the accounting corporation.

(*e*) Other Accident Expenses.

NOTE A.—If it is desired that the charge to operating expenses on account of injuries and damages shall be upon some arbitrary basis, the amount so charged shall be credited to the account (No. 381), "Casualties and Insurance Reserve," and the actual disbursements above enumerated shall be charged against such reserve account.

NOTE B.—The amount charged under the head (*c*), "Injuries to Employees," must be separately stated in annual reports to the Public Service Commission.

(G847*b*.) Law Expenses Connected with Damages.

Charge to this account all law expenses in connection with the defense or settlement of damage claims, including—

(*a*) Salaries and Expenses of Attorneys.—A proper proportion of the salary and expenses of the general solicitor or counsel, and salaries, fees, and expenses of attorneys engaged in this work.

(*b*) Court Costs and Expenses.—Fees of court stenographers, expenses connected with taking depositions, and other court expenses.

(*c*) Law Printing.—Cost of law books, and cost of printing of briefs, court records, and similar papers.

NOTE A.—If it is desired that the charge to operating expenses on account of law expenses in connection with damages shall be upon some arbitrary basis, the amount so charged shall be credited to the account (No. 381), "Casualties and Insurance Reserve," and the actual disbursements above enumerated shall be charged against such reserve account.

NOTE B.—The compensation of the general solicitor or counsel and other attorneys engaged partly in the defense or settlement of damage suits and partly in other legal work should be properly apportioned between this account and the account (No. G836), "General Law Expenses."

(G848.) General Stationery and Printing.

Charge to this account all expenses for stationery and printing, stationery supplies, and postage, except as hereinafter provided.

The cost of printing briefs and other legal papers shall be charged to the account (No. G836), "General Law Expenses," or (G847), "Law Expenses Connected with Damages," in accordance with the purpose of the printing.

The cost of printing signs, posters, and other advertising matter shall be charged to the account (No. G553), "Advertising—Gas."

The cost of such mechanical calculators, typewriters, duplicating machines, and other office appliances as are not properly capitalized, shall, if for use in general offices, be charged to the account (No. G835), "General Office Supplies and Expenses"; or if for the use of departmental officers, to the proper departmental accounts.

(G850.) Store Expenses.

Charge to this account all salaries and expenses in connection with storerooms, including cost of sending materials and supplies from general storerooms to branch storerooms, and the collection of scrap material.

2453 (G851.) Stable Expenses.

Charge to this account the cost of feed, keep, and shoeing of horses, wages of stablemen, hostlers, veterinary expenses, and all other expenses of stabling horses; also the cost of repairing harness and vehicles.

NOTE.—The cost of horses purchased to replace others should be charged to the account (No. G122), "General Equipment."

(G852.) Undistributed Adjustments—Balance.

At least once a year an inventory of materials and supplies shall be taken, and the difference (in respect of any particular class of materials and supplies) between the ledger and inventory balances debited or credited to this account in case it cannot be assigned to a specific account. Credit to this account all discounts recovered through the prompt payment of bills for materials and supplies consumed in operation, unless such discounts are applied to the particular bills.

NOTE.—Where materials and supplies have been used in construction as well as in operation, a suitable proportion of the shortages or overages disclosed by the inventory may be debited or credited to the account (No. G286), "Miscellaneous Construction Expenditures."

(G853.) Duplicate Gas Charges—Cr.

Credit to this account all charges made to any account in gas operating expenses in respect of any gas or other product of gas operations of the corporation consumed therein.

17. Expenses of Outside Operations.—The detailed expense accounts for other than gas operations will be elsewhere provided for.

18. Tax accounts.—An account shall be kept of the taxes chargeable against each particular class of operations, and one for those chargeable against non-operating revenues. Each tax account shall be appropriately entitled (as e. g., "Taxes Assignable to Gas Operations," "Taxes Assignable to Non-operating Revenues," etc.), and shall be so kept as to show separately the following:

State Franchise Tax on Capital Stock,
State Franchise Tax on Gross Earnings,
Special Franchise Tax,
Taxes on Land (exclusive of improvements),
Taxes on Improvements on Lands,
Taxes on Personal Property,
Other Taxes (showing in detail).

To each tax account there shall be charged monthly the amount of taxes accruing during the month, and such amount shall be concurrently credited to the account "Taxes Accrued" (or to the account "Prepaid Taxes," if such tax is prepaid). The amount of taxes accruing during any month shall, where the levy is unknown, be estimated as nearly as may be, and when the levy is ascertained the matter shall be adjusted during the remainder of the tax year. For example, if at the beginning of a tax year the taxes on a particular class of property are estimated to be $600 for the year, the monthly charge on account of such tax should be $50 until the amount
454 of the levy becomes known. If during, say, the fifth month, it is found that the levy for the year is $640, there will already have been charged up four months at $50 per month, leaving $440 to be charged during the remainder of the year, or $55 for the fifth month and each month thereafter during the remainder of the year. Such taxes as pertain to two or more classes of operations or to

non-operating revenues should be apportioned with regard to such operations and non-operating revenues upon an equitable basis, which basis will be required to be reported in the annual report of the corporation to the Public Service Commission.

19. Uncollectible Bills.—For uncollectible gas bills the following account is provided.

(G870.) Uncollectible Gas Bills.

When, after a reasonably diligent effort to collect, any account stated for gas sold has proved impracticable of collection, it shall be charged to this account and credited to the account receivable in which theretofore charged.

20. Definitions of Non-operating Revenue Accounts.—In the following definitions of accounts the letters and numbers prefixed to the titles are inserted solely for convenience of reference and are no part of the titles or of the definitions:

(G901*b*.) Rent Accrued from Lease of Gas Plant.

Credit to this account monthly as they accrue all revenues flowing to the corporation from its interests in gas plant or equipment held by others under some form of lease whereby it surrenders possession of such property. This account contemplates that the taxes on property so held are payable by the tenant in possession and charged by him to the appropriate tax account. If under the contract of lease such taxes are payable by the lessor or its assignee, such taxes shall be charged to this revenue account and not to any of the lessor's tax accounts, nor to any of its expense accounts.

(G901*d*.) Miscellaneous Rent Revenues.

Credit to this account monthly as they accrue all miscellaneous rent revenues flowing to the corporation as a return upon leased property other than gas plant and equipment. Such revenues shall be classified as follows:

Leasehold Revenues.—That is to say, all revenues flowing to the corporation from its interests in property held by others under any lease the entire term of which is greater than one year. This contemplates that the taxes on property so held are payable by the tenant in possession and charged by him to the appropriate tax account. If under the contract of lease such taxes are payable by the lessor or its assignee, such taxes shall be charged to this revenue account and not to any of the lessor's tax accounts, nor to any of its expense accounts.

2455 Other Rent Revenues.—That is to say, all revenues flowing to the corporation from its interests in property held by others under any lease or contract for a term not to exceed one year from the beginning of the term, or held at will or upon sufferance. This account contemplates that the taxes on property of this character

shall be paid by the landlord and charged to the appropriate tax account. If under the contract covering the holding for terms of one year or less, or at will, the taxes are to be paid by the tenant, the amount of such taxes shall be credited month by month to this account as they accrue, and shall correspondingly be charged to the tax account covering taxes on property of this character.

Entries in this account must be made in such wise as to show separately the classes above indicated, which will be required to be stated separately in the annual reports to the Public Service Commission.

(G902.) Interest Revenues.

Credit to this account monthly as it accrues all—

Interest from Bound Investments.—That is to say, all interest accruing to the corporation upon such of its interest-bearing bound investments (as hereinbefore defined) as are liabilities of solvent concerns and individuals.

Interest from Free Investments.—That is to say, all interest accruing to the corporation upon such of its interest-bearing free investments (as hereinbefore defined) as are liabilities of solvent concerns and individuals.

Interest from Other Sources.—That is to say, all interest accruing to the corporation upon its interest-bearing current assets, special deposits, and all other assets not provided for under the two foregoing heads, where such interest is a liability, actual or contingent, of solvent concerns and individuals.

Entries in this account must be made in such wise as to show separately the classes above indicated, which will be required to be stated separately in the annual reports to the Public Service Commission.

(G903.) Dividend Revenues.

Credit to this account at their cash value, and as of the date when collectible, all—

Dividends on Bound Investments.—That is to say, all dividends declared by solvent concerns upon stocks held by the corporation among its bound investments.

Dividends on Free Investments.—That is to say, all dividends declared by solvent concerns upon stocks held by the corporation among its free investments.

Entries in this account must be made in such wise as to show separately the classes above indicated, which will be required to be stated separately in the annual reports to the Public Service Commission.

(G904.) Profits from Operations of Others.

Whenever, in accordance with the terms of any contract, the corporation is entitled to participate in the profits resulting from
2456 the operations of others, all revenues accruing to the corporation from such source shall be credited to this account.

NOTE.—This account does not include any dividends on stocks. Such dividends should be credited to the account (No. G903), "Dividend Revenues."

(G905.) Miscellaneous Non-operating Revenues.

To this account shall be credited all non-operating revenues accruing to the corporation and not provided for in any of the foregoing accounts.

21. Definition of Non-operating Revenue Deductions Account.—To an account entitled "Non-operating Revenue Deductions" shall be charged all matters provided for under the following sub-accounts:

A. Rent Expenses. This sub-account includes all matters provided for under the following two heads:

Leasehold Expense.—That is to say, all expense arising in connection with the procuring of revenues from leaseholds having terms greater than one year, including the cost of negotiating contracts, advertising for tenants, fees paid conveyancers, collector's commissions, cost of enforcing payment of rent, cost of ousting tenants, etc., and all other expense arising in connection with such leaseholds. This applies only to leases conveying the property out of the possession of the corporation, and it includes the expense accruing while the property is idle and awaiting an occupant. This head includes cost of maintenance of the property when such cost is borne by the corporation. Such maintenance includes depreciation as well as reparable wear and tear. It does not include taxes.

Other Rent Expense: This head is analogous to the preceding head "Leasehold Expense," and differs from that only in that this provides for expense in connection with property let for a term of one year or less.

b. Interest Expense.—This sub-account includes all expense arising in connection with procuring interest upon investments, such as expense of collection, expense of investigating delay in payment, expense of enforcing payment, and the like. It does not include taxes on such investments.

c. Dividend Expense.—This sub-account includes all expense arising in connection with the collection of dividends on stocks of other corporations; also all expense incurred in the investigation of the affairs of the corporations whose stocks are held, whether for the

purpose of detecting mismanagement or for the purpose of inducing the declaration of dividends, and all expense connected with enforcing payment of dividends when declared. It does not include taxes on such investments.

d. Others' Operations Expense.—This sub-account includes the cost of negotiating contracts whereunder the corporation is to participate in profits resulting from the operations of others; also all expense of collecting the corporation's proportion of such profits, and all expense connected with procuring the modification or the dissolution of any such contract.

e. Miscellaneous Non-operating Expense.—This sub-account includes all non-operating expense (as hereinbefore defined) which is not provided for in the foregoing sub-accounts.

2457 *f.* Non-operating Taxes.—This sub-account includes all taxes accruing upon non-operating property and all assignable to non-operating revenues.

g. Uncollectible Non-operating Revenues.—When any non-operating revenues are judged by the corporation to be uncollectible, the amount thereof shall be credited to the account in which theretofore charged, and charged to the account "Non-operating Revenue Deductions" under the head of "Uncollectible Non-operating Revenues."

NOTE.—In annual reports of corporations to the Public Service Commission this account will be required to be fully analyzed.

22. Income Deductions.—The sum total of the credit balances in the revenue accounts for any particular operation at the close of a fiscal period gives the gross revenue from that operation for that period. This gross revenue diminished by the operating expenses, the taxes, and the uncollectible bills assignable to such operation for the period, gives the income from that operation for the period. Similarly for the non-operating revenues, the non-operating expenses, and the non-operating taxes.

The aggregate of the incomes from the several operations and the nonoperating income is the gross income applicable to corporate and leased properties. As has before been said, the gross income is, in the usual case, subject to various compulsory deductions, and these are hereinafter called Income Deductions.

23. Definitions of Income Deduction Accounts.—In the following definitions the letters and numbers prefixed to the titles of the several accounts are inserted solely for convenience of reference and are no part of the titles or of the definitions:

(921.) Interest Deductions.

Charge to this account monthly (or as otherwise below directed) all matters provided for under the following five heads:

Absolute Interest Accrued on Funded Debt.—This head includes

all interest accruing absolutely on the outstanding funded debt of the corporation.

Contingent Interest Accrued on Funded Debt.—This head includes, when the contingency occurs, all interest accruing contingently on the outstanding funded debt of the corporation. This includes such matters as interest on income bonds.

Interest Accrued on Receiver's Certificates.—This head includes all interest accruing on receiver's certificates which are liens upon the property of the corporation or any part of it.

Interest Accrued on Other Unfunded Debt.—This head includes all interest accruing on all unfunded debt of the corporation except receiver's certificates.

Interest Accrued on Debenture Stocks.—This head includes all interest accruing on the outstanding debenture stocks of the corporation.

Entries in the account "Interest Deductions" must be made in such wise as to show separately the classes above indicated, which will be required to be stated separately in the annual reports to the Public Service Commission.

2458 (922*b*.) Rent for Lease of Other Plant.

Charge to this account monthly all amounts accrued against the accounting corporation for rent of gas plant and equipment which it holds under some form of lease from another company or corporation and of which it has the exclusive possession. Taxes accrued on such plant and equipment shall not be charged to this account but to the appropriate Taxes account. If such taxes are (under the contract of lease) payable by the lessor or reversioner, they shall be credited to this account and charged to the appropriate Taxes account. Such taxes, when paid by the lessor or reversioner, shall be charged to its rent revenue account and not to its Taxes account, to the end that taxes upon such plant and equipment shall be reported by the corporation in possession.

(922.) Other Rent Deductions.

Charge to this account the matters provided for in the following sub-accounts:

f. Joint Facility Rents.—Where any plant or equipment is maintained or operated by another corporation for the joint benefit of the accounting corporation and others under a joint arrangement for sharing the expense (on the basis of the relative amounts of benefit to the several participants), if such joint arrangement provides for including in the charge against the accounting corporation any pure rent, profit, or return upon such plant or equipment over and above depreciation and other expense of maintenance and operation, such pure rent, or profit, or return upon property shall be charged to this sub-account.

NOTE.—This should be read in connection with the revenue account (No. 443), "Joint Gas Rent Revenue." (See page 36.)

g. Miscellaneous Rent Deductions.—This sub-account includes all miscellaneous rents payable not elsewhere provided for.

NOTE A.—Rents for furnished offices (and for office rooms in office buildings heated and lighted by the landlord) should not be charged to this account, but to the appropriate expense account.

NOTE B.—Entries in this account must be made in such wise as to permit an analysis in the annual report of the corporation in accordance with the sub-accounts above defined.

(923.) Sinking Fund Accruals.

Charge to this account month by month all accruals required to be made to sinking funds in accordance with the provisions of mortgages or other contracts requiring the establishment of sinking funds. All accruals to sinking or other funds created voluntarily by the corporation and not in pursuance of the provisions of any mortgage or other contract or of the requirements of law shall be excluded herefrom.

(924.) Guaranties of Periodic Payments.

Charge to this account all unsecured accruals of obligations arising under contracts whereby the corporation has guaranteed the annual or more frequent periodic payment of money or performance of other obligation on the part of another corporation
2459 or person, and because of the default of such other corporation or person the liability of the present corporation has become actual. This account does not include such matters as guaranties of payment of principal of funded debt and other similar things relating to a series of years, nor does it include any guaranties for which the corporation has protected itself through taking ample security. If insufficient security has been taken in respect of such annual or more frequent payments, the unsecured portion thereof shall be charged to this account.

(925.) Loss on Operations of Others.

Whenever in accordance with the terms of any contract the corporation is bound to contribute toward reimbursement of the losses resulting from the operations of others, all liabilities accruing to the corporation from such source shall be charged to this account.

(926.) Other Contractual Deductions from Income.

Charge to this account month by month all contractual liabilities arising from annual or other more frequent periodic matters and not includible in any of the foregoing accounts. This account in-

cludes only deductions from income and not any liabilities arising in exchange for goods or other things purchased.

(927.) Amortization of Landed Capital.

Charge to this account at the close of any fiscal period such proportion of the original money cost (estimated if not known) of landed capital as is necessary to cover the proportion of the life thereof expired during such period.

NOTE A.—The amounts charged to this account shall be concurrently credited to the account (No. 374), "Accrued Amortization of Capital." (See page 28.)

NOTE B.—When any landed capital expires or is otherwise retired from service (as e. g., through sale), the capital account or other indicant account (if any) originally charged therewith shall be credited with the amount originally charged, the account "Accrued Amortization of Capital" shall be debited with all amounts theretofore credited to such account in respect of such landed capital so going out of service, the appropriate account shall be debited with the proceeds of sale (if any), and any necessary adjustment shall be made through the "Corporate Surplus or Deficit" account.

(928.) Amortization of Debt Discount and Expense.

Charge to this account at or before the close of any fiscal period that proportion of the unamortized discount and debt expense on outstanding debt which is applicable to the period. This proportion shall be determined according to a rule, the uniform application of which during the interval between the issue and the maturity of any debt will completely amortize or wipe out the discount at which such debt was issued and the debt expense connected therewith. Such amortization may at the option of the corporation be earlier effected by charging all or any portion of such discount and debt expense to the account (No. 939), "Other Deductions from Surplus," immediately upon issue of the debt or thereafter.

2460 (929.) Amortization of Premium on Debt—Cr.

Credit to this account at or after the close of any fiscal period the proportion of the premium at which outstanding debt was issued which is applicable to the period. This proportion shall be determined according to a rule, the uniform application of which during the interval between the issue and the maturity of any debt will completely amortize or wipe out the premium at which such debt was issued. Such amortization may at the option of the corporation be effected by crediting all or any portion of such premium to the account (No. 931*b*), "Other Additions to Surplus," only upon the maturity of the debt.

24. Appropriations.—The balance resulting from closing the foregoing income deduction accounts for any fiscal period into gross in-

come for that period gives the Net Corporate Income for the period. The net corporate income being of the same nature as the corporate surplus shall be closed into the "Corporate Surplus or Deficit" account. The group of accounts which show for any fiscal period the changes in the "Corporate Surplus or Deficit" account are designated the Appropriation accounts, for the reason that substantially all of them are subject only to the discretion of the corporation. At the end of each fiscal period each of the appropriation accounts shall be closed into the "Corporate Surplus or Deficit" account.

25. Definitions of Appropriation Accounts.—In the following definitions of the appropriation accounts the letters and numbers prefixed to the titles of the accounts are inserted solely for convenience of reference and are no part of the titles or of the definitions:

(931*a*.) Bad Debts Collected.

When any debt theretofore written off as a bad debt is collected, the amount of the collection shall be credited to this account. Expense involved in such collection shall be charged to this account.

(931*b*.) Other Additions to Surplus.

Credit to this account all additions to surplus because of erroneous accounting in prior fiscal periods, and all other additions to surplus not elsewhere provided for.

NOTE.—A complete analysis of this account will be required in annual reports of corporations to the Public Service Commission.

(932.) Expenses Elsewhere Unprovided For.

Charge to this account all expenses not chargeable as a part of operating expenses or of non-operating expenses, such as fines levied on the corporation for violation of law, for misfeasance, for nonfeasance, etc., fines levied on directors, officers, and other employees and assumed by the corporation, donations to funds, to churches and other associations, and other like expenses and outgoes.

(933.) Dividends on Outstanding Stocks.

When any dividend is declared upon any outstanding stocks of the corporation, the amount of such dividend shall there-
2461 upon be charged to this account. All entries to this account shall show the amount of stock upon which the dividend is declared, the class of such stock, and the rate of the dividend as well as the amount thereof; and if the dividend is payable in any other thing than money, such thing shall be described in the entry with sufficient particularity to identify it, and the actual money value thereof shall be stated as the amount of the dividend.

When any dividend is declared upon the stocks of the corporation held in its treasury, the amount of such dividend thereon shall be

credited to this account. Entries of credits to this account shall be made with the same degree of particularity as is prescribed in the preceding paragraph.

(934.) Amortization Elsewhere Unprovided For.

Charge to this account such amortization as is not elsewhere provided for. This account provides for all optional amortization, such as that of discount on stocks outstanding, abandoned property, etc.

(935.) Appropriations to Reserves.

Charge to this account all optional appropriations to reserves.

(936.) Gifts to Controlled Corporations.

Charge to this account all gifts made by the corporation to its controlled corporations, also such portions of all advances thereto as are not carried as assets.

(937.) Other Appropriations.

Charge to this account all optional appropriations made by the corporation and not elsewhere provided for.

NOTE.—A complete analysis of this account will be required in annual reports of corporations to the Public Service Commission.

(938.) Bad Debts Written Off.

Charge to this account the amount by which debts are written off from the accounts of the corporation when they become stale and are placed in the "bad debt" class.

NOTE.—Such "uncollectible bills" as have been provided for in the heretofore defined "uncollectible bills" accounts must not be included in this account.

(939.) Other Deductions from Surplus.

Charge to this account all deductions from surplus because of erroneous accounting in prior fiscal periods, and all other deductions from surplus not elsewhere provided for.

NOTE.—A complete analysis of this account will be required in annual reports of corporations to the Public Service Commission.

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2466 At an Adjourned Meeting of the Public Service Commission for the First District, Duly Held at Its Office, No. 120 Broadway, in the Borough of Manhattan, City and State of New York, on the 29th Day of June, 1917.

Present:

Oscar S. Straus, Chairman;
Henry W. Hodge,
Travis H. Whitney,
Charles S. Hervey,
Commissioners.

Case No. 578.

In the Matter of a Uniform System of Accounts for Gas Corporations Within the Jurisdiction of the Commission.

Order Modifying the Final Order.

An order having been adopted by the Public Service Commission, First District, on December 8, 1908, prescribing a uniform system of accounts to be kept by gas corporations subject to its jurisdiction, it is hereby

Ordered, That Schedule A of the Uniform System of Accounts for Gas Corporations be modified by the substitution for paragraphs 9-22 thereof the matter contained in Schedule 1 appended hereto.

Ordered, That in addition to such amendment there be inserted as an introduction to the definitions of capital in said Schedule A the following statement:

In prescribing this uniform system or method of keeping accounts, records and books to be observed by such corporations, the Commission is not undertaking that any item set out in any account will have the Commission's approval either as to amount or character in fixing a rate or authorizing an issue of securities. The system or method of accounts prescribed is designed to set out the facts in connection with the income, outgo, etc., and the Commission will determine in any proceeding involving the fixing of a rate or authorizing an issue of securities just what consideration shall be given to items in the several accounts.

2467 The following definitions of capital relate to the cost of productive property, which is one of the items of information required in the consideration of applications for the consent of the Commission to the issue of securities. These definitions are applicable to specific expenditures relating to specific property rather than the property investment of the company in its entirety. A specific expenditure may therefore be properly classified as an "addition" when it does not take the place of anything previously existing without implying that this justifies the issue of additional securities. Before determining that an outlay for an addition may be provided for by the issue of additional securities, the Commission may require evidence that the entire property investment has been increased by the amount of the specific addition, and that the expenditure has not been made from the proceeds of earlier issues of securities or from the proceeds of sale of other property or from funds set aside for the purpose of maintaining the investment unimpaired.

It is the practice of the Commission in every case to require the presentation of evidence respecting the adequacy of the provision made for meeting depreciation or consumption of capital by charges against revenue in accordance with the terms of accounts elsewhere defined in this classification. Unless and until otherwise ordered, the moneys reserved from income for the preservation of the capital investment are not required to be segregated from other assets in a special cash account or fund, nor to be retained until they can be expended in replacing any specific property. On the contrary, the moneys so reserved will be available for the acquisition of other assets and in the ordinary case will be concurrently expended either for replacements or additions, to the end that there shall be no idle cash at the same time that there is current use for funds for capital investment.

While it is not at present required that the depreciation reserve "Accrued Amortization of Capital" shall be subdivided into the various classes of fixed capital hereinafter specified, the commission recommends that such subdivision be made and entered year by year in a "Plant Ledger" or "Register of Fixed Capital."

Ordered, That this order take effect on the first day of January, 1918.

2468 SCHEDULE 1.

9. Further Classification of Capital.—Fixed capital is further divisible into original capital, additions, betterments, and renewals and replacements, as defined below.

10. Original capital is capital put into service in carrying out such part of the plans for construction and finance as is authorized for immediate execution at the outset of the enterprise.

11. Additions comprise tangible or intangible capital which is added to original capital and does not take the place of anything previously existing.

12. Betterments comprise the enlargement or improvement of existing structures, facilities and equipment. When a betterment consists in the substitution of a superior part for an inferior part retired (as, for example, the strengthening of a building by the substitution of heavier girders), the amount of the betterment is the excess cost of the new part over the cost of the part retired. (If the cost of the part retired is not known, it shall be estimated and the facts upon which the estimate is based shall be shown.) Changes or alterations in existing structures, facilities and equipment necessary or incidental to the installation of a betterment shall be classed as repairs, and the cost of such changes or alterations, less salvage, if any, shall be charged to the appropriate operating expense account.

13. Renewals include all extensions of terms of years in land and tangible fixed capital, and all extensions of the life period of franchises and other intangible fixed capital.

14. Replacements include all substitutions for capital exhausted or become inadequate in service, the substitutes having substantially no greater capacity than the things for which they were substituted. When, through wear and tear or through casualty, it becomes necessary to replace some part of any structure, facility, or unit of equipment, and the extent of such replacement does not amount to a substantial change of identity in such structure, facility, or unit of equipment, the replacement of such part is to be considered a repair, and the cost of such repair is to be treated as an operating expense, and must not be charged to any capital account.

NOTE A.—Any replacement that involves a change in the type or character of construction as well as capacity of the part replaced (such, for illustration, as the substitution of concrete or steel poles for wood poles in a division or section of an electric line) should be recorded in capital account, after the capital account has been relieved of the cost of the part replaced. In order, however, to simplify the accounting, replacements of parts or sections of continuous capital, such as track, gas mains and electric line, even when involving a change in type or character, shall be treated as repairs in case the cost of a continuous section does not exceed $100; and office furniture, small buildings, and equipment of minor importance, when replaced in kind and without betterment, shall be treated according to the same rule.

NOTE B.—When the replacements to be made to an important building or other structure, machine or piece of apparatus will constitute the major portion of its value when replaced, the entire
2469 structure, machine or piece of apparatus when taken out of

service shall be considered as retired and the cost thereof credited to capital account, as provided in Paragraph 15, and the reconstructed property, including that portion of the original property not removed at its present value, shall be considered as an addition and the cost thereof accounted for accordingly.

15. Withdrawals or Retirements.—To the end that the capital accounts shall at all times disclose the cost of all property in service, the cost of retired capital, whether replaced or not, must be deducted from (i. e., credited to) the capital account. Every gas corporation is therefore required to take such measures and establish such procedure as will insure strict compliance with these requirements. * * * When anything is worn out, lost, sold, destroyed, abandoned, surrendered upon lapse of title, become unserviceable, or otherwise withdrawn or retired from service, the amount at which such thing stood charged in the capital account shall be credited to the capital account in which it stood charged at the time of exhaustion or retirement, and the entry of such credit shall cite by name and page of book or other record the original entry of cost of the thing retired. If there is no such original entry, that fact shall be stated in connection with the credit entry. If the amount originally charged (i. e., the ledger value) is not separately recorded, it shall be taken to be the proportionate share of said property in the value of the entire group in which the property is included. The entry shall state the fact of such estimation.

NOTE A.—The foregoing rule shall not apply to capital temporarily out of service, provided such period of temporary disuse does not exceed two years. In their annual reports to the Public Service Commission corporations will be required to give particulars concerning all capital temporarily disused and not credited to the proper capital account in accordance with the foregoing rule.

NOTE B.—No receiver or other person temporarily in charge of a gas corporation shall be relieved of the foregoing requirement through failure to obtain the records of the corporation. If by reason of the absence of the corporate records, he is unable to make the proper credits to the capital accounts of the corporation for retirements, he shall open on his books the two historical accounts "Property Retired During the Receivership" and "Depreciation Accrued Prior to the Receivership" and credit to the former account the original cost in accordance with the foregoing requirement, concurrently charging the same amount (less salvage, if any) to the several depreciation reserves.

16. Entries Must Enable Identification.—Every debit or credit to a fixed capital or other investment account must be made in such wise as to be readily identified with the particular item of property to which it relates. For each item (or project) of fixed capital or other investment the records shall show the date of the entry, the date of acquisition or installation, the date when placed in service, the actual money cost, and the description thereof with such particularity as to

enable the location and identification thereof (including, in case the item is movable, the name of the manufacturer and the identifying mark or number, if any, imprinted thereon, and such other particulars as may be necessary for identification.) Where two or more items are acquired under a single undivided contract, the entry in respect of each shall refer to the others, and shall state the entire consideration, and shall also state the portion thereof fairly applicable to the particular item covered by the entry. When any item of capital is withdrawn from service the date of withdrawal shall
2470 be included in the withdrawal entry relating to such item.

NOTE A.—In the case of continuous structures like electric lines, gas mains, etc., the record shall be itemized to the extent that no item shall contain more than one operating division or section or more than one type of construction. The entry for any item shall so specify the principal physical characteristics (such as size, weight, type, etc.) of the chief constituent parts of the item, together with location, that identification may be assured.

NOTE B.—The date when an item of fixed capital is placed in service may, if preferred, be kept in the engineering records.

17. Work Orders Required for Changes in Fixed Capital.—Each extension, improvement, retirement or other change in the property of a gas corporation shall be covered by a "work order" (or "job order") definitely designated by number, name, or other distinguishing mark, issued by the officer having jurisdiction in such matters. Such work order shall describe in detail the ownership, character and location of the work to be undertaken, state the approximate dates of commencement and completion, and bear reference to (*a*) the authorization under which it is undertaken, (*b*) the detailed estimates of its cost, and (*c*) maps, profiles, plans, diagrams, specifications, files, etc., applicable to the work. All work orders and supporting records shall be preserved during the existence of the property to which they relate and shall be so filed as to be conveniently accessible for examination. * * * Where a betterment, substitution, replacement or retirement of property is involved, the work order shall show the date of installation of the property enlarged, improved, replaced or withdrawn, and shall cite by name and page of book the accounting and engineering records covering such installation. If a work-order system was in use at the time such property was installed, the work order covering the withdrawal of such property shall cite the work order under which it was installed, as well as the original cost at which such property was charged in capital account on the books of the corporation. * * * When work involves more than one capital account as defined in the Uniform System of Accounts for Gas Corporations, a separate work order shall be issued for the work chargeable to each account. The corporation may in exceptional cases issue a work order covering more than one account, provided that such fact is stated in the work order, and provided that the estimated cost is so prepared that details of labor, material, apparatus, references, etc., as required above, shall be available for the part of the work which is chargeable to each account.

* * * A copy of each work order, or a list of such orders, shall be filed with the Commission within one week from the time of issuance.

NOTE.—Fixed capital charges for regularly recurring work, such as setting meters, running services or other similar projects, the individual cost of which does not exceed $250, may be covered by standing orders. A monthly report shall be filed with the Commission showing the number and total cost of units installed under each standing order.

18. Balance Sheet Accounts for Work in Progress.—The work or job orders shall accumulate current charges for labor and material applied to the particular job or project until its completion in such wise as to show the total cost of each completed project. The aggregate amount of such charges on all open work orders shall be
2471 carried in a suspense account designated "Work in Progress" until transfer can properly be made to the permanent accounts; provided, however, (1) that the cost of additions shall be carried until the completion of the work in a fixed capital account to be designated "Unfinished Construction," and (2) that the cost of work involving the removal or retirement of any fixed capital shall not be carried in suspense beyond the end of the next succeeding fiscal year without the permission of the Commission, and (3) that the cost of repair work shall not be carried in suspense beyond the end of the current fiscal year.

NOTE A.—If at the beginning of a job involving the replacement or retirement of any fixed capital, the accounting corporation shall make full credits therefor to capital account, the cost of installing new property in substitution or replacement may be carried in the fixed capital account "Unfinished Construction."

NOTE B.—Requirement of the use of the above-mentioned clearing accounts "Work in Progress" and "Unfinished Construction" will be suspended in the case of a company which satisfies the Commission that the system which it has in use for recording construction expenditures produces similar results in respect of the following essential matters:

(1) Complete identification of expenditures with property.

(2) A clear statement of the total cost of each job or project.

(3) The exclusion from the fixed capital account of all duplications (replacements) arising out of reconstruction work.

In case these conditions are met and the clearing accounts are not used, all debits or credits to fixed capital accounts shall be contemporaneously spread over the authorizations or orders to which they relate and the fact established at usual accounting intervals that the respective totals are in agreement.

NOTE C.—The accumulated charges on standing work orders for regularly recurring work, such as the setting of meters, running services, etc., shall be closed out monthly to the permanent account.

19. Costs of New Capital to be Actual Money Costs.—All charges made to capital or other accounts on or after January 1, 1909, shall be the actual money cost of the things in respect of which they are made. When the consideration actually given for the thing in respect of which a charge to a capital account is made is anything other than money, the actual consideration shall be described in the entry with sufficient fullness and particularity to identify it, and the amount charged shall be the actual money value of such consideration at the time of the transaction.

20. Discounts Upon Securities Not to be Charged to Capital Accounts.—Discounts upon securities and other commercial paper issued in payment for capital are to be provided for in other accounts and must in no case be charged to the capital accounts.

21. Costs of Labor, Materials and Supplies.—Cost of labor (employed in construction) includes not only wages, salaries, and fees paid employees, but also such personal expenses of employees as are borne by the corporation. Cost of material and supplies consumed in construction is the cost at the places where they enter into construction, including cost of transportation and inspection when specifically assignable. If such materials and supplies are passed through storehouses, their cost entered in the account may include a suitable proportion of store expense.

22. Improvements on Leased Property.—In the case of leases where substantially the full benefit of improvements will be
2472 obtained by the lessee, the cost of additions to and betterments of leased property should be charged to a sub-account under the appropriate fixed capital account, and depreciation and retirements in connection therewith treated in the same manner as on company-owned property. In case the full benefit of improvements will not be obtained by the lessee because of reversion to the lessor at the expiration of the lease, the cost of improvements should be charged to suspense and cleared by uniform charges to rent deductions within the period of the lease. Ordinary current repairs, including minor rearrangements and changes in connection with leased buildings, should be charged to the appropriate maintenance accounts. Expenditures charged to lessors or for which lessors are required under the leasehold agreement to reimburse the lessee prior to the termination of the lease should not be charged to the fixed capital accounts of the lessee.

2473 COMPLAINANT'S EXHIBIT 50.

Comp. Ex. 50. J. A. I.

N. Y. & Q. G. Co., No. 1.

Any amendment to this Schedule will be made by issuing a new or revised individual sheet or sheets, filed to become effective as noted thereon.

New York & Queens Gas Company,

88 Main Street,

Flushing, N. Y.

Schedule applies to the Third Ward, Borough of Queens, City of New York.

Issued on thirty days' notice to the Public Service Commission under order of the Public Service Commission for the First District, State of New York, in Case No. 2330 of date September 17, 1918.

Issued October 9th, 1918.

Posted October 9th, 1918.

Effective November 8th, 1918.

Issued by Maynard H. Spear, Secretary and Genl. Manager, 88 Main Street, Flushing, N. Y.

474 N. Y. & Queens G. Co. No. 1.

New York & Queens Gas Company.

88 Main Street,

Flushing, N. Y.

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Terms for testing meters on consumers' request	7

Dated of Issue, October 9, 1918.

Date Effective, Nov. 8, 1918.

Under order of the Public Service Commission for the First District, State of New York, in Case No. 2330, of date September 17, 1918, by Maynard H. Spear, Secretary and General Manager, 88 Main Street, Flushing, Borough of Queens, New York.

2475 N. Y. & Queens Gas Co. No. 1.

New York & Queens Gas Company.

88 Main Street,

Flushing, N. Y.

1st Revised Sheet #1, Cancelling Original Sheet #1.

Effective November 8, 1918.

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Sheet N

Preliminary Statement as to Service.....
Rate A—For all consumers (1st revised sheet, effective Jan. 26, 1919.).....
Terms and Conditions, Rules and Regulations affecting all classes of service (1st revised sheet, page 1, effective January 26, 1919.).....
Copy of application for gas supply.....
Terms and Conditions upon which Consumers' Deposits are required held and may be withdrawn.....
Forms for testing meters on consumers' request.....

Date of Issue, December 27, 1918.

Date Effective Jan. 26, 1919.

Revision made to show changes in sheets 3 and 4 effective th date. Issued by William Raynor, Assistant Secretary, 88 Ma Street, Flushing, Borough of Queens, New York.

2476 New York & Queens Gas Company,

88 Main Street,

Flushing, N. Y.

Original Sheet No. 2.

Preliminary Statement.

Territory served, such portions of the Third Ward, Borough Queens, New York City, in which the Company has distributi mains, (Flushing, College Point, Whitestone and Bayside.)

Service to premises located within 100 feet of the Company' mains may be obtained by signing an application upon the for used by the Company, and making a deposit if required, as securi for the payment of bills.

The rate specified in the schedule is charged for the gas whethe same is used for light, heat or power.

Date of Issue, October 9, 1918.

Date Effective, Nov. 8, 1918.

Under order of the Public Service Commission for the First District, State of New York, in Case No. 2330, of date September 17, 1918, by Maynard H. Spear, Secretary and General Manager, 88 Main Street, Flushing, Borough of Queens, New York.

2477 New York & Queens Gas Company,

88 Main Street,

Flushing, N. Y.

Original Sheet No. 3.

Rate "A"—General Service.

Available for any consumer of gas, for light, heat or power.
Rate.—One Dollar ($1.) per thousand (1,000) cubic feet of gas.
Discounts.—None.
Determination of Demand.—No demand rate charged.
Minimum Charge.—None.
Standard Riders.—None.
Term.—Terminable on written notice by either party.
Terms and Conditions.—See Sheet No. 4 for standard terms and conditions.

The above rate was originally effective 1911, by act of legislature, laws of 1906.

Date of Issue, October 9, 1918.

Date Effective, Nov. 8, 1918.

Under order of the Public Service Commission for the First District, State of New York, in Case No. 2330, of date September 17, 1918, by Maynard H. Spear, Secretary and General Manager, 88 Main Street, Flushing, Borough of Queens, New York.

2478 New York & Queens Gas Company,

88 Main Street,

Flushing, N. Y.

1st Revised Sheet #3, Cancelling Original Sheet #3.

Effective November 8, 1918.

Rate "A"—General Service.

Available for any consumer of gas, for light, heat or power.

Rate.—The rate is that fixed by statute, what at the time of filing this schedule is One Dollar ($1) per thousand (1,000) cubic feet of gas, and will continue until the statutory limitation is removed.

Discounts.—None.
Determination of Demand.—No demand rate charged.
Minimum Charge.—None.
Standard Riders.—None.
Terms.—Terminable on written notice by either party.
Terms and Conditions.—See Sheet No. 4 for standard terms and conditions.

The above rate was originally effective 1911, by act of legislature, laws of 1906.
Date of issue, December 27, 1918.
Date effective January 26, 1919.
Revision.—Continues present statutory rate until limitation is removed.
Issued by William Raynor, Assistant Secretary, 88 Main Street, Flushing, Borough of Queens, New York.

2479 New York & Queens Gas Company.

88 Main Street,

Flushing, New York.

Original Sheet No. 4, Page 1.

Terms and Conditions.

Rules and Regulations Applicable to all Contracts.

I. Applicants are required to sign an application for gas to be supplied through ordinary meters. For copy of application see Original Sheet No. 5.

II. Service Connection:

A. Where the Company's gas mains are within one hundred (100) feet of the Consumer's building to be supplied and are not separated therefrom by any serious obstacles, service piping will be installed. The Consumer to pay the Company for the cost from the property line to the meter.

III. Meters:

A. Ordinary.—A suitable location must be provided for the Company's ordinary gas meter, such location to be as nearly as practicable to the point of entrance of the Company's service.

B. Prepayment.—Prepayment Meters will be set only in a location approved by the Company.

C. The Company reserves the right to set an ordinary or prepayment meter according to the location provided for the setting of the meter or the character of the premises to be supplied.

D. The Consumer must not disconnect or in any way interfere ith the meter, or its action.

E. Meters will be tested at request of the Consumer by the Pub- Service Commission or to the Gas Company. See P. S. C. Form id Company's Form, Original Sheet No. 7.

IV. Liability:

A. Bills will be rendered for gas supplied through a meter ap- oved by the Company.

B. The Consumer must protect the Company's property on his emises, from frost or injury and be responsible for and make good the Company any damage thereto. In the case of a Prepayment eter, the consumer is responsible for all gas consumed and must y upon demand all amounts found short in the money box, as dicated by the index of the meter.

C. The Company shall not be liable for any injury caused by an plosion, or otherwise, except as the result of its own negligence or the negligence of an employee in the due preformance of his ties as such.

Date of issue, October 9, 1918.
Date effective, Nov. 8, 1918.

Under order of the Public Service Commission for the First Dis- ict, State of New York, in Case No. 2330, of date September 17, 918, by Maynard H. Spear, Secretary and General Manager, 88 lain Street, Flushing, Borough of Queens, New York.

480 New York & Queens Gas Company,

88 Main Street,

Flushing, N. Y.

1st Revised Sheet #4, Page 1, Cancelling Original Sheet #4, Page 1.

Effective November 8, 1918.

Terms and Conditions.

Rules and Regulations Applicable to all Contracts.

I. Applicants are required to sign an application for gas to be upplied through ordinary meters. For copy of application see Original Sheet No. 5.

II. Service Connection:

A. Upon the application in writing of the owner or occupant of ny buil ag or premises within 100 feet of any main laid down

by the Company and payment by him of all money due by him to the Company, the Company will supply gas as may be required for such building or premises, and provided the required deposit shall have been made as provided by law; and provided further that the ground in which such pipe is required to be laid shall not be frozen or other serious obstacles to laying the same shall be presented, and provided further that applicants, if required, shall deposit in advance with the Company, a sum of money sufficient to pay the cost of his portion of the pipe to be laid and the expense of laying such portion.

III. Meters:

A. Ordinary.—A suitable location must be provided for the Company's ordinary gas meters, such location to be nearly as practicable to the point of entrance of the Company's service.

B. Prepayment.—Prepayment Meters will be set only in a location approved by the Company.

C. The Company reserves the right to set an ordinary or prepayment meter according to the location provided for the setting of the meter or the character of the premises to be supplied.

D. The Consumer must not disconnect or in anyway interfere with the meter, or its action.

E. Meters will be tested at request of the Consumer to the Public Service Commission or to the Gas Company. See P. S. C. Form and Company's Form. Original Sheet No. 7.

IV. Liability:

A. Bills will be rendered for gas supplied through a meter approved by the Company.

B. The Consumer must protect the Company's property on his premises, from frost or injury and be responsible for and make good to the Company any damage thereto. In the case of a Prepayment Meter, the consumer is responsible for all gas consumed and must pay upon demand all amounts found short in the money box, as indicated by the index of the meter.

C. The Company shall not be liable for any injury caused by an explosion, or otherwise, except as the result of its own negligence or of the negligence of an employee in the due performance of his duties as such.

Date of issue, December 27, 1918.
Date effective, January 26, 1919

Revision.—Made to conform to Article VII Transportations Corporation Law.

Issued by William Raynor, Assistant Secretary, 88 Main Street, Flushing, Borough of Queens, New York.

81 New York & Queens Gas Company,
88 Main Street,
Flushing, N. Y.

Original Sheet No. 4, Page 2.

Terms and Conditions (Contd.).

IV. D. The Consumer should notify the Company immediately any interruption in the Supply of gas.

V. Leakage:

The consumer must notify the Company immediately of the discovery of any gas leakage.

VI. Access to Company's Property:

The Company is entitled to access to its property upon the Consumer's premises between the hours of 8 A. M. and 6 P. M. Every employee of the Company who is authorized by it to enter the consumer's premises for the purpose of inspecting, reading, testing meters, collecting gas bills, etc., is supplied with a badge to identify him as an employee of the Company.

VII. Deposits:

A deposit of an amount equal to the estimated consumption of the gas for two calendar months will be required of the Consumer, unless waived upon satisfactory reference being furnished. The Company reserves the right, however, to require a deposit at any time. For copy of "Terms and Conditions upon which Consumers' Deposits are Required, Held and May Be Withdrawn" see Original Sheet No. 6.

VIII. Payment of Bills:

A. Meters are read and bills presented monthly by mail or by hand at the address where the service is rendered, or at the address designated by the Consumer, or at the last known address of the consumer. The Company reserves the right to read meters and render bills weekly. All bills are due and payable upon presentation and if not so paid, the Company will discontinue the supply of gas. Any notice to the Company shall be delivered to it in writing at its commercial office.

B. The Company reserves the right to remove a meter if the consumption of gas shall be less than 100 cubic feet per month.

Date of issue, October 9, 1918.
Date effective Nov. 8, 1918.

Under order of the Public Service Commission for the First District, State of New York, in Case No. 2330, of date September 17, 1918, by Maynard H. Spear, Secretary and General Manager, 88 Main Street, Flushing, Borough of Queens, New York.

2482

New York & Queens Gas Company,

88 Main Street,

Flushing, N. Y.

Original Sheet No. 4, Page 3.

Terms and Conditions (Contd.).

IX. Estimated Bills:

In case a meter shall cease to register, the gas consumed during the period of non-registration shall be estimated on the basis of the quantity registered immediately before or after such period, or for a corresponding period of the previous year, or on the basis of an average of all, at the option of the Company.

X. Any and all rate schedules, contracts and regulations of this Company that may be effected by orders or amendments thereto issued, by the United States Fuel Administrator, Washington, D. C. or the Federal Fuel Administrator for New York State, or the War Industries Board or other Federal Authority acting under authority of an Executive Order of the President, or in furtherance of the purpose of the Act of Congress, approved August 10, 1917, are hereby modified and amended so as to comply in all respects with such orders and amendments.

Date of Issue, October 9, 1918.
Date Effective Nov. 8, 1918.
Under order of the Public Service Commission for the First District State of New York, in Case No. 2330, of date September 17, 1918, by Maynard H. Spear, Secretary and General Manager, 88 Main Street, Flushing, Borough of Queens, New York.

(Here follow reproductions of original sheets, 5, 6, and 7, marked pages 2483, 2484, and 2485.)

New York & Queens Gas Company,

New York & Queens Gas Company,
88 Main Street,
Flushing, New York.

Original Sheet No. 5.

APPLICATION FOR GAS SUPPLY.

Form 1 Jan. 9 17

Led. ..... Folio .....

NAME ..... TOWN .....

No. ..... Flushing, N. Y. 191

To THE NEW YORK & QUEENS GAS CO.

The subscriber wishes to be supplied with Gas in the premises

No. .....

occupied as a ..... floor ..... on the usual terms of the Company, as printed on the back of this application, and will pay for the same ..... as charged by the Company at a rate not to exceed the price per thousand cubic feet authorized by law, on delivery of the bill by the collector, or otherwise until three days after written notice is given at the Company's office to discontinue the supply.

Witness .....

(Sign first name in full)

Final Bill Dept. — M. or C. C. — App. Clerk

	Will party use	
Deposit $	Gas Range?	Send Bills to .....
Receipt No.	Water Heater?	Business Address .....
Received by	Is House Piped?	Business .....
.....	Are Fixtures up?	Used N. Y. & Q. Gas at .....

Date of Issue, October 9, 1918 Date Effective, Nov.8,1918.

Under order of the Public Service Commission for the First District, State of New York, in Case No. 2330, of date September 17, 1918, by Maynard H. Spear, Secretary and General Manager, 88 Main Street, Flushing, Borough of Queens, New York.

2483

New York & Queens Gas Company,
88 Main Street,
Flushing, New York.

Original Sheet No. 6.

TERMS AND CONDITIONS UPON WHICH CONSUMERS' DEPOSITS ARE REQUIRED, HELD AND MAY BE WITHDRAWN.

NEW YORK & QUEENS GAS COMPANY

TERMS AND CONDITIONS UPON WHICH CONSUMERS' DEPOSITS ARE REQUIRED, HELD AND MAY BE WITHDRAWN.

Section 63 of the Transportation Corporations Law:

Deposit of Money May Be Required. Every gas light and electric light corporation may require every person to whom such corporation shall supply gas or electric light for lighting any building, room or premises to deposit with such corporation a reasonable sum of money according to the number and size of lights used or required, or proposed to be used, for two calendar months, by such person, and the quantity of gas and electric light necessary to supply the same, as security for the payment of the gas and electric light rent or compensation for gas consumed, or rent of pipe or wire and fixtures, to become due to the corporation, but every corporation shall allow and pay to every such depositor legal interest on the sum deposited for the time his deposit shall remain with the corporation.

Extract from an order adopted by the Public Service Commission for the First District in Case No. 1808, June 15, 1915, Prescribing Regulations and Practices Respecting Consumers' Deposits:

"4. To allow and to pay to every depositor legal interest (at present six per cent. (6%) per annum) on the deposit for the time it shall remain with the corporation.

5. To render to each depositor, when his deposit with accrued interest thereon is applied to unpaid bills or refunded, a statement showing (a) the bills in arrears and unpaid and the amount thereof; (b) the amount of the deposit, and the accrued interest thereon; (c) the interest amounts paid or credited, if any, and date of such payments or credits; and (d) the balance of the bills remaining unpaid or the balance remaining to the depositor's credit, as the case may be.

6. To allow each depositor when he ceases to be a consumer to withdraw his deposit and all accrued interest thereon, or the balance thereof after payment of all bills for which the deposit is security. Mere change of residence, or of location of service, is not to be deemed of itself to be such cessation or ground for requiring a new deposit.

7. To make diligent efforts to locate each depositor who has ceased or who shall hereafter cease to be a consumer of gas and to whom a balance is due, and inform him of his balance and how it may be withdrawn.

8. To issue to every person from whom, on and after August 1, 1915, a deposit may be received, a certificate of deposit. There shall be printed on the face of said certificate in a conspicuous manner the following:

THIS RECEIPT IS NOT NEGOTIABLE OR TRANSFERABLE.

Legal interest (6 per cent. per annum at present) is allowed on deposits for the time the deposits remain with the corporation. Deposit with accrued interest will be repaid when the consumer's account is closed, and all indebtedness to the corporation for gas is paid.

9. To keep on hand, for distribution to its customers, printed circulars, over its corporate or business name, such circulars to be entitled "TERMS AND CONDITIONS UPON WHICH CONSUMERS' DEPOSITS ARE REQUIRED, HELD AND MAY BE WITHDRAWN," and to contain under said title (a) the provisions in full of Section 63 of the Transportation Corporations Law (Chapter 219, Laws of 1909); (b) the text of paragraphs numbered 4, 5, 6, 7, 8, 9 and 10 of this Order, with a statement that it is an extract from this order; and (c) such other terms and conditions as such corporation may prescribe. Every such corporation shall, on or before the 1st day of August, 1915, provide each consumer having a deposit with a copy of said circular, and every such corporation shall thereafter, prior to exacting a deposit present a copy of said circular to the consumer or applicant for service from whom a deposit is demanded.

10. To provide reasonable ways and means whereby a depositor, who makes application for the return of his deposit or any balance to which he is entitled, but who is unable to produce the original certificate of deposit, or receipt, may not be deprived of his deposit or balance."

NEW YORK & QUEENS GAS COMPANY
88 MAIN ST., FLUSHING, N. Y.

Date of Issue, October 9, 1918 Date Effective, Nov.8,1918

Under order of the Public Service Commission for the First District, State of New York, in Case No. 2330, of date September 17, 1918, by Maynard H. Spear, Secretary and General Manager, 88 Main Street, Flushing, Borough of Queens, New York.

2484

New York & Queens Gas Company,
88 Main Street,
Flushing, New York.

Original Sheet No. 7.

FORMS FOR TESTING METERS ON CONSUMERS REQUEST.

3120

312

New York & Queens Gas Company

88 MAIN STREET

ed Folio

Flushing, N. Y. 191

fr

IR:

Receipt is acknowledged of your complaint involving the question of the ccuracy of the meter on your premises. If you desire this company to test he meter for accuracy of registration, please sign the attached application nd return it within ten days. If, however, you desire to have your meter fficially tested, application should be made promptly to the Public Service Commission for the First District at its office, 154 Nassau Street, New York City. The Commission will make such a test upon the payment of a small ee to cover the actual cost. This fee will be returned to you and collected rom the company if the test of the meter discloses that the percentage of naccuracy equals or exceeds two per cent. to your prejudice. If the meter s found to register slow or less than two per cent. fast, this fee will be re-ained by the Commission.

NEW YORK & QUEENS GAS COMPANY

Per

191

Led Folio

To New York & Queens Gas Compan

88 Main Street, Flushing, N. Y.

I hereby request you to exchange and test the g meter registering gas supplied to my premises at:

(Addre

(Signature of Complainant)

Date of Issue, October 9, 1918 Date Effective, Nov. 8,1918

Under order of the Public Service Commission for the First District, State of New York, in Case No. 2330, of date September 17, 1918, by Maynard H. Spear, Secretary and General Manager, 88 Main Street, Flushing, Borough of Queens, New York.

2485

2486 COMPLAINANT'S EXHIBIT 51.

COMPLAINANT'S EXHIBIT 51 FOR IDENTIFICATION.

(Copy.)

Moderate Price Dwellings.

Telephone 299-J, Flushing.

P. J. O'Connor,

Builder,

Forty-eight Central Avenue,

Flushing, N. Y.

New York & Queens Gas Company,
88 Main Street,
Flushing, N. Y.

GENTLEMEN:

In relation to replacements of Buildings at Plant at Works on Myrtle Avenue:

Superintendent's Cottage, frame construction about 20′ x 30′, two story, attic and cellar, bath and steam heat, would cost at this time about Five thousand six hundred dollars ($5,600.00).

Office Building, Brick construction about 25′ x 30′, two story and basement with addition of frame construction about 18′ x 25′ one story, would cost to replace at this time about Ten thousand four hundred dollars ($10,400.00).

Trusting that the above will be satisfactory, I am,
Yours very truly,

P. J. O'CONNOR.

2487 COMPLAINANT'S EXHIBIT #52.

General Ledger #4 of Complainant Company.
Not printed.

COMPLAINANT'S EXHIBIT #53.

Journal #5 of Complainant Company.
Not printed.

COMPLAINANT'S EXHIBIT #54.

Operating Expense Ledger #2 of Complainant Company.
Not printed.

COMPLAINANT'S EXHIBIT #55.

Accounts Payable Ledger of Complainant Company.
Not printed.

COMPLAINANT'S EXHIBIT #56

General Cash Ledger #3 of Complainant Company.
Not printed.

2488 COMPLAINANT'S EXHIBIT 57.

Complts. Ex. 57. E. C. S. 4/30/20.

Tribune Building, 154 Nassau Street,

Borough of Manhattan, City of New York.

STATE OF NEW YORK:

Public Service Commission for the First District.

In the Matter of the Form of Report to be Filed by Gas and Electric Corporations Subject to the Jurisdiction of the Public Service Commission for the First District in Accordance with Section 66 of the Public Service Commissions Law.

Order No. 728.

The Public Service Commission for the First District being authorized and required by Section 66 of the Public Service Commissions Law to prescribe the form of report required under said Act to be made by gas and electrical corporations subject to its jurisdiction;

It is hereby

Ordered: That the form for reports of all gas and electrical corporations subject to the jurisdiction of the Commission, as the terms are defined in Section 2 of the Public Service Commissions Law, for the six months ending December 31, 1907, as the said form has been prepared by the Chief Statistician of the Commission be and the same hereby is approved and prescribed by the Public Service Commission for the First District; and it is further

Ordered: That every such corporation shall on or before October 31, 1908, make and file with the Commission a report in said form for the six months ending December 31, 1907; and it is further

Ordered: That the Secretary of this Commission serve upon each of the said corporations on or before September 30, 1908, in the manner prescribed by law a certified copy of this order, and two copies of the form hereby prescribed.

Gas works.	January 1, 1911.	
	No. of men.	Rate, cents per hour.
Classification.		
Engineers	1	29 2/12¢
"	..	.....¢
"	..	.....¢
Gas Makers	1	22 11/12¢
"	..	.....
Firemen	1	20 ¢
"	1	17 11/12¢
Gen. Firemen	..	.....
Coal Passers	..	.....
"	..	.....
Laborers	4	16⅔ ¢
"	6	20 ¢
"	..	.....
"	..	.....
"		

COMPLAINANT'S EXHIBIT 58.

Comp. Ex. 58. J. A. F.

Sheet #1.

Wages Paid by the New York & Queens Gas Company, 1911-1920.

Compiled from the Pay Rolls of the Company.

January 1, 1914.		January 1, 1918.		January 1, 1919.		April 15, 1920.	
No. of men.	Rate, cents per hour.	No. of men.	Rate, cents per hour.	No. of men.	Rate, cents per hour.	No. of men.	Rate, cents per hour.
1	33 2/11¢	1	44 4/ 9¢	1	50 ¢	1	63 ¢
..	.....	1	33⅓ ¢	2	47⅔ ¢	1	66 ¢
..	.....	1	30 5/ 9¢	..	.....¢	1	56 ¢
1	27 3/11¢	2	36⅔ ¢	2	44 4/ 9¢	2	59 ¢
..	.....	..	.....	..	.....	1	56 ¢
1	25 ¢	2	30 5/ 9¢	4	38 8/ 9¢	3	56 ¢
1	20 5/11¢	..	.....	..	.....	..	.....
..	.....	..	.....	..	.....	3	56 ¢
..	.....	..	.....	..	.....	..	.....
..	.....	..	.....	..	.....	2	50 ¢
3	19 1/11¢	6	27 7/ 9¢	6	36 1/ 9¢	3	50 ¢
2	20 5/11¢	..	.....	3	33⅓ ¢	..	.....
5	18 2/11¢	..	.....	3	38 8/ 9¢	..	.....
..	.....	..	.....	1	44 4/ 9¢	..	.....

Wages Paid by the Ne

Compiled fr

Recapitulation—Pe

	Year.	No. of men.	Max
Gas Works.			
Jan.	1911	16	
	1914	15	
	1918	18	
	1919	32	
April 15,	1920	21	
Shop Department.			
Jan.	1911	15	
	1914	23	
	1918	24	
	1919	14	
April 15,	1920	24	
Mains & Service Department.			
Jan.	1911	5	
	1914	4	
	1918	4	
	1919	6	
April 15,	1920	9	
		Percentages of	
Jan.	1911	36	
	1914	42	
	1918	46	
	1919	52	
April 15,	1920	54	

NOTE.—In the Manufacturing, Shop and Mains and Service Departm straight time rate and went into effect in August, 1919.

Sheet #2.

id by the New York & Queens Gas Company, 1911-1920.

Compiled from the Pay Rolls of the Company.

itulation—Percentages of Increase—By Departments.

men.	Maximum rate.	Minimum rate.	Average rate.	Increase in average rates of pay per hour. Between Jan., 1914, and April 15, 1920.	Increase in average rates of pay per hour. Between Jan., 1911, and April 15, 1920.
6	29.1¢	13.1¢	19.1¢		
5	33.1¢	15.1¢	20.7¢		
8	44.4¢	18.5¢	29.7¢		
2	62.5¢	22.7¢	39.7¢		
1	66 ¢	42 ¢	54.6¢	163.76%	185.86%
5	27.5¢	15 ¢	21.6¢		
3	36.1¢	16.6¢	25.5¢		
4	42.8¢	18.3¢	30.7¢		
4	47 ¢	25 ¢	33.4¢		
4	67 ¢	34.6¢	48.9¢	91.76%	126.38%
5	40 ¢	17.5¢	25 ¢		
4	44.5¢	22.2¢	31.9¢		
4	50 ¢	30.6¢	37.5¢		
6	55.6¢	36.1¢	44.3¢		
9	80.9¢	70.6¢	74.3¢	133.54%	197.20%

Percentages of Wage Increase—All Departments.

6	40 ¢	13.1¢	21 ¢		
2	44.5¢	15.1¢	24.4¢		
6	50 ¢	18.3¢	30.9¢		
2	62.8¢	22.7¢	38.5¢		
4	80.9¢	34.5¢	55.3¢	126.63%	163.33%

rvice Departments, the wage rates for overtime, Holiday and Sunday work are one and one half (1½) times the

COMPLAINANT'S EXHIBIT 59.

New York & Queens Gas Company.

Comparison of Unit Costs of Coal and Oil Received by the New York & Queens Gas Company for the Years 1911, 1914, 1915, 1916, 1917, 1918, 1919, 3 *Mos.* 1920.

Data Taken from Original Bills and Vouchers.

Generator Coal.

Year.	Tons.	Cost. Amount.	Per ton.	Stevedore. Amount.	Per ton.	Total cost per ton.
1911	2,568	$11,376.24	$4.4300	$1,435.57	$.5590	$4.9890
1914	4,185	19,950.17	4.7670	2,552.44	.6099	5.3769
1915	4,499	21,471.48	4.7725	2,771.90	.6161	5.3886
1916	5,042	25,636.98	5.0847	3,106.45	.6161	5.7008
1917	5,890.45	34,177.88	5.8022	4,099.99	.6960	6.4982
1918	7,673.75	56,929.89	7.4188	7,232.73	.9425	8.3613
1919	5,301.752	44,727.59	8.4364	5,945.84	1.1215	9.5579
To March 1920	1,256.90	10,614.01	8.4446	1,572.37	1.2510	9.6956

Per cent increase over.

	1911.	1914.	1915.	1916.	1917.	1918.	1919.
1914.	7.75%						
1915.	8%	.2%					
1916.	14%	6%	6%				
1917.	30%	21%	20%	14%			
1918.	67%	56%	55%	47%	29%		
1919.	91%	78%	77%	68%	47%	14%	
To March 1920.	94%	80%	80%	70%	49%	16%	1.4%

Boiler Coal.

Year.	Tons.	Cost. Amount.	Per ton.	Stevedore. Amount.	Per ton.	Total cost per ton.
1911	928	$2,489.60	$2.6827	$471.87	$.5084	$3.1911
1914	1,908	5,027.50	2.6349	1,064.35	.5578	3.1927
1915	2,128.46	5,645.68	2.6524	1,202.18	.5648	3.2172
1916	2,695.35	7,726.58	2.8666	1,669.52	.6194	3.4860
1917	2,234.95	9,197.18	4.1151	1,516.03	.6783	4.7934
1918	2,376	15,558.09	6.5480	2,060.27	.8671	7.4151
1919	1,656.96	9,833.01	5.9343	1,682.41	1.0153	6.9496
To March 1920	623.20	3,864.13	6.2004	724.85	1.1635	7.3639

Per cent increase over.

	1911.	1914.	1915.	1916.	1917.	1918.	1919.
1914.	....						
1915.	1%	.75%					
1916.	9%	9%	8%				
1917.	50%	50%	49%	38%			
1918.	132%	132%	130%	113%	55%		
1919.	118%	117%	116%	99%	15%	6.25%*	6%
To March 1920.	138%	131%	129%	111%	54%	.7%*	

Gas Oil.

Year.	Gallons.	Cost. Amount.	Per gallon.
1911	873,883	$26,216.49	$.0300
1914	1,053,944	41,740.40	.0396
1915	1,243,574	38,426.43	.0309
1916	1,231,199	38,044.05	.0309
1917	1,314,370	67,558.63	.0514
1918	1,542,945	104,715.26	.06786
1919	1,640,330	109,607.11	.06682
To March 1920	478,347	34,839.45	.072833

Per cent increase over.

	1911.	1914.	1915.	1916.	1917.	1918.	1919.
1914.	32%						
1915.	3%	22%*					
1916.	3%	22%*	0				
1917.	71%	30%	66%	66%			
1918.	126%	71%	119%	119%	32%		
1919.	123%	68%	116%	116%	30%	1.5%*	9%
To March 1920.	143%	84%	136%	136%	41.7%	7.3%	

*In red.

COMPLAINANT'S EXHIBIT 60.

Comparison of Prices Paid for Materials by the New York & Queens Gas Company from 1914 to 1919, Inclusive.

Data Compiled from Original Vouchers.

	1914.		1915.		1916.		1917.		1918.		1919.	
	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.
Steel Pipe—$^3/_4$" to 3" per foot	(List) Less 70/10/10%	Less 53/10/10%	Less 73%	Less 64%	Less 80.31/5%	Less 72.31/5%	Less 63%	Less 30/5%	Less 40/5%	Less 37/5%	Less 55.8/5/2½%	Less 34/5%
Iron Oxide—Sponge per bushel	$ .135	$ .135	$ .14	$ .14	$ .14	$ .14	$ .14	$ .18	$ .18	$ .18	$ .27	$ .32
Red Lead—Atlantic " pound	.10	.10	.0475	.0475	.0775	.0775	.14	.15	.15	.15	.13	.19
White Lead " " "	.08	.08	.08	.0928	.0775	.105	.0975	.14	.1152	.127	.13	.144
Linseed Oil—Boiled " gallon	.56	.70	.70	.70	.60	.77	1.04	1.33	...	...	1.78	1.78
Cast Iron Pipe—A. G. I. Std. per Net Ton	...	...	20.25	20.25	31.00	31.00	32.50	32.50	...	...	50.00	63.00
Cast Iron Fittings—A. G. I. Std. per pound	.0275	.0275	.0275	.0275	.0325	.0375	.035	.055	.055	.055	.055	.087
Iron Bars " "	.04	.05	.04	.05	.05	.07	.07	.08	.08	.08	.08	.09
Checkerbrick " M pieces	24.50	24.50	24.10	24.10	24.00	28.60	40.65	40.65	58.15	58.15	51.50	62.40
Portland Cement (4 bags to Bbl.) " barrel	1.90	2.00	1.60	1.90	1.60	1.90	1.90	2.50	2.50	2.80	3.20	3.65
Malleable Iron Fittings " pound	(List) Less 65/21½%	Less 50/5%	Less 43.5%	Less 85%	Less 70/5%	Less 63½%	Less 47½/5%	Less 30/5%	Plus 5%	Plus 15–5%	Less 2/10%	Plus 12½%
Gas Meters—5 lt. Ordinary Each	5.35	5.35	5.35	5.70	5.70	6.33	6.33	6.33	...	...	9.60	9.60
Cylinder Oil per gallon	.21	.21	.21	.21	.25	.25	.25	.27	.36	.36	.405	.405
Engine Oil " "	.18	.18	.18	.18	.25	.25	.25	.252	.306	.306	.342	.342
Brooms " dozen	4.00	4.00	4.50	4.50	...	...	6.50	7.75	9.50	13.00	9.00	9.00
1/16" Flax packing " pound	.60	.60	.60	.60	.60	.60	.60	.60	.63	.63	.63	.63
Boiler Compound " "	.045	.045	...	...	...	...	.10	.20	.25	.25	.30	.315

Comp. Ex. 60. J. A. F.

COMPLAINANT'S EXHIBIT 61.

Comparison of Prices Paid for Materials by the New York & Queens Gas Company from 1914 *to* 1919, *Inclusive.*

Data Compiled from Original Vouchers.

		1914.		1919.		Increase in 1919 over 1914.	
		Lowest.	Highest.	Lowest.	Highest.	Lowest.	Highest.
Steel Pipe—¾" to 3"	per foot	(List) Less 70/10/10%	Less 53/10/10%	Less 55.8/5/2½%	Less 34/5%	68.63%	194.11%
Iron Oxide—Sponge	per bushel	$ .135	$ .135	$ .27	$ .32	100%	137.03%
Red Lead—Atlantic	per pound	.10	.10	.13	.19	30%	90%
White Lead— "	" "	.08	.08	.13	.144	62.50%	80%
Linseed Oil—Boiled	" gallon	.56	.70	1.78	1.78	217.85%	154.28%
Cast Iron Pipe—A. G. I. Std.	" net ton	20.25	20.25	50.00	63.00	146.91%	211.11%
Cast Iron Fittings—A. G. I. Std.	" pound	.0275	.0275	.055	.087	100%	216.36%
Iron Bars	" "	.04	.05	.08	.09	100%	80%
Checkerbrick	" M pieces	24.50	24.50	51.50	62.40	110.20%	154.69%
Portland Cement (4 bags to Bbl.)	" barrel	1.90	2.00	3.20	3.65	168.42%	132.50%
Malleable Iron Fittings	" pound	(List) Less 65/2½%	Less 50.5%	Less 2.10%	Plus 12½%	158.46%	136.83%
Gas Meters—5 lt. Ordinary	Each	5.35	5.35	9.60	9.60	79.43%	79.43%
Cylinder Oil	per gallon	.21	.21	.405	.405	92.85%	92.85%
Engine Oil	" "	.18	.18	.342	.342	90%	90%
Brooms	" dozen	4.00	4.00	9.00	9.00	125%	125%
1 16" Flax packing	" pound	.60	.60	.63	.63	5%	5%
Boiler compound	" "	.045	.045	.30	.315	566.66%	600%

STATE OF NEW YORK,
County of New York, ss:

I, James B. Walker, Secretary of the Public Service Commission for the First District, Do Hereby Certify, that I have compared the above with the original approved by said Commission on September 22, 1908, and that it is a correct transcript therefrom and of the whole of the original.

In Testimony Whereof, I have hereunto subscribed my hand and affixed the seal of the Commission, this 28th day of April, 1920.

[Seal of Public Service Commission for the First District.]

JAMES B. WALKER,
Secretary.

(Here follow Complainant's Exhibits Nos. 58, 59, 60, and 61, marked pages 2489 to 2493, inclusive.)

2494 COMPLAINANT'S EXHIBIT 62.

Comp. Ex. 62. J. A. F.

New York & Queens Gas Company.

List Price of Standard Wrought Iron & Steel Pipe.

	Price per foot.
3/4"	$ .115
1"	.17
1 1/4"	.23
1 1/2"	.275
2"	.37
2 1/2"	.585
3"	.765

* * * * * * *

List Price of Malleable Iron Fittings.

	Price per pound.
Class B	.20
Class C	.13

2495 COMPLAINANT'S EXHIBIT #63.

Various coal and oil vouchers referred to in Complainant's Exhibit #59.

Not printed.

COMPLAINANT'S EXHIBIT 64.

Comp. Ex. 64. G. C. S. 5/5/20.

New York & Queens Gas Company.

Cost of Production and Distribution, Year Ended December 31, 1919.

Patterson, Teele and Dennis, Accountants and Auditors, New York and Boston. # 8566. Copy.

New York & Queens Gas Company.

Cost of Production and Distribution, Year Ended December 31, 1919.

	Quantity.	Unit price.	Amount.	Cost per M cubic feet.	Material per M cubic feet made.
Cost of Production:					
Generator Coal	5,869.37 Tons	$8,280 Ton	$48,595.80	$.1279	34.59 Lb.
Boiler Fuel Coal	2,715.26 Tons	6.472 Ton	17,573.89	.0462	16.00 Lb.
Boiler Fuel Water Gas Tar	266,006 Gals.	.060 Gal.	15,960.36	.0420	.70 Gal.
Labor, Cartage, etc., Handling			9,302.69	.0245	
Total Water Gas Fuel			91,432.74	.2406	
Gas Oil	1,590,785 Gals.	.067 Gal.	107,192.16	.2820	4.19 Gal.
Iron Mass	15,573 Bu.	.301 Bu.	4,690.21	.0123	.04 Bu.
Water	356,500 C. F.	.001 C. F.	356.50	.0009	.94 C. F.
Sundry Supplies			59.61	.0002	
Total Material			203,731.22	.5360	

COMPLAINANT'S EXHIBIT 64—*Continued.*

	Quantity.	Unit price.	Amount.	Cost per M cubic feet.	Material per M cubic feet made.
Deduct: Residuals—Water Gas Tar	266,225 Gals.	.060 Gal.	15,974.31	.0420	.70 Gal.
Net Material			187,756.91	.4940	
Gas Making Labor			23,970.80	.0631	
Total Material and Labor			211,727.71	.5571	
Repair Labor			10,101.99	.0266	
Repair Material			17,843.55	.0469	
Miscellaneous Works Expense			1,503.59	.0039	
Total Water Gas Made & Cost of Production—forward	380,086,000 C. F.		$241,176.84	$.6345	
Decrease in Stock on hand	4,000 C. F.*				
Used by New York & Queens Gas Company	1,933,300 C. F.				
Gas Sales to Consumers	336,241,400 C. F.				
Total	338,170,700 C. F.				
Losses due to Condensation, etc.	41,915,300 C. F.	(11.03%)			
	380,086,000 C. F.				

(*In red.)

Cost of Production and Distribution, Year Ended December 31, 1919 (Concluded).

	Amount.	Cost per M cubic feet sold.
Total Cost of Production—Forward	$241,176.84	$.7173
Cost of Distribution and Other Expenses:		
Transmission Pumping	449.63	.0013
Distribution Superintendence and Supplies and Expenses	3,708.95	.0110
Meter and Installation Work	4,724.28	.0141
Work on Consumers' Premises	11,996.66	.0357
Repairs of Street Mains	5,697.02	.0169
Repairs of Services	809.35	.0024
Repairs of Meters	4,571.28	.0136
Repairs of Tools	34.50	.0001
Repairs of Gas Appliances	1,918.74	.0057
Commercial Expense	24,982.66	.0743
Salaries—General Office	5,760.78	.0171
Supplies and Expenses—General Office	3,319.33	.0099
Legal Expense	2,997.19	.0089
Claims and Arrears Expense	157.23	.0005
Insurance	3,703.01	.0110
Stable Expense	2,991.49	.0089
Automobile Expense	4,441.32	.0132
Claims for Damages	133.00	.0004
Real Estate Rents Paid	2,075.96	.0062
Stationery and Printing	2,045.44	.0061

COMPLAINANT'S EXHIBIT 64—*Continued*.

		Amount.	Cost per M cubic feet sold.
Undistributed Adjustments		1,262.54	.0038
Uncollectible Bills		1,349.02	.0040
Interest on Consumers' Deposits		1,621.10	.0048
Gas Rate Appeal No. 2		15,518.73	.0462
Defensive Emergency Service		747.46	.0022
Relief Department and Pensions		581.15	.0017
Total Cost of Distribution and Other Expense		107,597.82	.3200
Renewals and Replacements		10,086.41	.0300
Taxes and Interest Thereon		23,794.71	.0707
Total Cost of New York & Queens Gas Company of Gas sold by it		382,655.78	1.1380
Deduct: Income from Sales of Gas		334,614.83	.9951
		48,040.95	.1429
Deduct: Miscellaneous Operating Revenues:			
Rent from Gas Appliances	13,839.53		
Gross Profit from Sale of Appliances	8,465.39		
Interest on Bank Balances	308.60		
Interest on Consumers' Final Bills	5.44		
Interest on Main Contracts Deposits	81.10		
		22,700.06	.0675
Net Deficit from Operations		$25,340.89	$.0754

2500 COMPLAINANT'S EXHIBIT 65.

Comp. Ex. 65, 5/5/20. G. C. S.

New York & Queens Gas Company.

Revenues and Expenses of the Gas Business of the New York & Queens Gas Company for the Year Ended December 31, 1919.

Patterson, Teele and Dennis,

Accountants and Auditors,

New York and Boston.

#8567.

Copy.

2501 New York & Queens Gas Company.

Revenues & Expenses of the Gas Business of the New York & Queens Gas Company for the Year Ended December 31, 1919.

Revenues.

Sales of Gas	Schedule 1	334,614.83
Miscellaneous Operating Revenues:		
Rents from Gas Appliances (440)		13,839.53
Gross Profit from Sales of Gas Appliances (441)		8,465.39
Interest on Bank Balances (G902)		308.60
Interest on Consumers' Final Bills (G902)		5.44
Interest on Main Contracts Deposits (G902)		81.10
Total Revenues Applicable to Gas Business		357,314.89

Expenses.

Cost of Production	Schedule 2	241,176.84
Cost to Distribute	Schedule 3	104,627.70
Uncollectible Gas Bills (G870)		1,349.02
Interest on Consumers' Deposits		1,621.10
Renewals and Replacements (374)		10,086.41
Taxes and Interest Thereon	Schedule 4	23,794.71
Total Expenses		382,655.78
Total Revenues		357,314.89
Net Loss from Gas Business		25,340.89

Net Loss per thousand cubic feet of gas sold 7.54 cents

COMPLAINANT'S EXHIBIT 65—*Continued.*

2502

New York & Queens Gas Company.

Sale of Gas Year Ended December 31, 1919.

Schedule 1.

General ledger No. 4, folio.		Cubic feet.	Amount.	Less deductions and allowances	Total.
204	Commercial Metered Lighting @ 1.00	256,432,400	256,432.40	1,235.77	255,196.63
200	Municipal Buildings @ .75	1,554,000	1,165.50	.....	1,165.50
202	Prepayment @ 1.00	78,255,000	78,252.95	25	78,252.70
	Totals	336,241,400	335,850.85	1,236.02	334,614.83

Cost of Production.

Year Ended December 31, 1919.

Schedule 2.

Operating expenses, ledger No. 2, folio			
2	Superintendence (601A)		3,086.85
6	Boiler Labor (601B)		7,089.28
10	Generator Labor (601D)		10,760.02
14	Purifier Labor (601E)		1,801.45
18	Miscellaneous Labor (601F)		1,233.20
22	Boiler Fuel (602) see below		20,410.98
26	Water (603)		356.50
30	Generator Fuel (606)		55,061.40
34	Gas Oil (607)		107,192.16
38	Purification Supplies (608)		4,749.82
42	Miscellaneous Works Expense (609)		1,503.59
50	Repairs Works & Station Structures—Labor (610)		636.32
54	Repairs Works & Station Structures—Materials (610)		2,037.86
62	Repairs Power Plant—Material	(G508-9-13)	3,137.88
58	Repairs Power Plant (Boilers, Engs., etc.) Labor		2,529.83
68	Repairs Gas Apparatus (Sets, Holders, etc.) Labor	(G511*a*-612-613)	6,327.79
72	Repairs Gas Apparatus—Materials		12,891.89
80	Repairs Works Tools (615)		383.97
84	Boiler Fuel—Tar (used) (602) see above		15,960.36
			257,151.15

COMPLAINANT'S EXHIBIT 65—*Continued.*

Operating expenses, ledger No 2, folio			
	Deduct:		
86	Residuals Produced (cr.)	15,960.36	
88	Residuals Produced (Sold) (442)	13.95	
			15,974.31
	Total		241,176.84

Cost of Production per thousand cubic feet of Gas sold 71.72728 cents.

2504

New York & Queens Gas Company.

Cost to Distribute.

Year Ended December 31, 1919.

Schedule 3.

94	Transmission Pumping (631)		449.63
98	Distribution Superintendence (632)		2,513.02
102	Distribution Supplies and Expenses (633)		1,195.93
108	Gas Meter and Installation (634*a*)		4,724.28
114	Work on Consumers' Premises (Complaints, Inspectors, Gas Arc. Ins. & M.)	(634*b*)	5,478.70
122	Work on Consumers' Premises (Repairing, Appliances		2,880.81
126	Work on Consumers' Premises (Con. & Discon. Appliances B. I. Appliances)		3,637.15

130	Repairs Gas Mains (635)			5,697.02
134	Repairs Gas Service (636)			809.35
138	Repairs Meters (637)			4,571.28
144	Repairs Distribution Tools (638)			34.50
148	Repairs Appliances (639)			1,918.74
156	Commercial Dept.—General Labor (G551*a*)			3,576.50
160	Commercial Dept.—Accounting (G551*b*)			5,591.48
164	Commercial Dept.—Contracts (Applications) (G551*c*)			355.43
166	Commercial Dept.—Collecting—Regular			
172	Commercial Dept.—Collecting—P. P.	(G551*d*)		4,069.67
176	Commercial Dept.—Meter Reading (G551*e*)			1,866.93
181	Commercial Dept.—Supplies & Expenses			2,813.04
186	Commercial Dept.—Cashier	(G551*f*)		2,769.60
188	Commercial Dept.—Stoves			982.67
190	Advertising (G553)			355.40
194	Canvassing and Soliciting (G554)			429.47
198	Salaries & Expenses of General Office (G833-4)			2,172.47
203	General & Miscellaneous Expenses (G837)			5,760.78
	Less: Interest on Unpaid Taxes	3,553.04 233.71		
208	General & Miscellaneous Expenses—Defensive Emergency			3,319.33
212	Rents (G835)			747.46
215	Rate Case (G836)			2,075.96
				15,518.73
	Amount forward			86,315.33

COMPLAINANT'S EXHIBIT 65—*Continued.*

2505

New York & Queens Gas Company.

Cost to Distribute.

Year Ended December 31, 1919.

Schedule 3 (Concluded).

Operating expenses, ledger No. 2, folio		
	Amount brought forward	86,315.33
216	Legal Expense (G836)	2,997.19
221	Law Expenses connected with claims and arrears (G847*a*)	157.23
222	Insurance (G838)	3,703.01
228	Accidents and Damages (G847)	133.00
230	Stationery and Printing (G848)	2,045.44
236	Stable Expense (G851)	2,991.49
243	Repairs Automobiles (G851)	4,441.32
250	Undistributed Adjustments (G852)	1,106.29
254	Relief Dept. and Pensions	581.15
General ledger, folio.		
298	Bad Debts written off (938)	156.25
	Total	104,627.70

Cost to Distribute, etc. per thousand cubic feet of Gas sold, 31.11684 cents.

Taxes & Interest Thereon.

Year Ended December 31, 1919.

Schedule 4.

New York State Taxes:		
Gross Earnings	1,749.10	
New York City Taxes:		
Special Franchise	7,382.54	
Real Estate of Corporations	28.20	
Real Estate	13,103.16	
U. S. Government Taxes:		
Capital Stock	1,298.00	
Total Taxes applicable to Gas Business	23,561.00	23,561.00
Interest on Unpaid Taxes:		
Special Franchise	32.55	
Real Estate	201.16	
Total Interest on Unpaid Taxes Applicable to Gas Business		233.71
Total Taxes & Interest on Unpaid Taxes Applicable to Gas Business		23,794.71

2507 COMPLAINANT'S EXHIBIT #66.

Witness Miller's appraisal of cost of reproduction spread upon record at page 699.
Not printed here.

COMPLAINANT'S EXHIBIT #67.

Various vouchers submitted in connection with complainant's exhibits #60, #61, #62.
Not printed.

COMPLAINANT'S EXHIBIT #68.

Various vouchers other than coal and oil.
Not printed.

2508 (Copy.)

COMPLAINANT'S EXHIBIT 69.

G. B. St. George, President. L. V. Birmingham, Secretary-Treasurer.

St. George Coal Company,

Anthracite and Bituminous,

149 Broadway, New York.

Telephone, Cortlandt 1638.

Anthracite.

D. L. & W. Coal Co.
P. & R. Coal & Iron Co.
Lehigh Valley Coal Sales.

April 9th, 1920. M. H. Spear, April 10, 1920.

(Thought Mr. Addicks would be interested.)

Mr. G. Fiear, Purchasing Agent,
New York and Queens Gas Company,
88 Main Street, Flushing, L. I.

DEAR SIR:

Referring to your conversation with our Mr. C. A. Anderson relative to your requirements on Broken coal for the coming year, namely 1,000 gross tons, beg to submit the following for your consideration.

We will supply you with Delaware, Lackawanna & Western Coal Company's broken coal from their Scranton region at $8.00 per gross

f. o. b. Hoboken. The present rate to Flushing is 0.56¢ per gross making a price, per gross ton, of $8.56 alongside your dock. We ld deliver in boatloads of 500 tons or more as specified by you. s price, $8.00, is subject to any increase given the miners at the clusion of present negotiations.

Appreciating your courtesy to Mr. Anderson and trusting that we may be favored with an early reply, beg to remain,

Very truly yours,

ST. GEORGE COAL COMPANY.
L. V. BERMINGHAM,
Secretary-Treasurer.

quotations are not binding until orders are accepted by us. Rail- l weights govern all sales. We are not responsible for loss of coal route nor for damages from delays of transportation, strikes, or es beyond our control.

COMPLAINANT'S EXHIBIT #70.

Book containing main record of the Complainant Company. Not printed.

Copy.

COMPLAINANT'S EXHIBIT 71.

Memorandum of Agreement.

Agreement made this eighteenth day of December, 1918, between Standard Oil Company (New Jersey) party of the first part, and Consolidated Gas Company, party of the second part, Wit- seth:

In consideration of the mutuality hereof, it is agreed between the rties hereto as follows:

1. The party of the first part hereby sells and agrees to deliver the party of the second part (on terms and conditions herein- er mentioned) One Hundred and Twenty-two Million (122,- 000,000) gallons of a homogeneous Gas Oil of not less than 26 degrees vity, Beaume, and of a quality equivalent for gas-making pur- es to similar gravities received by the Gas Company during the ar prior to the date of this contract, for consumption in the busi- s of said party of the second part in its various plants in New rk City, or the plants of such other Gas Companies as it may signate in the said City, or in Westchester County.

2. The party of the second part hereby purchases One Hundred d Twenty-two Million (122,000,000) gallons of Oil specified ove, and agree to receive same within the contract period begin- ng January 1, 1919, and ending December 31, 1919, subject, how- er, to an option in the party of the second part, to be exercised by tice in writing to the party of the first part on or before May 1,

1919, to cancel as of June 30, 1919, its obligation to purchase, receive and pay for one-half of said quantity of One Hundred and Twenty-two Million (122,000,000) gallons of Gas Oil, to wit: Sixty-one Million (61,000,000) gallons thereof.

2512 3. The price shall be for delivery in the manner, at the points and at the rates, in cents per gallon, respectively stated in paragraph "4" hereof, and payment for all deliveries shall be made in net cash thirty (30) days after date of invoice, or on demand thereafter, with interest at six (6%) per cent.

In the case of tank-boats, delivery shall be at the mouth of the pipe-lines of the party of the second part and in the case of tank-cars, at said second party's railroad siding.

Where delivery is made by tank-boats, the party of the second part shall, at its own expense, furnish power for the operation of the boat's pumps.

Delivery shall be made in fairly equal monthly quantities as the business of the party of the second part shall require, and as it, in writing, shall order; but not less than one tank-boat, or one tank-car load, shall be ordered at any one time, and total deliveries shall not exceed the quantity above specified.

4. —

(A.) For Water Transportation by Tank-Boat

(Barrels Being 50 Gallons Each.)

	Per gal.
Consolidated Gas Co., E. 21st St. Branch, in lots of not less 2,000 barrels	7.5721¢
Consolidated Gas Co., W. 42nd St. Branch, in lots of not less than 2,000 barrels	7.5824¢
Consolidated Gas Co., E. 99th St. Branch, in lots of not less than 2,000 barrels	7.5927¢
New Amsterdam Gas Co., Ravenswood, L. I., in lots of not less than 4,000 barrels	7.5824¢
Standard Gaslight Co., E. 115th St., in lots of not less than 2,000 barrels	7.5927¢
Astoria Light, Ht. & Pwr. Co., Flushing Bay, in lots of not less than 6,000 barrels	7.5927¢
Central Union Gas Co., E. 138th St., in lots of not less than 3,000 barrels	7.5927¢

2513

New York & Queens Gas Co., Flushing, L. I., in lots of not less than 2,000 barrels	7.7472¢
Westchester Lighting Co., Pelham, N. Y., in lots of not less than 2,000 barrels	7.8502¢
Westchester Lighting Co., Yonkers, N. Y., in lots of not less than 1,500 barrels	7.7678¢

	Per gal.
Westchester Lighting Co., Tarrytown, N. Y., in lots of not less than 1,000 barrels	8.0562¢
Peekskill Ltd. & Ry Co., Peekskill, N. Y., in lots of not less than 1,000 barrels (during the open season of navigation.)	8.0562¢
Northern Westchester Lighting Co., Ossining, N. Y., in lots of not less than 1,430 barrels (during the open season of navigation.)	8.0562¢

The prices above mentioned are based on the lighterage rates given below plus Government tax of three (3%) per cent. on transportation, and it is mutually agreed that if the lighterage rate or war tax is increased or decreased, the price will be correspondingly adjusted.

Lighterage rates to—	Minimum.	Rate (cents).
Consolidated Gas Co., E. 21st Street	2,000	3½
Consolidated Gas Co., West 42nd Street	2,000	4
Consolidated Gas Co., East 99th Street	2,000	4½
New Amsterdam Gas Co., Ravenswood, L. I.	4,000	4
Standard Gas Light Co., East 115th Street	2,000	4½
Astoria Lt. Heat & Power Co., Flushing Bay	6,000	4½
Central Union Gas Co., East 138th Street	3,000	4½
New York & Queens Gas Co., Flushing, L. I.	2,000	12
Westchester Lighting Co., Pelham, N. Y.	2,000	17
Westchester Lighting Co., Yonkers, N. Y.	1,500	13
Westchester Lighting Co., Tarrytown, N. Y.	1,000	27
Peekskill Ltg. & Ry. Co., Peekskill, N. Y.	1,000	27
Northern Westchester Ltg. Co., Ossining, N. Y.	1,430	27

(All the above subject to ice conditions.)

2514 (B.) For Rail Transportation by Tank-Cars.

	Per gal.
Peekskill Ltg. & Ry. Co., Peekskill, N. Y.	8.5197¢
Northern Westchester Ltg. Co., Ossining, N. Y.	8.5197¢
Westchester Ltg. Co., White Plains, N. Y.	8.8936¢
Westchester Ltg. Co., Rye, N. Y.	8.7916¢

The prices above mentioned are based on the present freight rates from Bayonne, established by existing tariffs, plus Government tax of three (3%) per cent. on transportation, and it is mutually agreed that if the freight or war tax is increased or decreased, the price will be correspondingly adjusted.

5. If the party of the second part finds that it will be unable to take, during the contract period, the entire contract quantity, it shall so notify the party of the first part in writing, if possible, three months prior to December 31, 1919, but not later than De-

cember 1, 1919, and in that event, or if no such notice is given, the party of the first part shall then have the option, to be communicated in writing to the party of the second part on or before the tenth day of December, 1919, of canceling the balance which may remain undelivered at the expiration of the contract period, or of continuing delivering until the entire contract quantity shall have been delivered. In the latter event, the party of the second part shall place orders and the party of the first part shall make deliveries, in like manner as hereinbefore provided in respect of the contract period.

In the event that the party of the second part shall cancel this contract under the provisions of Section "2" hereof, as of June 30, 1919, the said party of the second part shall, notwithstanding such cancellation, purchase and pay for, under the terms of this
2515 contract, the full amount of Sixty-one Million (61,000,000) gallons of said Gas Oil during the six (6) months period terminating on June 30, 1919; and, in case deliveries in said last named amount shall not have been ordered by the party of the second part, the party of the second part shall continue after June 30, 1919, to place orders in normal quantities and to receive deliveries, and the party of the first part shall make deliveries in like manner as hereinbefore provided in respect of the contract period, until said full amount of Sixty-one Million (61,000,000) gallons shall have been delivered under this contract.

6. The quantities from time to time delivered hereunder shall be measured and invoices rendered and payments made on the basis of the number of gallons certified to have been loaded by a properly authorized New York Produce Exchange Inspector.

7. If, during the life of this Agreement, any internal or war-revenue tax shall be levied by the Federal or any State Government upon the goods covered hereby, or in respect of the production, manufacture, or sale thereof, or, in the case of a delivered price basis, upon the transportation thereof, including freight charges thereon, it is agreed that the amount of such tax shall be added to the purchase price above specified and shall be borne by the party of the second part.

8. All orders shall be filled with reasonable promptness by the party of the first part, but said party of the first part shall not be held responsible for losses resulting, directly or indirectly, from delay, or from failure to deliver, caused by fire, strikes, differences with workmen, riots, insurrection, war, blockade, interference of civil or military authority, compliance with orders of the President of the United States, or other governmental agency, interrup-
2516 & 2517 tion in transportation, whether by rail or water, of the product above described, or of the crude petroleum from which the same is to be obtained, or from other causes beyond its control.

9. The party of the second part agrees that tank-cars will be unloaded within forty-eight (48) hours (Sundays and holidays excepted) at initial destination, and that for detention of cars beyond

said forty-eight (48) hours it will pay to the party of the first part a per diem charge of One Dollar and Seventy-five cents ($1.75) per car.

In witness whereof the parties hereto have caused these presents to be duly executed the day and year first written above.

STANDARD OIL COMPANY (NEW JERSEY),
By F. H. BUFORD,
Vice President.

Attest:
C. T. WHITE,
Secretary.

CONSOLIDATED GAS COMPANY OF N. Y.,
By W. R. ADDICKS,
Vice President.

Attest:
F. R. BARNITZ,
Asst. Secretary.

2518 COMPLAINANT'S EXHIBIT 72.

Copy.

Comp. Ex. 305. J. A. F.
Comp. Ex. 72. J. A. F.

Complainant's Ex. 72.

Standard Oil Company
(Incorporated in New Jersey),
Domestic Sales Department
26 Broadway.

Dictated
C. K.: K.
T J. Williams.

New York, January 8, 1919.

Subject. ——.

Mr W. R. Addicks, Vice President,
Consolidated Gas Company of New York,
130 East 15th Street,
New York City.

DEAR SIR:

Please be advised that the lighterage rates on Gas Oil will be increased approximately fifteen per cent., effective February 8, 1919, to meet increasing cost of labor and repairs.

As soon as we learn of the exact figures, we will advise you.

Yours very truly,
T. J. WILLIAMS.
/s/ /K.

2519 Copy.

Standard Oil Company
(Incorporated in New Jersey),
Domestic Sales Department,
26 Broadway.

Dictated.

C. K.: K.

T. J. Williams.

New York, January 16, 1919.

Subject, ——.

Mr. W. R. Addicks, Vice President,
Consolidated Gas Company of New York,
130 East 15th Street,
New York City.

DEAR SIR:

Referring to our letter of January 8th, on account of the increased cost of operation, we beg to advise you that the rates for transportation by bulk barge to the following Gas Works from our refineries will be effective February 8, 1919:

Deliveries to—		Minimum.	Rate.
Consolidated Gas Company,	East 21st St.	1,500	4¢
" " "	" 99th St.	2,000	5¼¢
Standard " "	" 115th St.	2,000	5¼¢
Central Union " "	" 138th St.	3,000	5¼¢
New Amsterdam	Ravenswood, L. I.	4,000	4½¢
N. Y. & Queens Gas Company,	Flushing, L. I.	2,000	13¾¢
Astoria Light & Power Co.,	Astoria, L. I.	6,000	5¼¢
Westchester Light Company,	Pelham, N. Y.	2,000	19½¢
" " "	Tarrytown, N. Y.	1,000	31¢
" " "	Yonkers, N. Y.	1,500	15¢
Peekskill Lt. & Rwy. Co.,	Peekskill, N. Y.	1,000	31¢
Consolidated Gas Company,	West 42nd St.	2,000	4½¢
Westchester Light Company,	Ossining, N. Y.	1,430	31¢

(All subject to ice conditions.)

Subject to change in rate on thirty days' notice and subject to strikes and interference of Government or other interference beyond our control.

This will make the prices at the various Gas Plants as follows:

2520

		In lots of not less than, bbls.	Rate.
Consolidated Gas Company,	East 21st St.....	1,500	7.5824¢
" " "	" 99th St.....	2,000	7.6082¢
Standard " "	" 115th St.....	2,000	7.6082¢
Central Union " "	" 138th St.....	3,000	7.6082¢
New Amsterdam	Ravenswood, L. I.	4,000	7.5927¢
N. Y. & Queens Gas Company,	Flushing, L. I....	2,000	7.7833¢
Astoria Light & Power Co.,	Astoria, L. I.....	6,000	7.6082¢
Westchester Light Company,	Pelham, N. Y....	2,000	7.9017¢
" " "	Tarrytown, N. Y..	1,000	8.1386¢
" " "	Yonkers, N. Y....	1,500	7.8090¢
Peekskill Lt. & Rwy. Co.,	Peekskill, N. Y...	1,000	8.1386¢
Consolidated Gas Company,	West 42nd St.....	2,000	7.5927¢
Westchester Light Company,	Ossining, N. Y....	1,430	8.1386¢

The prices above mentioned are based on the lighterage rates given in the previous paragraph, plus Government tax of 3% on transportation.

Yours very truly,

T. J. WILLIAMS.
/s./ /K.

Rates O. K. based on the lighterage rates attached plus 7½¢ a gallon.

1/17/19. W. R. A.
Jan. 20, 1919.
W. R. A.

2521

COMPLAINANT'S EXHIBIT 73.

Copy.

Comp. Ex. 304, Oct. 2/19.

Comp. Ex. 73. J. A. F.

Agreement, Made This Twenty-eighth Day of March, 1919, *Between the Standard Oil Company (New Jersey), Party of the First Part, and the Consolidated Gas Company of New York, Party of the Second Part.*

Whereas, the parties hereto entered into a contract, dated December 18, 1918, for the purchase and delivery of gas oil during the calendar year 1919 and now desire to modify the said contract in the manner hereinafter specified:

Now, therefore, this agreement witnesseth:

1. The party of the second part hereby surrenders the option to cancel said contract, contained in section 2 of the said agreement.

2. The quantity of oil which the party of the first part sells and agrees to deliver and which the party of the second part purchases and agrees to receive during the period beginning April 1, 1919, and ending December 31, 1919, is eighty-two million (82,000,000) gallons.

3. The price which the party of the first part agrees to charge and the party of the second part agrees to pay for such oil shall be one and one-half cents (1½c) per gallon less than the price specified in Section 4 of the said contract, as modified by letter of T. J. Williams, on behalf of the party of the first part, to W. R. Addicks, Vice-President of the party of the second part, dated January 16, 1919, a copy whereof is hereto attached.

4. In all other respects, except as expressly modified by this agreement, the said contract of December 18, 1918, is hereby ratified and confirmed.

2521½ In witness whereof, the parties hereto have caused these presents to be duly executed the day and year first above written.

STANDARD OIL COMPANY (NEW JERSEY),
By F. J. BUFORD,
Vice President.

Attest:
C. T. WHITE,
Secretary.

CONSOLIDATED GAS COMPANY OF NEW YORK,
By W. R. ADDICKS,
Vice President.

Attest:
F. R. BARNITZ,
Asst. Secretary.

COMPLAINANT'S EXHIBIT 73—*Continued.*

Copy.

Standard Oil Company
(Incorporated New Jersey),
Domestic Sales Department,
26 Broadway.

Dictated.
O. K.: K.
T. J. Williams.

Subject, ——.

New York, January 16, 1919.

Mr. W. R. Addicks, Vice President,
Consolidated Gas Company of New York,
130 East 15th Street,
New York City.

DEAR SIR:

Referring to our letter of January 8th, on account of the increased cost of operation, we beg to advise you that the rates for transportation by bulk barge to the following Gas Works from our refineries will be effective February 8, 1919:

Deliveries to—	Minimum.	Rate.
Consolidated Gas Company, East 21st St.	1,500	4¢
" " " " 99th St.	2,000	5¼¢
Standard " " " 115th St.	2,000	5¼¢
Central Union " " " 138th St.	3,000	5¼¢
New Amsterdam " " Ravenswood, L. I.	4,000	4½¢
N. Y. & Queens Gas Company, Flushing, L. I.	2,000	13¾¢
Astoria Light & Power Co., Astoria, L. I.	6,000	5¼¢
Westchester Light Company, Pelham, N. Y.	2,000	19½¢

COMPLAINANT'S EXHIBIT 73—*Continued.*

Deliveries to—	Minimum	Rate
Westchester Light Company, Tarrytown, N. Y.	1,000	31¢
" " " Yonkers, N. Y.	1,500	15¢
Peekskill Lt. & Rwy. Co., Peekskill, N. Y.	1,000	31¢
Consolidated Gas Company, West 42nd St.	2,000	41½¢
Westchester Light Company, Ossining, N. Y.	1,430	31¢

(All subject to ice conditions.)

Subject to change in rate on thirty days' notice and subject to strikes and interference of Government or other interference beyond our control.

This will make the prices at the various Gas Plants as follows

2523	In lots of not less than, bbls.	Rate
Consolidated Gas Company, East 21st St.	1,500	7.5824¢
" " " " 99th St.	2,000	7.6082¢
Standard " " " 115th St.	2,000	7.6082¢
Central Union " " " 138th St.	3,000	7.6082¢
New Amsterdam " " Ravenswood, L. I.	4,000	7.5927¢
N. Y. & Queens Gas Company, Flushing, L. I.	2,000	7.7833¢
Astoria Light & Power Co., Astoria, L. I.	6,000	7.6082¢
Westchester Light Company, Pelham, N. Y.	2,000	7.9017¢
" " " Tarrytown, N. Y.	1,000	8.1386¢
" " " Yonkers, N. Y.	1,500	7.8090¢
Peekskill Lt. & Rwy. Co., Peekskill, N. Y.	1,000	8.1386¢
Consolidated Gas Company, West 42nd St.	2,000	7.5927¢
Westchester Light Company, Ossining, N. Y.	1,430	8.1386¢

The prices above mentioned are based on the lighterage rates given in the previous paragraph, plus Government tax of 3% on transportation.

Yours very truly,

T. J. WILLIAMS.

2524 [Endorsed:] Standard Oil Company (N. J.) and Consolidated Gas Company of New York. Agreement.

2525 COMPLAINANT'S EXHIBIT 74.

Copy.

Comp. Ex. 74. J. A. F.

Comp. Ex. 488 for Ident.

Memorandum of Agreement.

Agreement made this fourth day of December, 1919 between the Standard Oil Company (New Jersey) party of the first part, and the Consolidated Gas Company of New York, party of the second part, witnesseth:

In consideration of the mutuality hereof, it is agreed between the parties hereto, as follows:

1. Party of the first part hereby sells and agrees to deliver to party of the second part (on the terms and conditions hereinafter mentioned) 67,000,000 gallons of homogeneous gas oil of not less than 28 degrees gravity, Beaume, and of a quality equivalent for gas-making purposes to similar gravities received by the Gas Company during the year prior to the date of this contract, for consumption in the business of said party of the second part in its various plants in New York City, or the plants of such other Gas Companies as it may designate in the said City, or in Westchester County.

2. Party of the second part hereby purchases 67,000,000 gallons of said gas oil above specified and agrees to receive same within the contract period beginning January 1, 1920 and ending June 30, 1920.

Party of the first part hereby extends option to the party of the second part to be exercised by notice in writing to the party of the first part on or before May 31, 1920, to purchase, receive and pay for an additional amount of 67,000,000 gallons of gas oil of the same quality as that above specified and upon the same terms as to price and rate of monthly delivery as are provided with respect to said amount of 67,000,000 gallons specified for the first six months period aforesaid. Said additional quantity of 67,000,000 gallons
2526 shall be respectively delivered and received during the period from July 1, 1920 to December 31, 1920, in the event the said option is exercised.

3. The price shall be for delivery in the manner, at the points and at the rates, in cents per gallon, respectively stated in paragraph "4" hereof, and payment for all deliveries shall be made in net cash thirty (30) days after date of invoice, or on demand thereafter, with interest at six (6%) per cent.

In the case of tank-boats, delivery shall be at the mouth of the pipe-lines of the party of the second part and in the case of tank-cars, at said second party's railroad siding.

Where delivery is made by tank-boats, the party of the second

part shall, at its own expense, furnish power for the operation of the boats' pumps.

Delivery shall be made in fairly equal monthly quantities as the business of the party of the second part shall require, and as it, in writing, shall order; but not less than one tank-boat, or one tank-car load, shall be ordered at any one time, and total deliveries shall not exceed the quantity above specified.

4. (A.) For Water Transportation by Tank-boat (Barrels Being 5 Gallons Each):

	Per gall.
Consolidated Gas Co., E. 21st St. Branch, in lots of not less than 1,500 barrels	7.0824
Consolidated Gas Co., W. 42nd St. Branch, in lots of not less than 2,000 barrels	7.0927
Consolidated Gas Co., E. 99th St. Branch, in lots of not less than 2,000 barrels	7.1082
New Amsterdam Gas Co., Ravenswood, L. I., in lots of not less than 4,000 barrels	7.0927
Standard Gaslight Co., E. 115th St., in lots of not less than 2,000 barrels	7.1082
2527 Astoria Light, Ht. & Pwr. Co., Flushing Bay, in lots of not less than 6,000 barrels	7.1082
Central Union Gas Co., E. 138th St., in lots of not less than 3,000 barrels	7.1082
New York & Queens Gas Co., Flushing, L. I., in lots of not less than 2,000 barrels	7.2833
Westchester Lighting Co., Pelham, N. Y., in lots of not less than 2,000 barrels	7.4017
Westchester Lighting Co., Yonkers, N. Y., in lots of not less than 1,500 barrels	7.3690
Westchester Lighting Co., Tarrytown, N. Y., in lots of not less than 1,000 barrels	7.6386
Peekskill Ltg. & Ry. Co., Peekskill, N. Y. (during the open season of navigation), in lots of not less than 1,000 barrels	7.6386
Northern Westchester Lighting Co., Ossining, N. Y. (during the open season of navigation), in lots of not less than 1,430 barrels	7.6386

The prices above mentioned are based on the lighterage rates given below plus Government tax of three (3%) per cent. on transportation, and it is mutually agreed that if the lighterage rate or war tax is increased or decreased, the price will be correspondingly adjusted

Lighterage rates to—	Bbls. (50 gals. each). Minimum.	Rate (cents).
Consolidated Gas Co., E. 21st Street	1,500	4
Consolidated Gas Co., West 42nd Street	2,000	4½
Consolidated Gas Co., East 99th Street	2,000	5¼
New Amsterdam Gas Co., Ravenswood, L. I.	4,000	4½
Standard Gas Light Co., East 115th Street	2,000	5¼
Astoria Lt. Ht. & Power Co., Flushing Bay	6,000	5¼
Central Union Gas Co., East 138th Street	3,000	5¼
New York & Queens Gas Co., Flushing, L. I.	2,000	13¾
Westchester Lighting Co., Pelham, N. Y.	2,000	19½
Westchester Lighting Co., Yonkers, N. Y.	1,500	15
Westchester Lighting Co., Tarrytown, N. Y.	1,000	31
Peekskill Ltg. & Ry. Co., Peekskill, N. Y.	1,000	31
Northern Westchester Ltg. Co., Ossining, N. Y.	1,430	31

(All the above subject to ice conditions.)

(B.) For Rail Transportation by Tank Cars.

	Per gal.
Peekskill Ltg. & Ry. Co., Peekskill, N. Y.	8.0197¢
Northern Westchester Ltg. Co., Ossining, N. Y.	8.0197¢
Westchester Ltg. Co., White Plains, N. Y.	8.3936¢
Westchester Ltg. Co., Rye, N. Y.	8.2916¢

The prices above mentioned are based on the present freight rates from Bayonne, established by existing tariffs, plus Government tax of three (3%) per cent. on transportation, and it is mutually agreed that if the freight or war tax is increased or decreased, the price will be correspondingly adjusted.

5. If the party of the second part finds that it will be unable to take the said 67,000,000 gallons hereby purchased during the contract period of six months terminating June 30, 1920, or in the event the aforesaid option is exercised by the party of the second part and said party of the second part finds that it will be unable to take the said additional quantity of 67,000,000 gallons during the six months' period terminating December 31, 1920, then, in either of said events, said party of the second part shall so notify the party of the first part in writing respectively as to either of said contract quantities, if possible two months prior to the termination of the respective six months' periods but not later than thirty days prior to the termination of the respective six months' periods, *of* if no such notice is given, the party of the first part shall then have the option, to be communicated in writing to the party of the Second part on or be-

fore the tenth day of the last month in the respective
2529 months' periods, of cancelling the proportion which may rem
undelivered at the expiration of the contract period, or
continuing delivery until the entire contract quantity shall have b
delivered. In the latter event the party of the second part shall pl
orders and the party of the first part shall make deliveries in
manner as hereinbefore provided with respect to the first six mon
period, and the second six months' period if said option be exerci

6. The quantities from time to time delivered hereunder shal
measured and invoices rendered and payments made on the basi
the number of gallons certified to have been loaded by a prop
authorized New York Produce Exchange Inspector.

7. If, during the life of this Agreement, any internal or
revenue tax shall be levied by the Federal or any State Governm
upon the goods covered hereby, or in respect of the production, m
facture, or sale thereof, or in the case of a delivered price basis,
the transportation thereof, including freight charges thereon,
agreed that the amount of such tax shall be added to the purc
price above specified and shall be borne by the party of the se
part.

8. All orders shall be filled with reasonable promptness by
party of the first part, but said party of the first part shall n
held responsible for losses resulting, directly or indirectly,
delay, or from failure to deliver, caused by fire, strikes, differ
with workmen, riots, insurrections, war, blockade, interferen
civil or military authority, compliance with orders of the Pres
of the United States, or other governmental agency, interrupti
transportation, whether by rail or water, of the product abov
scribed, or of the crude petroleum from which the same
2530 be obtained, or from other causes beyond its control.

9. The party of the second part agrees that tank-cars will b
loaded within forty-eight (48) hours (Sundays and holiday
cepted) at initial destination, and that for detention of cars b
said forty-eight (48) hours it will pay to the party of the firs
a per diem charge of One Dollar and Seventy-five ($1.75) per

In witness whereof the parties hereto have caused these pres
be duly executed the day and year first written above.

STANDARD OIL COMPANY (NEW JERSE
By F. D. ASCHE,
Vice-President.

Attest:
C. T. WHITE.
Secretary.

CONSOLIDATED GAS COMPANY OF N
By W. R. ADDICKS.

Attest:
F. R. BARNITZ.
Asst. Secretary.

531 The prices per gallon, indicated in the attached memorandum of agreement, have been checked and verification made that such prices are in accordance with current lighterage and freight rates, plus the basic rate of seven cents per gallon.

(S.) J. H. N. ARMSTRONG,
Controller.

December 17, 1919.

532 COMPLAINANT'S EXHIBIT 75.

Complainant's Exhibit 75 for Identification.

Copy.

Warren Oil Company of Pennsylvania,
New York Office.
291 Broadway.

W. R. Glass, Manager.

May 7th, 1920.

(Referred to Mr. Addicks.)
H. F. M.

Consolidated Gas Company,
130 East 15th Str.,
New York, N. Y.

GENTLEMEN:

We offer, subject prior sale, forty (40) tank cars 25/35 Gravity Fuel Oil, at price of 14½¢ per gallon, f. o. b. Pennsylvania Refinery, shipments to begin promptly when railroads will accept, and extend over sixty (60) days.

If interested, kindly advise, to oblige,

Yours very truly,

WARREN OIL COMPANY
OF PENNA.,
(Signed) By C. R. LINDQUIST.
C. R. LINDQUIST.

CRL.:C.E.

May 10, 1920.

W. P. A.

2533 COMPLAINANT'S EXHIBIT 76.

Complainant's Ex. 76. G. C. S. 5/11/20.

November 25th, 1919.

The Texas Oil Company,
17 Battery Place,
New York City.

DEAR SIRS:

I would be glad to be informed if you have any gas oil 23/34° Beaume for sale and the price per gallon, furnished in monthly quantities as required from day to day to fulfill the demands of our gas business for the first six months in 1920 and also for the calendar year 1920.

For your information would say that the quantity involved would be in the vicinity of 122,000,000 gallons, ten per cent more or less for a twelve month period and approximately one-half of said amount for a six months' period.

The oil tank storage in the several plants totals 6,076,500 gallons and varies from about 180,000 gals. at some plants to about 2,000,000 gals. at other plants and substantially all *a*oil would have to be delivered in tank boats in the Boroughs of Manhattan, Bronx and Queens and in minimum cargoes of 1500 barrels in some plants, while in others the minimum cargo would be 6,000 barrels.

Your immediate reply will be appreciated.

Very truly yours,

W. R. ADDICKS,
Vice-President.

(Here follows Complainant's Exhibit 77, marked page 2534.)

Comp. Ex. 77. J. A

N. Y. and Queens

ost to Manufacture One Million Cubic Feet of Carburetted Water Gas (Daily for the City of New

	Quantity.		Price.	
Generator Coal (Anthracite)	15.18 Gr. Ton	*@*	$8.44 per Gr. Ton	
Boiler Coal (Anthracite)	1.34 "	"	8.44 " "	$
Boiler Coal*	8.48 "	"	6.20 " "	
Labor, Handling, Carting etc.			1.25 " "	
Total Cost of Generator and Boiler Fuel				
Gas Oil	4,200 Gals.	*@*	$ .072833 per Gal.	
Tar and Drip Oil Credits	714 "	"	.0425 "	
Net Cost of Oil				
Net Cost of Fuel (Coal and Oil)				
Iron Oxide, Water and Sundries				

Gas Making Labor.

1 Superintendent	$5.75
1 Clerk	4.00
3 Gas Makers, *@* $4.64	13.92
3 Engineers, *@* $4.93	14.79
2 Boiler Firemen, *@* $4.48	8.96
2 Generator Firemen & Coal Passers, *@* $4.48	8.96
2 Laborers (Purification, etc.), *@* $4.00	8.00
Sunday and Holiday Overtime	2.73

Repair Labor.

2 Mechanics, *@* $5.50	$11.00
1 Helper, *@* $4.00	4.00
2 Laborers, *@* $4.00	8.00

Repair Material

Miscellaneous Works Expense

Total Cost of Manufacture

Unaccounted for Gas (New York & Queens Gas Company) 10% of Gas Ma
Cost of Manufacture per M Cubic Feet of Gas Sold

*Additional Boiler Fuel used on account of Steam used for High Pressure Transm
Service Commission for First District.
‡In red ink in copy.

A. F.

s.

ly Average) of a Quality to Meet the Statutory Requirements York.

	Total cost per million.	Material per M cubic feet.	Cost in cents per M cu. ft.
.....	$128.12	34.00 lbs. per M	12.81 Cts.
$11.31			
52.58	63.89	22.00 " "	6.39 "
.....	31.25	.....	3.13 "
.....	$223.26	.....	22.33
.....	$305.90	4.20 Gals. per M	30.59 "
.....	430.35	.....	43.04 "
.....	$275.55	.....	27.55 "
.....	$408.81	.....	49.88 "
.....	12.50	.....	01.25 "
	$67.14	.....	6.71 "
	$23.00	.....	2.30 "
.....	30.00	.....	3.00 "
.....	10.00	.....	1.00 "
.....	$641.42	.....	64.14 "
Jade.			
.....			71.27 "

smission in supplying Douglaston Extension under Order of Public

2535 COMPLAINANT'S EXHIBIT 78.

COMP. EX. 78. J. A. F.

At a Stated Meeting of the Public Service Commission for the First District, Duly Held at Its Office, No. 154 Nassau Street, in the Borough of Manhattan, City and State of New York, on the 19th Day of March, 1915.

Present:

Edward E. McCall,
Chairman;
Milo R. Maltbie,
J. Sergeant Cram,
George V. S. Williams,
Robert C. Wood,
Commissioners.

Case No. 1856.

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of NEW YORK AND QUEENS GAS COMPANY to Such Extent as May be Necessary to Serve Residents of Douglaston and Little Neck, in the Borough of Queens, City of New York.

Order.

A hearing having been held in this proceeding on July 29th, August 13th, August 27th, September 2nd, September 9th, and October 6, 1914, James S. Brownson, appearing for the Douglaston Civic Association, Joseph W. Doolittle, appearing for the Douglaston Realty Company, F. H. Reeve, appearing for Joseph P. Day, agents for the Dwight and Murray Realty Company, John M. Riehle, representing the Long Island Sound Realty Company, John A. Hardman, appearing for the Douglas Manor Association, Charles F. Mathewson and Edward J. Patterson, appearing as counsel for New York and Queens Gas Company, Arthur DuBois, Assistant Counsel to the Commission, attending, and the Commission being of the opinion after said hearing that the mains and services of the New York and Queens Gas Company should be extended to serve resi-
2536 & 2537 dents of Douglaston, including Douglas Manor, with gas

Ordered that the New York and Queens Gas Company, be and hereby is directed to extend its gas mains and services in such a manner as may be required reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York and known as Douglaston, including Douglas Manor.

Further ordered that construction on the said proposed extension

be begun not later than April 30, 1915, and be completed as far
Alley Road or Main Avenue, Douglaston, by September 1, 1915.

Further ordered that on or before April 30, 1915 New York a
Queens Gas Company file with this Commission a general plan
layout showing a proposed transmission and distribution system
be installed pursuant to the terms of this Order, that shall be su
able and adequate to furnish reasonable service to the communi
known as Douglaston, including Douglas Manor, and that this exte
sion be completed and in service not later than September 10, 191

Further ordered that this Order shall take effect forthwith and th
within ten days after service thereof said New York and Queens G
Company notify the Commission in writing whether the terms
this Order are accepted and will be obeyed.

By the Commission.

TRAVIS H. WHITNEY,
Secretary.

[SEAL.]

(Here follows reproduction of Complainant's Exhibit No. 79,
marked page 2538.)

QUEENS
PANY

(S

STRUCTOON

CHECKED BY

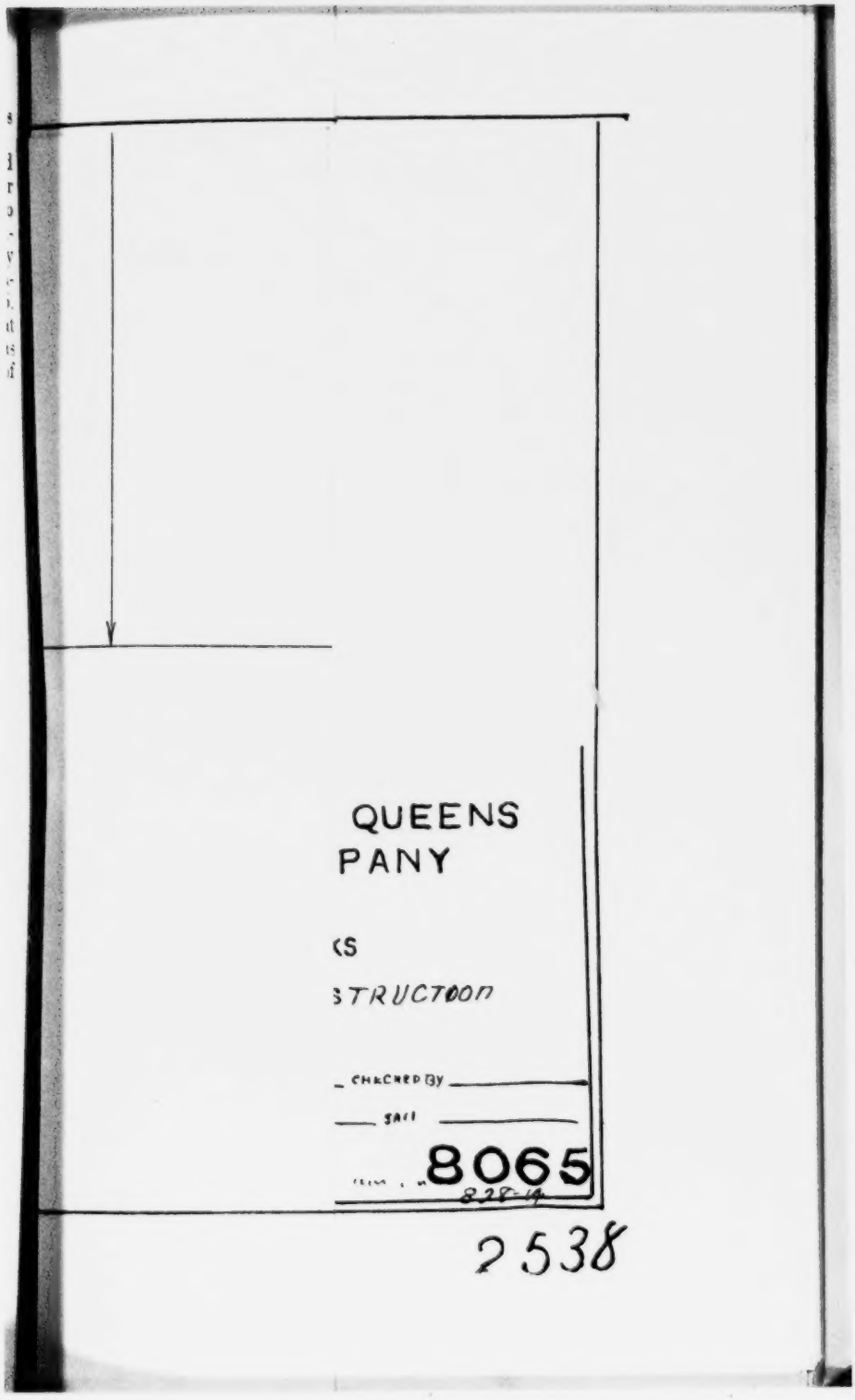
SAVI

8065

228-14

2538

MAPS
TOO
LARGE
FOR
FILMING


QUEENS
PANY
CS
STRUCTOON
CHECKED BY
8065
2538

2539 COMPLAINANT'S EXHIBIT 80.

(Copy.)

COMPL. EX. #80.

Lehigh and Wilkes Barre Coal Company,

Office of Vice-President and General Agent.

143 Liberty Street,
New York, April 17, 1919.

P. B. Heilner, Vice-Pres. & Genl. Agt.
Daniel Anthony, Asst. Genl. Agent.

Mr L. B. Gawtry, Vice-President,
Consolidated Gas Company,
4 Irving Place, New York City.

DEAR SIR:

We have entered your order for 100,000 tons of Broken coal, equal monthly shipments, for delivery during the coal year April 1, 1919 to March 31, 1920. The price of this coal is $5 85 per gross ton at the mines. The rate of freight now in force is $1.85 per ton from the mines to Port Johnston, making the price f. o. b. $7.70 per gross ton. Should there be any increase or decrease in said freight rate, the price f. o. b. Port Johnston will be adjusted to correspond with such increase or decrease.

The sale is subject to the usual strike clause or any interference with operation or transportation beyond our control, and the price is subject to the Government tax of 3% on the railroad freight.

Yours truly,

P. B. HEILNER,
V. P. & G. A.

2391½ (Copy.)

April 18th, 1919.

Mr P. B. Heilner, Vice-President,
Lehigh & Wilkesbarre Coal Company,
143 Liberty Street,
New York.

MY DEAR SIR:

I beg to acknowledge receipt of your letter of the 17th instant, the terms of which are satisfactory and as agreed between us.

Very truly yours,

L. B. G.

2540 COMPLAINANT'S EXHIBIT 81.

Copy.

COMPL. EX. #81.

Lehigh and Wilkes Barre Coal Company,

Office of Vice President and General Agent.

P. B. Heilner, Vice Pres. & Genl. Agt.
Daniel Anthony, Asst. Genl. Agent.

143 Liberty St.,
New York, June 27, 1919.

Mr. Lewis Gawtry, Vice President,
Consolidated Gas Company,
3 Irving Place,
New York City.

DEAR SIR:

On July 1st, 1919, we will leave Port Johnston as a shipping dock and move to Pier No. 18, Jersey City, N. J., a new modern up to date shipping plant.

As our rail transportation is 5¢ per ton more to Jersey City than to Port Johnston, we will bill our coal at 5¢ a ton more at the new dock than we ask at Port Johnston.

The water freight should be 5¢ per ton less from Jersey City than it is now from Port Johnston, but I can not say at this writing what the towing rates will be.

(L. 78—No charge in towing.)

Yours truly,

P. B. HEILNER.
V. P. & G. A.

(Here follow Complainant's Exhibits 82, 83, 84, 85, and 86, marked pages 2441-2448, inclusive.)

MAPS
TOO
LARGE
FOR
FILMING

549 COMPLAINANT'S EXHIBIT #87.

Oil vouchers of the Complainant Company for the year 1920.
Not printed.

COMPLAINANT'S EXHIBIT #88.

Other vouchers of the Complainant Company for the year 1920.
Not printed.

550 COMPLAINANT'S EXHIBIT 89.

Comp. Ex. 89. Idtfn. 5/26/20. W. R.

021-16-2.
65M-8-17.

Telephone 5600 Stuyvesant.

Paid by Check No. 4865.
Dated, July 15, 1920.

S. W. R.

(277.)

To The New York Edison Company, Dr.,
Irving Place and Fifteenth Street,
New York.

Invoice No. M 59640.
Date, May 24, 1920.
Ledger-folio 43-625.
Order No. —.
Charge Slip No. —.

N. Y. & Queens Gas Co., Flushing, L. I.

To 503 Gro. Tons 16 Cwt. Bit. Coal F. O. B. Tidewater	8.35 gr. t.	4206.73	
Towing Canal St. N. R., to Pier 18 J. C., Light		19.00	
Towing Pier 18 J. C. to Flushing, L. I. & Return to 30th St. & E. R.		100.44	
Trimming	.08 gr. t.	15.09	
Rental Boat Irene K. 14 days	12.00	168.00	
			4509.26

On board boat Irene K. consigned to Flushing, L. I., as per B/L. dated May 21, 1920.
Weight as per Bill of Lading subject to correction.

2551 Date Bill Rec'd., 6/1/20. . . . . Date Goods Rec'd., 5/25
Rec. Book —. Page 33.

Quality O. K. M. Morrison. Order No. —.

Add. & Ext. O. K., W. P. Prices O. K., A. J. S.

Charge . . . . . .

. . . . . .

. . . . . .

M. S. 6. . . . . $4.50

. . . . . .

. . . . . .

Approved.

M. H. SPEAR,
V. P., General Manager.

2552 021-16-2.
65M-8-17.

Telephone 5600 Stuyvesant.

Paid by Check 4865.
Dated, July 15, 1920.

S. W. R.

(293.)

To The New York Edison Company, Dr.,
Irving Place and Fifteenth Street,
New York.

Invoice No. M 59797.
Date, June 4, 1920.
Ledger-folio, 43-597.
Order No. —.
Charge Slip No. —.

N. Y. & Queens Gas Company, Flushing, L. I.

To additional charges in connection with our Invoice M 59640, May 24, 1920, 4509.26 as follows:

Docking Charge at Pier 18 J. C.	.01 Per ton	5.04
Trimming Originally Charged at	15.09	
Should have been	15.12	
Difference		.03

Account Boat Irene K. B/L, May 21/20, bound for Flushing.

2553 Date Bill Rec'd., 6/9/20..... Date Goods Rec'd., 5/25/20.

Rec. Book —. Page #33.

Quality O. K., M. Morrison Order No. —.

Add. & Ext. O. K., W. P. Prices O. K., A. J. S.

Charge .....

.....

.....

M. S. 6 ..... $5.07

.....

.....

Approved.

M. H. SPEAR,
V. P., General Manager.

2554 COMPLAINANT'S EXHIBIT 90.

Complainant's Ex. 90.

New York & Queens Gas Company.

Present Cost of Distribution, Taxes, and Renewals and Replacements Based on Prices Being Paid for Labor and Material as of May 25, 1920.

	Amount.	Cost per M cubic feet sold (336,241,400 cu. ft.).
Cost of distribution and other expenses:		
Transmission Pumping	515.07	.0015
Distribution Superintendence and Supplies and Expenses	4,079.85	.0121
Meter and Installation Work	5,669.14	.0169
Work on Consumers' Premises	14,284.22	.0425
Repairs of Street Mains	7,121.28	.0213
Repairs of Services	1,011.69	.0030
Repairs of Meters	5,028.41	.0150
Repairs of Tools	37.95	.0001
Repairs of Gas Appliances	2,221.22	.0066
Commercial Expenses	27,480.93	.0817
Salaries—General Office	9,304.00	.0276
Supplies and Expenses—General Office	3,651.26	.0109
Legal Expense	5,497.19	.0163
Claims and Arrears Expense	172.95	.0005
Insurance	4,073.31	.0121
Stable Expense	3,380.13	.0101
Automobile Repairs	5,469.85	.0162
Claims for Damages	133.00	.0004
Real Estate Rents Paid	2,390.96	.0071

	Amount.	Cost per M cubic feet sold (336,241,400 cu. ft.).
Stationery and Printing	2,454.53	.0073
Undistributed Adjustments	1,262.54	.0038
Uncollectible Bills	1,349.02	.0040
Interest on Consumers' Deposits	1,621.10	.0048
Gas Rate Appeal	25,000.00	.0743
Relief Department and Pensions	697.38	.0021
Total Cost of Distribution and Other Expenses	133,906.98	.3982
Renewals and replacements	10,086.41	.0300
Taxes and interest thereon (1919 figure)	23,794.71	.0708
Total Distribution, Taxes, Renewals and Replacements	167,788.10	.4990

Compl. Ex. 90.

(Here follow reproductions of Complainant's Exhibits Nos. 91, 92, 93, 94, and 95, marked pages 2555-2562, inclusive.)

Publicanti Edicti 91

Complainant's Exhibit 91

NOTICE OF ASSESSMENT AND RECEIPT — PAID BY CHECK No 4288 — DATED 1/12 1920

STATE TAX DEPARTMENT, ALBANY, N. Y.

STATE FRANCHISE TAX
UNDER § 186 OF THE TAX LAW

UNCERTIFIED CHECKS NOT ACCEPTED

Date 12/29/19

Notice is hereby given that there has been assessed against you the amount set below as a franchise tax. It is due and payable on or before JANUARY 15, 191...

TAX
On Franchise or Business, based on Gross Earnings for the year ending October 31, 1919, as provided by Chap. 60 of the Consolidated Law.

CERTIFIED CHECKS should be payable to State of New York and forwarded to STATE TREASURER, Albany, N. Y., with this form.

New York & Queens Gas Co
88 Main St
Flushing, L. I. Y.

RECEIVED
JAN 12 1920
COMMISSIONER'S OFFICE
STATE OF NEW YORK

This notice must be returned at the time payment is tendered, as when properly signed it becomes a receipt for taxes. Penal interest attaches after JANUARY 15, 191..., or at the expiration of 30 days from the date of this statement.

Gross Earnings, $ 349820.17 — Rate 5 Mills. Tax, $ 1749.10

Tax on dividends exceeding 4% ... 3%

Total tax, ...

$1749.10

STATE OF NEW YORK—TREASURER'S OFFICE

Albany, JAN 16 1920 191...

Received from the above-named Company ...

Seventeen hundred forty nine 10/100 Dollars,

in full for above tax.

Deputy Comptroller

Deputy Treasurer

Date Bill Rec'd 1/21/20 Date Goods Rec'd ...
Rec. Book ... Page ...
Quality O. K. ... Order No. ...
Add. & Ext. O. K. ... Prices O. K. ...
Charge ...
Account rules 1749.10
...
...
...
...
General Manager

2555

Complainants Exhibit 92

FIRST HALF OF TAX DUE
MAY 1, 1919
AFTER MAY 1 1919

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE
BILL FOR SPECIAL FRANCHISE TAXES, 1919
AND, OR, FOR
"REAL ESTATE OF CORPORATIONS" TAXES
OFFICE OF RECEIVER OF TAXES, LONG ISLAND CITY

TAX LEVY OF 1919
RATE: 2.37 PER CENT.

PAID BY CHECK No. 3264 PAID BY CHECK No. 11161
DATED MAY 6 1919 DATED NOV 25 1919

BOROUGH OF QUEENS

92 188 12 17

3180 J

IF PAYMENT IS NOT MADE WITHIN SEVEN PER CENT. PER ANNUM WILL BE CHARGED ON THE DEBT FROM WHEN THESE TAXES BECOME DUE TO THE DATE OF PAYMENT, EXCEPT ON THE FIRST HALF WHEN PAID IN THE MONTH OF MAY, AND ON THE SECOND HALF WHEN PAID IN THE MONTH OF NOVEMBER.

DISCOUNT: THE SECOND HALF OF THE TAX MAY BE PAID ON THE FIRST DAY OF MAY, OR AT ANY TIME THEREAFTER, PROVIDED THAT THE FIRST HALF IS PAID. ON SUCH PAYMENT OF THE SECOND HALF A DISCOUNT WILL BE ALLOWED FROM THE DATE OF PAYMENT TO NOVEMBER 1ST AT THE RATE OF FOUR PER CENTUM PER ANNUM.

PRESERVE THIS BILL. PRESENT IT AT THE TIME PAYMENT IS MADE OF EACH HALF OF TAX. IT WILL BE A FINAL RECEIPT 5013

LINE NO	IDENTIFICATION NO.	EQUALIZED VALUE OF SPECIAL FRANCHISE	TAX ON SPECIAL FRANCHISE	"REAL ESTATE OF CORPORATIONS" VALUATION	"REAL ESTATE OF CORPORATIONS" TAX	FIRST HALF OF TAX ON SPECIAL FRANCHISE DUE MAY 1	FIRST HALF OF "REAL ESTATE OF CORPORATIONS" TAX DUE MAY 1	SECOND HALF OF TAX ON SPECIAL FRANCHISE DUE NOV. 1	SECOND HALF OF "REAL ESTATE OF CORPORATIONS" TAX DUE NOV. 1
150	170	311500	7382 55			3691 27		3691 27	

NAME: NEW YORK & QUEENS GAS COMPANY

INTEREST ON TAX	
DISCOUNT ON TAX	
TOTAL AMOUNT PAID	3691.27

LINE NO	IDENTIFICATION NO.	NOTICE
150	170	ARREARS

REGISTERED

BOOK	FOLIO
X	198

Approved

FROM THE CHARTER OF THE CITY OF NEW YORK, SEC. 1025—

WHENEVER ANY TAX OR ASSESSMENT SHALL REMAIN UNPAID FOR THREE YEARS, OR ANY WATER RENT SHALL REMAIN UNPAID FOR FOUR YEARS, THE TAX LIEN ON THE PROPERTY WILL BE SOLD TO SATISFY SUCH ARREARS OF TAXES, ASSESSMENTS OR WATER RENTS, AND ALL TAXES, ASSESSMENTS AND WATER RENTS UP TO A DAY TO BE NAMED IN THE ADVERTISEMENT OF SALE AS STATED THEREIN. THE COLUMNS FOR ARREARS INDICATE LOTS SOLD FOR ARREARS, OR TO BE SOLD THEREFOR. ARREARS TO BE PAID AND L/S'S REDEEMED AT THE OFFICE OF THE COLLECTOR OF ASSESSMENTS AND ARREARS.

FIRST HALF SPECIAL FRANCHISE TAX	FIRST HALF REAL ESTATE OF CORPORATIONS TAX	SECOND HALF SPECIAL FRANCHISE TAX	SECOND HALF REAL ESTATE OF CORPORATIONS TAX
PAID MAY 6 1919		PAID NOV 25 1919	
RECEIVED PAYMENT	RECEIVED PAYMENT	RECEIVED PAYMENT	RECEIVED PAYMENT
FOR DEPUTY RECEIVER OF TAXES	FOR DEPUTY RECEIVER OF TAXES	FOR DEPUTY RECEIVER OF TAXES	FOR DEPUTY RECEIVER OF TAXES

THE WORD ARREARS, IF IT APPEARS TYPEWRITTEN IN THE SPACE INDICATED BY THE ARROW, MEANS THAT PREVIOUS TAXES HAVE NOT BEEN PAID. PAYMENT SHOULD BE MADE TO THE COLLECTOR OF ASSESSMENTS AND ARREARS. OTHERWISE, LIENS WILL BE SOLD.

2556

Complainants Exhibit 93

FIRST HALF OF TAX DUE
MAY 1, 1919
SECOND HALF OF TAX DUE
NOVEMBER 1, 1919

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE
BILL FOR SPECIAL FRANCHISE TAXES, 1919

AND, OR, FOR
"REAL ESTATE OF CORPORATIONS" TAXES
OFFICE OF RECEIVER OF TAXES—LONG ISLAND CITY
DATED MAY 1 1919

TAX LEVY OF
1919
RATE: 2.37 PER CENT.

PENALTY AT THE RATE OF SEVEN PER CENT. PER ANNUM WILL BE CHARGED FROM THE DATE WHEN THESE TAXES BECOME DUE UNTIL THE DATE OF PAYMENT, EXCEPT ON THE FIRST HALF WHEN PAID IN THE MONTH OF MAY, AND ON THE SECOND HALF WHEN PAID IN THE MONTH OF NOVEMBER

BOROUGH OF QUEENS

DISCOUNT. THE SECOND HALF OF THE TAX MAY BE PAID ON THE FIRST DAY OF MAY, OR AT ANY TIME THEREAFTER, PROVIDED THAT THE FIRST HALF IS PAID. ON SUCH PAYMENT OF THE SECOND HALF A DISCOUNT WILL BE ALLOWED FROM THE DATE OF PAYMENT TO NOVEMBER 1ST AT THE RATE OF FOUR PER CENTUM PER ANNUM

RESERVE THIS BILL. PRESENT IT AT THE TIME PAYMENT IS MADE OF EACH HALF OF TAX. IT WILL BE A FINAL RECEIPT 50003

BOROUGH NO.	SECTION NO.	EQUALIZED VALUE OF SPECIAL FRANCHISE	TAX ON SPECIAL FRANCHISE	"REAL ESTATE OF CORPORATIONS" VALUATION	"REAL ESTATE OF CORPORATIONS" TAX	FIRST HALF OF TAX ON SPECIAL FRANCHISE DUE MAY 1	FIRST HALF OF "REAL ESTATE OF CORPORATIONS" TAX DUE MAY 1	SECOND HALF OF TAX ON SPECIAL FRANCHISE DUE NOV. 1	SECOND HALF OF "REAL ESTATE OF CORPORATIONS" TAX DUE NOV. 1	LINE NO.	IDENTIFICATION NO.	NOTICE OF ARREARS
149	A 170			1200	28 44		14 22		14 22	149	A 170	

NEW YORK & QUEENS GAS CO

		REGISTERED	
		BOOK	FOLIO
INTEREST ON TAX			
DISCOUNT ON TAX			2 4
TOTAL AMOUNT PAID	14.22		13.98

REGISTERED
12 8

Appointed Dean

FIRST HALF SPECIAL FRANCHISE TAX	FIRST HALF REAL ESTATE OF CORPORATIONS TAX	SECOND HALF SPECIAL FRANCHISE TAX	SECOND HALF REAL ESTATE OF CORPORATIONS TAX
RECEIVED PAYMENT	RECEIVED PAYMENT	RECEIVED PAYMENT	RECEIVED PAYMENT
FOR DEPUTY RECEIVER OF TAXES	FOR DEPUTY RECEIVER OF TAXES	FOR DEPUTY RECEIVER OF TAXES	FOR DEPUTY RECEIVER OF TAXES

FROM THE CHARTER OF THE CITY OF NEW YORK, SEC. 1028—

WHENEVER ANY TAX OR ASSESSMENT SHALL REMAIN UNPAID FOR THREE YEARS, OR ANY WATER RENT SHALL REMAIN UNPAID FOR FOUR YEARS, THE TAX LIEN ON THE PROPERTY WILL BE SOLD TO SATISFY SUCH ARREARS OF TAXES, ASSESSMENTS OR WATER RENTS, AND ALL TAXES, ASSESSMENTS AND WATER RENTS UP TO A DAY TO BE NAMED IN THE ADVERTISEMENT AS STATED THEREIN. THE COLUMNS FOR ARREARS INDICATE LOTS TO BE SOLD FOR ARREARS, OR TO BE SOLD THEREFOR. ARREARS TO BE PAID AND LOTS REDEEMED AT THE OFFICE OF THE COLLECTOR OF ASSESSMENTS AND ARREARS.

THE WORD ARREARS IF IT APPEARS TYPEWRITTEN IN THE SPACE INDICATED BY THE ARROW, MEANS THAT PREVIOUS TAXES HAVE NOT BEEN PAID. PAYMENT SHOULD BE MADE TO THE COLLECTOR OF ASSESSMENTS AND ARREARS. OTHERWISE LIENS WILL BE SOLD

2557

Complainant's Exhibit 94

FIRST HALF OF TAX DUE
MAY 1, 1919
SECOND HALF OF TAX DUE
NOVEMBER 1, 1919

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE

BILL FOR REAL ESTATE TAXES, 1919

AND UNPAID WATER CHARGES OF 1918

PAID BY CHECK No. 3772

OFFICE OF RECEIVER OF TAXES, 1 CENTRE STREET, COURT SQUARE, LONG ISLAND CITY

DATED MAY 2 1919

PAID BY CHECK No. 41

DATED NOV 25 1919

TAX LEVY OF 1919
RATE: 2.37 PER CENT.

31800

PENALTY AT THE RATE OF SEVEN PER CENT. PER ANNUM WILL BE CHARGED FROM THE DATE WHEN REAL ESTATE TAXES BECOME DUE UNTIL THE DATE OF PAYMENT, EXCEPT ON THE FIRST HALF WHEN PAID IN THE MONTH OF MAY, AND ON THE SECOND HALF WHEN PAID IN THE MONTH OF NOVEMBER.

BOROUGH OF QUEENS

DISCOUNT: THE SECOND HALF OF THE TAX UPON REAL ESTATE MAY BE PAID ON THE FIRST DAY OF MAY, OR AT ANY TIME THEREAFTER, PROVIDED THAT THE FIRST HALF IS PAID. ON SUCH PAYMENT OF THE SECOND HALF A DISCOUNT WILL BE ALLOWED FROM THE DATE OF PAYMENT TO NOVEMBER 1ST AT THE RATE OF FOUR PER CENTUM PER ANNUM.

PRESERVE THIS BILL. PRESENT IT AT THE TIME PAYMENT IS MADE OF EACH HALF OF TAX. IT WILL BE A FINAL RECEIPT 50003

SECTION OF WARD	VOL.	BLOCK	LOT	LINE NO. (CHANGED EACH YEAR)	LOCATION	ASSESSED VALUATION	AMOUNT OF TAX	FIRST HALF OF TAX DUE MAY 1	REPAIR WATER CHARGES FROM BUREAU OF WATER REGISTER: WATER RENT 1919	REPAIR WATER CHARGES FROM BUREAU OF WATER REGISTER: METER RATING 1919	SECOND HALF OF TAX DUE NOV. 1	SECTION OF WARD	VOL.	BLOCK	LOT	LINE NO. (CHANGED EACH YEAR)	NOTICE OF ARREARS
3	2	170	31	8376		550000	13035 00	6517 50			6517 50	3	2	170	31	8376	ARREARS

REGISTERED BOOK	REGISTERED FOLIO	NAME OF PAYOR		REGISTERED BOOK	REGISTERED FOLIO		REGISTERED BOOK	REGISTERED FOLIO
5	170	NEW YORK & QUEENS GAS CO.	INTEREST ON TAX.....			INTEREST ON TAX		
			TOTAL AMOUNT PAID			DISCOUNT ON TAX	26	92
						TOTAL AMOUNT PAID		

FIRST HALF OF TAX — RECEIVED PAYMENT

WATER — RECEIVED PAYMENT

SECOND HALF OF TAX — RECEIVED PAYMENT

THE WORD ARREARS, IF IT APPEARS TYPEWRITTEN IN THE SPACE INDICATED BY THE ARROW, MEANS THAT PREVIOUS TAXES, ASSESSMENTS OR WATER CHARGES HAVE NOT BEEN PAID. PAYMENT SHOULD BE MADE IMMEDIATELY TO THE COLLECTOR OF ASSESSMENTS AND ARREARS, OTHERWISE LOTS WILL BE SOLD.

CHARTER OF THE CITY OF NEW YORK, SEC. 1036:

"WHENEVER ANY TAX OR ASSESSMENT SHALL REMAIN UNPAID FOR THREE YEARS, OR ANY WATER RENT SHALL REMAIN UNPAID FOR FOUR YEARS, THE TAX LIEN ON THE PROPERTY WILL BE SOLD TO SATISFY SUCH ARREARS OF TAXES, ASSESSMENTS OR WATER RENTS, AND ALL TAXES, ASSESSMENTS AND WATER RENTS UP TO A DAY TO BE NAMED IN THE ADVERTISEMENT OF SALE AS STATED THEREIN. THE COLUMNS FOR ARREARS INDICATE LOTS SOLD FOR ARREARS, OR TO BE SOLD THEREFOR; ARREARS TO BE PAID AND LOTS REDEEMED AT THE OFFICE OF THE COLLECTOR OF ASSESSMENTS AND ARREARS."

FIRST HALF OF TAX DUE
MAY 1, 1919
SECOND HALF OF TAX DUE
NOVEMBER 1, 1919

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE

BILL FOR REAL ESTATE TAXES, 1919

PAID UNPAID WATER CHARGES OF 1918

PAID BY CHECK No. 3772

OFFICE OF RECEIVER OF TAXES, 1 CENTRE STREET, COURT SQUARE, LONG ISLAND CITY

DATED MAY 2 1919

TAX LEVY OF 1919
RATE: 2.37 PER CENT.

PENALTY AT THE RATE OF SEVEN PER CENT. PER ANNUM WILL BE CHARGED FROM THE DATE WHEN REAL ESTATE TAXES BECOME DUE UNTIL THE DATE OF PAYMENT, EXCEPT ON THE FIRST HALF WHEN PAID IN THE MONTH OF MAY, AND ON THE SECOND HALF WHEN PAID IN THE MONTH OF NOVEMBER.

BOROUGH OF QUEENS

DISCOUNT: THE SECOND HALF OF THE TAX UPON REAL ESTATE MAY BE PAID ON THE FIRST DAY OF MAY, OR AT ANY TIME THEREAFTER, PROVIDED THAT THE FIRST HALF IS PAID. ON SUCH PAYMENT OF THE SECOND HALF A DISCOUNT WILL BE ALLOWED FROM THE DATE OF PAYMENT TO NOVEMBER 1ST AT THE RATE OF FOUR PER CENTUM PER ANNUM.

PRESERVE THIS BILL. PRESENT IT AT THE TIME PAYMENT IS MADE OF EACH HALF OF TAX. IT WILL BE A FINAL RECEIPT 50003

TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE.
Form 1-17.

PAID BY CHECK No. 3963

NOTICE AND DEMAND FOR TAX

DATE OCT 22 1919

UNITED STATES INTERNAL REVENUE SERVICE OFFICE OF THE COLLECTOR AT	AMOUNT OF TAX	DATE PAID	AMOUNT PAID
KIND OF TAX	12 MO 6/30/20		
CAPITAL	827 00	10/22/19	827.00

Notice is hereby given that there has been assessed against you the amount set opposite for the liability named which is now payable to me. Demand is made for the payment of said tax on or before the date given below. Failure to do so will cause a 5 per cent penalty to accrue with interest at 1 per cent per month from due date until paid.

DUE DATE OCT 24 1919

Collector of Internal Revenue.

NEW YORK & QUEENS GAS CO
88 MAIN ST
FLUSHING L I 1407

2-7-19

KEEP THIS PART OF THE FORM.

2559

Complainant Exhibit 95

Complainant's Exhibit 95

25594

Date Bill Rec'd 10/15/19 Date Goods Rec'd.....

Rec. Book 55 Page 55

Quality O. K. 55 Order No. 55

Add. & Ext. O. K. 55 Prices O. K 55

Charge.....

Accrued taxes (2) 00

Approved. [signature] General Manager

Complainant's Exhibit 95

RETURN RECEIPT

2560

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Bertram Gardner
(Signature or name of addressee)

S. Kapper
(Signature of addressee's agent, if any)

Date of delivery, 10/24, 191 9

Form 3811

Complainant's Exhibit 95

OFFICIAL BUSINESS

REGISTERED ARTICLE No. 3746

INSURED PARCEL No.

OCT 24 1 PM 1919 N.Y.

AND DATE OF DELIVERY

Return to Ivy Queens Gas Co
(NAME OF SENDER)

Street and Number, or Post Office Box, } 88 Main

Post Office at Flushing N.Y.

State

2661

Complainants Exhibit 95-

2662

"Referring to your previous request, extension to include May 1st will be given for filing returns provided you agree to pay the tax at the time of filing returns; a copy of this telegram should be attached to returns.
March 27. 1918.

Roper, Commissioner."

2563 COMPLAINANT'S EXHIBIT 96.

COMPLT.'s EX. 96. J. A. F.

Detailed Statement of the Cost of the Plant, Distribution System, etc., of the New York and Queens Gas Company to and Including December 31st, 1919.

2564 Detailed Statement of the Cost of the Plant, Distribution System, etc., of the New York & Queens Gas Company to and Including December 31, 1919.

2565 *Note.*

The tabulation comprised within the following pages is designed to show the actual investment of the New York & Queens Gas Company, to and including December 31, 1919, in the various items of plant, land, distributing system, and other property and equipment, shown in the inventory hitherto submitted, setting forth the property owned and in use by the Company in its gas business as of December 31, 1919. The book cost of the inventoried items of property is shown. No attempt is made to show the cost of property not owned and in use on December 31, 1919.

The date of the acquisition or installation by the New York & Queens Gas Company is in each instance shown. As to plant, equipment, etc., acquired and installed since August 1, 1904, each such item of property was new at the time of such acquisition and installation, unless otherwise stated. Whether the property acquired by the New York & Queens Gas Company on August 1, 1904 was at that time new or what was then its age, is not shown. The age of the property, equipment, etc., installed by predecessor companies and acquired by the New York & Queens Gas Company upon consolidation in 1904, is unknown, and therefore, under the terms of the order made in this suit by the Honorable Julius M. Mayer, United States District Judge, is not stated hereinafter, only the date of its acquisition by the New York & Queens Gas Company being set forth.

2566 *Summary of Cost of the Plant and Distribution System of the New York and Queens Gas Company to and Including December 31st, 1919.*

Plant and Distribution System acquired by the Company on Aug. 1, 1904, and still in use	Page	2	$280,108.00
Preliminary Organization and Development Expenses; Cost of financing; interest and taxes during construction; administrative, legal and miscellaneous general expenses prior to operation; engineering, superintendence and general contractor's expense and profit; coordination of service and consolidation of companies; omissions and contingencies (items not separately set forth in the accounts or included in the above-indicated sum)	.....		320,350.00
Franchises and Rights	.....		500,000.00
Additions to Real Estate since 1904	Page	3–4	20,630.90
Additions to Buildings	"	5–11	28,717.51
Additions to Apparatus	"	12	169,887.82
Additions to Distribution System	"	43	561,917.62
Additions to Office Equipment	"	44	3,932.79
Additions to Store Equipment	"	45	505.98
Additions to Laboratory Equipment	"	46	925.76
Additions to Tools and Implements	"	47	775.06
Miscellaneous Additions since 1904	"	48	63,095.64
Total of Costs			$1,950,847.08
Working Capital (as of Jan. 1, 1920)			165,000.00
Grand Total			$2,115,847.08

2567 *Cost of Plant and Distribution System (Exclusive of Undistributed Structural Costs) Acquired by the Complainant on August 1st, 1904 (Estimated as of That Date).*

Land	$19,423.00
Grading and Filling	5,000.00
Buildings	17,500.00
Apparatus	62,600.00
Large and Small Piping	2,000.00
Tools and Implements	400.00
Mains	117,560.00
Services	34,030.00
Meters and Connections	21,595.00
Total	$280,108.00

2568 *Cost of Additions to Real Estate*, 1904-1920.

Description.	Date of acquisition.	Cost.
Plot "A"	1909	$1,200.00
Plots "B" "C" & "D"	1911	5,901.25
Plots "E" & "F"	1912	1,128.00
Plots "G" & "H"	1915	12,388.39
Sundry	1917	13.26
		$20,630.90

2569 *Derivation of Cost of Additions to Real Estate.*

Description.	Date of acquisition.	Cost.	
Payment on lot	Jan. 1909	$	$1,200.00
Payments on lots	1911	5,800.00	
Title Insurance	Jan. & March "	101.25	
			5,901.25
Payment on lots	June 1912	100.00	
Payment on lots	July 1912	600.00	
Survey	Sept. 1912	20.00	
Payments on lots	" "	408.00	
			1,128.00
Payments on lots	" 1915	9,216.00	
Option & Survey $175.00; Cash Disbursements $325; Moving & Repair of House $761.27; Foundation for House $388.92	"	1,150.19	
Legal $696.88; Drawings $346.00; Consolidated Staff $5.48	"	1,048.36	
Lumber $203.86; Misc. $58.98; Labor $8.21	"	271.05	
Blueprints $4.13; Petty Cash $173.91; Pay Roll $24.75	"	202.79	
			12,388.39
Sundry	1917		13.26
Total of Additions to Real Estate			$20,630.90

2570 *Cost of Additions to Buildings,* 1904-1920.

Generator House #2	$1,452.75
Exhauster Room	692.28
Pump House	43.03
2-Story Coal Bin	39.51
1-Story Coal Bin	1,048.34
Boiler House	9,063.36
Oil House	469.19
Outside Coal Bins	628.75
Governor House	4,507.72
Garage	747.06
Compressor House	564.75
Pump House and Pipe Shed	223.36
Corrugated Iron Shed and Pump Foundation	98.14
Closet and Basin at Works	106.00
Fence	3,013.71
Electric Line for Conveyor	112.35
Flag Pole	35.00
12 Trees	60.00
Sewers	1,160.17
Oil Tank Embankment and Wall	4,246.21
Drip	164.62
Tar Bank	241.21
Total Additions	$28,717.51

Description.	Date of acquisition.	Cost.	
Generator House #2.			
Work on Arch	Aug. 1905	$80.00	
Work on Door—Meter Room	Sept. "	11.55	
Work on Walls	Nov. "	89.00	
Alter Walls and Roof	1911 E	941.00	
Concrete Floor	1911 "	100.00	
Labor and Mat'l Conc. Walls	" "	110.00	
Carpentry Work	" "	61.02	
Window and door $17.00, Pipe and Fittings $6.12	" "	23.12	
(No Description*)	" "	15.00	
Pay Roll $20.00, Freight $2.06	1912 "	22.06	
			1,452.75
Exhauster Room:			
Contract on Exhauster Room	May 1907	635.00	
Electric Lights Exhauster Rm	" "	24.20	
Cement Floor, Exhauster Room	Aug. "	33.08	
			692.28
Pump House:			
Lumber $24.13, Labor $18.90	1915 E	.....	43.03
2-Story Coal Bin:			
Lumber	Oct. 1904 R. E.	24.42	
Rods $14.50, Nails etc. $.59	" " " "	15.09	
			39.51

1-Story Coal Bin:

Contract on Coal Shed	Aug.	1905	875.00	
Lumber	"	"	8.83	
Horse Hire	"	"	12.00	
Lumber	Nov.	"	122.73	
Petty Cash	Jan.	1907	29.78	
				1,048.34

2572 Boiler House:

Contract—Add. to Boiler & Purif. House	Dec.	1905	$1,998.33	
Lumber $67.76, Labor $21.38, Tile Pipe, Etc. $6.20		1914 E	95.34	
Adjustment		1915 "	20.00	
Labor—Alterations		1915 "	138.50	
3-Steel Trusses		1915 "	130.00	
Pipe and Fittings		1915 "	69.59	
Cement $10.00, Lumber $17.23, Hauling $5.00		1915 "	32.23	
Labor on House $30.00, on Stack $183.20		1915 "	213.20	
Blueprints & Photostats		1915 "	6.75	
Services rendered by Consolidated Staff		1915 "	134.64	
Pay Rolls		1915 "	48.00	
Payments on Stack and Flue		1916 "	2,342.07	
Labor & Material on House		1916 "	3,999.46	
Labor on Stack		1916 "	6.17	
Small Pipe, Fittings & Valves		1916 "	342.69	
Sand, Stone and Cement		1916 "	166.75	
Lumber		1916 "	56.55	
Services rendered by Consolidated Staff		1916 "	23.90	
Miscellaneous		1916 "	179.04	

Derivation of Cost of Additions to Building, 1904-1920.—Continued.

Description.	Date of acquisition.	Cost.	
Petty Cash	1916 E	18.75	
Addition—Miscellaneous	1917 "	60.37	
			$10,062.53
Charge off, say ½ of 1905 Entry			999.17
			$9,063.36
2573 Oil House:			
Contract on Oil House	1912 E	$343.00	
Cement and Sand	" "	54.00	
Pay Roll	" "	30.00	
Hoist $12.80, Electrical Work $29.39	" "	42.19	
			$469.19
Outside Coal Bins:			
Lumber and Labor	1909 E	450.86	
Sand and Cement	" "	19.25	
Pipe and Fittings	" "	3.79	
Petty Cash $12.35, Pay Roll $106.25	" "	118.60	
Miscellaneous	" "	36.25	
			628.75
Governor House:			
Contracts for Building	1915 & 16 E	2,908.29	
Lumber $192.52, Sand, Stone & cement $106.30	" " " "	298.82	
Labor $837.38, Service of Consolidated staff $238.01	" " " "	1,075.39	
Hauling $36.00, Hardware $64.25	" " " "	100.25	

Blueprints $10.81, Misc. $87.36	"	"	98.17	
Small Piping $19.55, Petty Cash $7.25	"	"	26.80	
				4,507.72
Garage:				
Gutters & Leaders	Jan.	1906	25.90	
Galv. Iron $42.90, Contract on Wagon Shed $125.14	Aug.	"	168.04	
Cement $30.00, 2 Bell Traps $2.69	"	"	32.69	
Lumber, Brushes and Paint	"	"	12.63	
Galv. Iron	Sept.	"	55.03	
Carry forward			$294.29	
2574 Carried forward			$294.29	
Lumber	Nov.	1906	1.50	
" & Nails $100.60, Flushing $40	Jan.	1907	140.60	
Miscellaneous $10.42	Feb., March	"	24.42	
Floor		1919	286.25	
				$747.06
Compressor House:				
Mason—Material & Labor		1910 E	255.68	
Lumber $78.58, Labor & Hauling $55.02		" "	133.60	
Labor—Material—Roof & Leader		" "	50.77	
Found. Bolts $26.27, Box Steam Line $24.43		" "	50.70	
Pay Roll		" "	39.80	
Wire Window Guards		1916 "	34.20	
				564.75

Derivation of Cost of Additions to Building, 1904-1920.—Continued.

Description.	Date of acquisition.		Cost.	
Pump House & Pipe Shed:				
Lumber, Sash & Cord Etc.		1917 E	161.36	
Carpenter Labor		" "	62.00	
				223.36
Corrugated Iron Shed and Pump Found:				
Corrugated Iron $61.43, Lumber $12.12		1919 "	73.55	
Cement and Sand		" "	6.05	
Petty Cash $14.65 & Pay Roll $3.89		" "	18.54	
				98.14
Closet and Basin at Works	Jan.	1906	.....	106.00
Fence		1919	.....	3,013.71
Electric Line for Conveyer		1919	.....	112.35
Flag Pole		1916 "	.....	35.00
12 Trees		" "	.....	60.00
2575 Sewers:				
Labor of laying Sewer	Apr.	1906	$169.78	
Labor $345.00, Photos 79c, Service of Consolidated $26.31		1915 E	372.10	
Contract for Drain Work		1916 "	151.50	
Services of Consolidated Staff		" "	22.73	
Labor, Pipe, Cement etc.		" "	356.56	
Petty Cash $8.95, Blueprints .34		" "	9.29	
Labor and Hauling, Sewer in E. Yard		1910 "	78.21	
				$1,160.17

Labor and Material	1909 E	918.56	
Labor and Material	1916 "	2,172.73	
Lumber $238.14, Hdware. $15.09, Hauling $38.75	" "	291.98	
Services of Consol. Staff $509.62, Miscellaneous $3.20	" "	512.82	
Pipe and Fittings $82.77, Reinforcing $179.00	" "	261.77	
Blueprints $8.22, Petty Cash $12.94	" "	21.16	
Services of Consol. Staff $1.50, Miscellaneous $10.40	1917 "	11.90	
Pipe and Fittings	" "	1.41	
Petty Cash $1.90, Pay Roll $51.98	" "	53.88	
			4,246.21
Drip:			
Small Pipe and Fittings	1917 "	3.08	
1-24" Cap	" "	12.38	
Pay Roll	" "	149.16	
			164.62
2576 Tar Tank:			
Stand, Stone and Cement	1917 E	$23.65	
Small Pipe and Fittings	" "	68.57	
Hardware $8.14, Lumber $3.87	" "	12.01	
Hauling $7.00, Pay Roll $129.98	" "	136.98	
			$241.21

2577 *Summary of Cost of Additions to Apparatus,* 1904-1920.

Location.		Cost.
Generator House #1	Page 13	$8,135.21
Generator House #2	" 14-17	23,395.44
Exhauster House	" 18	1,546.75
Boiler House	" 19-21	16,606.39
Engine Room	" 22	458.57
Pump House	" 23	742.19
Governor House	" 24	1,207.41
Garage	" 25-26	5,094.66
Compressor House	" 27-28	3,798.28
Hose House	" 29	106.50
Deep Well Pump House	" 30	365.95
Gasoline House	" 31	174.28
Corrugated Iron Pump Shed	" 32	394.89
Yard	" 33-38	102,110.15
Miscellaneous	" 39-42	5,751.15
Total Additions to Apparatus		$169,887.82

2578 *Cost of Additions to Apparatus in Generator House* #1, 1904-1920.

1 7′ 6″ Lowe Water Gas set	1906	$8,135.21

Derivation of "Cost" of Addition in Generator House #1.

7′ 6″ Lowe Set 1906

Description.	Date of acquisition.	Cost.
Payment to U. G. I.	January	$2,267.00
Excavation and Concrete Work	"	201.60
3 1¼″ Globe Valve Trimmings	"	2.36
Remodeling Bristol Gauge	"	5.00
Payment to U. G. I.	February	2,267.00
Insurance	"	317.27
Cement and Hardware	"	15.17
Payment to U. G. I.	March	2,266.00
Payment to U. G. I. (Operating Floor(	"	715.75
Cement, Stone and Sand	"	64.13
Payment to U. G. I. (Floor Plates)	April	7.12
Payment to U. G. I. (Bolts and Washers)	June	7.81
		$8,135.21

2579 *Cost of Additions to Apparatus in Generator House #2, 1904-1920.*

Description.	Date of acquisition.	Cost.
1 #7 Root's Exhauster and 1 7″ x 10″ New York Safety Engine	1907	$1,506.75
1 8′ 6″ Lowe Water Gas set, incl. Condenser, etc.	1911	16,715.69
2 Terry Steam Turbines	1912	141.51
2 #6 Sturtevant Monogram Blowers	1912	With 8′ 6″ set.
1 #3 Revivifying Machine	1917	40.00
1 1¼″ Pickering Governor	1917	36.00
1 6″ x 5″ x 10″ Davidson Force Pump	1914 & 15	414.83
1 6″ x 4″ x 6″ Worthington Water "	1919	102.00
1 ¾″ Fisher Control Governor	1916	19.25
1 Tar Washer	1905	808.00
1 P. & A. Tar Extractor	1913	954.24
1 Wylie Meter	1911	1,172.35
1 6′ Station Meter	1905	1,227.84
	1911	With 8′ 6″ set.
1 Hoist and Motor	1911	162.75
Total Additions		$23,395.44

1617

Derivation of Cost of Additions to Apparatus in Generator House #2.

Description.	Date of acquisition.	Cost.
	1907 (Construction A/c.)	
2—#7 Roots Exhauster & 7″x10″ Engines	March	$82.05
Small Pipe & Fittings 13.23, Bolts, Washers and Belts	"	171.57
4—12″ Valves 135.00 & Drip & Fitt 36.57	"	15.00
Handling 12″ Pipe	April	4.44
Small Pipe and Fittings	"	184.31
12″ Fittings	"	71.85
Hauling 45.00 & Insurance 26.85	"	130.69
Labor—Connections	"	80.00
Contract—Setting Exhauster & Making Conn	"	16.26
Bolts 6.00 and Paint 10.26	"	67.20
Freight and Blowers, Engines and Fittings	"	1.65
Freight on Valves, etc	"	8.71
Pay Roll	May	34.40
Reducing Valves	"	47.87
Small Pipe and Fittings 19.49; 12″ Fitt. 28.38	"	15.04
Misc. H'dware, Bolts, Washers, Sand, Etc	June	1,832.80
2—Exhausters & Engines	"	35.80
Bell Trap 1.22, Fittings .98, Cement 33.60	"	13.40
Bolts and Wedges	"	9.35
Pay Roll	July	.87
Freight	August	79.50
Mason, Material and Labor	September	100.00
Set Exhauster in position	"	10.73
Lunkenheimer Oil Feeder		$3,013.49

It is assumed that this amount of $3,013.49 covers the installation of the Exhauster & Engine in the Generator

Terry Steam Turbines	1912		$141.51
8′ 6″ Lowe Set	1911		
Payments to U. G. I.		$14,192.00	
Contract on Foundations		635.00	
Pipe and Specials		211.98	
Soil Pipe and Fittings		4.66	
Small Pipe and Fittings		101.21	
C. I. Pipe		12.00	
Brass Gate Valves and Pipe Cutter		14.45	
Sand and Cement		18.15	
Brass Thermometer		7.35	
Freight on 12″ C. I. Pipe		3.81	
4—3″ x 1″ T Bolts		3.00	
1—M. Hard Bricks		8.00	
#14 Heintz Steam Trap		11.85	
White and Red Lead—Labor on Galv. Iron		7.00	
Hoisting and Setting Tank		14.50	
Hire of Horse and Cart		6.00	
Paint and Hardware		7.67	
Walls for Blower Room—Labor & Mat'l		124.54	
Electric Labor		11.64	
Pay Roll		1,219.98	
Petty Cash		3.00	
Freight and Hauling Oxide		97.90	
			$16,715.69

Derivation of Cost of Additions to Apparatus in Generator House #2.—Continued.

2582 Description	Date of acquisition.	Cost.	
#3 Revivifying Machine	1917 M	.....	$40.00
1¼" Pickering Governor	1917 K	.....	36.00
6" x 5" x 10" Davidson Force Pump	1914 & 15 M	.....	
Brick, Sand, Cement & Labor		$14.55	
Pump		180.00	
Pipe and Fittings		59.14	
Pay Roll		106.86	
Small Pipe and Exhauster Head		54.28	
			414.83
6" x 4" x 6" Worthington Water Pump	1919	.....	102.00
¾" Fisher Control Governor	1916 M	.....	19.25
Tar Washer, Erected with 12" Con	1905 Aug	.....	808.00
P. & A. Tar Extractor	1912 & 13 L	.....	
Sand & Cement 37.90, Pay Roll, 56.33		94.23	
Tar Extractor with 12" By Pass Connection		832.00	
Pay Roll		122.24	
			1,048.47
Wylie Meter	1911 M	1,000.00	
Meter		8.37	
Freight 5.52 & Misc. Hdw. 2.85		163.98	
Pay Roll 22.50, Sundry 16.00, M. & S. 125.48			1,172.35
6' Station Meter	1905	.....	
6' x 6' Meter	1905 Oct.	1,186.95	
Paint	" "	8.50	
Foundation	" Sept.	20.00	
Paint	" "	.37	
Valves, Pipe & Fittings 11.00, Paint .72, Express .30	" Dec.	12.02	
			1,227.84
Hoist and motor	1919	.....	162.75

2583 *Cost of Additions to Apparatus in Exhauster Room*, 1904-1920.

Description.	Date of acquisition.	Cost.
1 #7 Roots Exhauster 1 7″ x 10″ N. Y. S. Engine	1907	$1,506.75
1 #3 Revivifying Machine	1918	40.00
	Total Additions...	$1,546.75

Derivation of Cost.

#7 Roots Exhauster & 7″ x 10″ Engine (See ditto for New Generator.)	1907	
#3 Revivifying Machine	1918 M	$40.00

2584 *Cost of Additions to Apparatus in Boiler House*, 1904-1920.

Description.	Date of acquisition.	Cost.
2—B. & W Model 1916 Boilers	1916-1918	$8,189.11
1—Cunningham Boiler	1919	5,214.53
1—Erie City Iron Works Boiler	1914	2,294.50
1—3′ 0″ x 5′ 6″ Steel Blow Off Tank	1905	105.00
1—Empire Water Meter	1917	80.00
2—#2 Best Oil Burners	1916 with B & W	.....
1—Moore Compound Pump	1918	22.00
1—Feed Water Heater	1919	404.36
2—6″ x 4″ x 6″ Boiler Feed Pumps	1919	206.89
	Total Additions	$16,606.39

Description.	Date of acquisition.	Cost.	
2 B. & W. Model 1916 Boilers	1916 G	.....	
Payments to B. & W	"	$5,697.98	
Deeves-Boiler Settings	"	101.15	
Furnish & Set Stack Conn	"	195.00	
Grate Bars 15.25, Chemical Feeder 13.50	"	28.75	
"Best" Burners & Cocks	"	81.50	
Tube Expander 40.00 Alter Tar Tank 4.76	"	44.76	
Services of Consolidated Staff	"	746.67	
Valves, Pipe and Fittings	"	789.11	
Misel. Lumber & Hdware	"	45.84	
Petty Cash & Pay Roll	"	61.55	
Flame Plates, Etc	1918	32.00	
Labor on Flame Plates	"	24.80	
2—12" L. I. Wing Turbine Blowers	1919	340.00	
			$8,182.11
Cunningham Boiler	1819	.....	5,214.53
Erie City Iron Works Boiler	1914 G		
Contract on Boiler & Stack	"	1,277.01	
Hauling " " "	"	300.00	
Freight " " "	"	77.99	
Sand, Cement Miscel. H'dware Etc	"	198.39	
Services of Cons. & Astoria Staffs	"	84.88	
Moving Toilet in Yard	"	10.00	
Petty Cash & Pay Roll	"	168.63	
Small Pipe & Fittings	"	105.60	

Covering Boiler & Piping	"		72.00	
				2,294.50
2586 3' x 5' 6" Steel Blow Off Tank	Sept.	1905	105.00	
Empire Water Meter		1917 G	80.00	
Moore Compound Pump & Fittings		1918 G	22.00	
Feed Water Heater		1919	404.36	
6" x 4" x 6" Feed Pumps		1919	296.89	

2587 *Cost of Additions to Apparatus in Engine Room*, 1904-1920.

Description.	Date of acquisition.	Cost.	
1 10" x 12" New York Safety Engine	1917 & '18	$458.57	

Derivation of Cost of Apparatus in Engine Room.

Description.	Date of acquisition.	Cost.	
10" x 12" New York Safety Engine:			
2nd Hand Engine from Consol	1917 & '18	$150.00	
Hauling 7.00, Labor 4.17	"	11.17	
Bolts 15.33, Making Key .50	"	15.83	
Sand, Stone and Cement	"	24.50	
Pulleys 33.07, Petty Cash .65	"	33.72	
Rent of Stone Cutter	"	3.75	
Overhauling 48.24, Belt Tightener 76.50	1918	124.74	
New Bed 84.00, Fittings 2.33, Pay Roll 7.73		94.86	
			$458.57

2587½ *Cost of Apparatus in Pump House*, 1904-1920.

Description.	Date of acquisition.	Cost.	
2 4½"x4"x6" Davidson Oil Pumps	1912	With 8' 6" Set.	
1 4½"x2½"x6" " Seal Pumps	1906-7	$187.60	
1 4½"x2½"x6" " Tar "			
1 4½"x2½"x6" " Drip "	1910	80.75	
2 6x4x8" Davidson Water "	1916-1917	412.84	
1 Vertical Dial Oil Meter	1919	61.00	
Total Additions		$742.19	

Derivation of Cost of Apparatus in Pump House.

2 4½"x2½"x6" Davidson Seal & Tar Pumps:			
4½"x2½"x6" Oil Pump #10317	August 1906	$88.20	
" " " #10355	Sept. 1906	88.20	
2 Bed Plates for 4½"x2½"x6"	March 1907	11.20	
			$187.60
4½"x2½"x6" Davidson Drip Pump			80.75
2 6"x4"x8" Davidson Water Pumps:			
6"x4"x8" Davidson Pump	1916-1918	150.00	
6"x4"x8" Davidson Pump	1916	200.00	
Fittings 62.53 Petty Cash .31	1917	62.84	
			412.84
Vertical Dial Oil Meter	1919		61.00

Description.	Date of acquisition.	Cost.	
8 24″ Isbell Porter Gate Valves	1915	With Holder	
2 16″ " " " "	1915	" "	
3 12″ " " " "	1915	" "	
1 12″ Balanced Governor	1906	$282.41	
1 16″ Automatic "	1915	600.00	
1 16″ Balanced "	1915	325.00	
Total Additions		$1,207.41	

Derivation of Cost.

12″ Balance Governor:	1906		
12″ Governor with 7″ Extra Seal	September	225.00	
Labor-Building Pier under Gov.	June	23.85	
Freight on Bal. Governor	May	1.69	
Install & Adjust Governor	June	29.62	
Bbl. of Cement	May	2.25	
			$282.41
16″ Automatic Governor	1915 M	.....	600.00
16″ Balance Governor	1915 "	.....	325.00

2589 *Cost of Additions to Apparatus, Garage*, 1904-1920.

Description.	Date of acquisition.	Cost.
1 Maxwell Roadster	1914	$641.25
1 Maxwell Coupe	1914-5	881.75
1 Ford Runabout	1913	546.50
3 Special Body Delivery Wagon	1913-14-17	1,397.02
1 250 Gallon Drip Wagon	1908	50.00
1 Single Horse Dray	1907	50.00
1 Dump Cart	1915	20.00
1 Wagon Jack	1906	1.25
1 Bay Horse	1912	165.00
Fire Extinguishers	1912	18.30
Snow Plow	1914	29.35
Fire Pump	1916	40.00
Decarbonizer	1919	28.00
Maxwell Touring Car	1919	973.44
Convertible Top	1919	232.80
Ford Body	1919	20.00
Total Additions		$5,094.66

2590

Derivation of Cost.

Maxwell Roadster	1914	.....	$ 641.25
Maxwell Coupe	1914-15	.....	
Coupe Body	1914	$250.00	
Chassis	1915	496.75	
Petty Cash	1915	135.00	
			881.75
Ford Runabout	1913	.....	546.50

3 Ford Special Body Delivery Wagons—1913-14-17:				
Chassis		1913	500.00	
New Body 72.00 & Signs 15.00		1913	87.00	
Chassis		....	475.00	
Body 85.00, Tire 15.00, Signs 15.00		....	115.00	
Speedmeter		....	4.00	
Chassis		....	65.00	
Converter 75.00, Parts 76.02		....	151.02	
				1,397.02
250 Gallon Drip Wagon	June	1908	.....	50.00
Single Horse Dray	Sept.	1907	.....	50.00
Dump Cart		1915	.....	20.00
Wagon Jack	May	1906	.....	1.25
Bay Horse		1912	.....	165.00
Fire Extinguishers		"	.....	18.30
Snow Plow		1914	.....	29.35
Fire Pump		1916	.....	40.00
Decarbonizer		1919	.....	28.00
Maxwell Touring Car		1919	.....	973.44
Convertible Top		1919	.....	232.60
Ford Body		1919	.....	20.00

2591 *Cost of Additions to Apparatus in Compressor-house,* 1904-1920.

Description.	Date of acquisition.	Cost.
1 12″x16″x12″ Air Compressor	1910	$2,193.75
1 8″x12″x8″ " "	1908	1,303.53
1 Kennedy Telemetric Gauge	1918	301.00
Total Additions		$3,798.28

Derivation of Cost.

12″x16″x12″ Air Compressor	1910 M	
Compressor	"	1,588.19
Freight on Compressor	"	11.84
Building Concrete Foundation	"	82.20
Unloading & Placing on "	"	59.00
Labor & Hauling	"	76.15
Pay Roll 170.73 & Petty Cash 3.55	"	174.28
4″ St. Pipe with Stocks & Dies	"	126.70
4″ Union, 50 8″ Off Set 5.00	"	5.50
Steam Trap & Check Valves	"	6.32
Small Fittings & Valves	"	31.10
Gauge	"	32.00
		$2,193.75

2592 8″x12″x8″ Compressor	1908	
Compressor	December	798.43
Foundations for Bldgs. & Comp.	November	109.00
Small Pipe & Fittings	"	162.00
Bolts & Washers	"	9.95
Exhaust Head & Valves	"	20.70
Steam Trap 13.87 & Cement 6.30	December	20.17
Air Receiver	"	47.17
Small Pipe, Fittings & Labor	"	46.69
Pap Roll	"	76.90
Drilling 4.80 Valves & Miscel. Hardware 7.52	"	12.32
		$1,303.53

Kennedy Telemetric Gauge	1918 M	
Gauge		275.00
Regulator 6.00 & Mercury 20.00		26.00
		$301.00

2593 *Cost of Additions to Apparatus in Hose House,* 1904-1920.

Description.	Date of acquisition.	Cost.
Hose Cart	1906	$22.50
Hose	"	84.00
Total Additions		$106.50

Derivation of Cost.

Hose Cart	March 1906	$22.50
Hose 200' of 2"	1906	84.00

2594 *Cost of Additions to Apparatus in Deep Well Pump House,* 1904-1920.

Description.	Date of acquisition.	Cost.
1 7½" x 7½" x 6" Snow Steam Pump	1918-1919	$365.95

Derivation of Cost.

7½" x 7½" x 6" Snow Steam Pump	1918			
Pump	"	J	$225.00	
Fittings $5.17, Hdware. $1.75, Pay Roll $53.13	"	G	60.06	
				$285.06
Additions	1919			80.89
				$365.95

2595 *Cost of Additions to Apparatus in Gasoline House,* 1904-1920.

Description.	Date of acquisition.	Cost.
1 Bowser 280 Gal. Storage:		
Outfit	1912	$174.28

Derivation of Cost.

Description.	Date of acquisition.		Cost.
Storage System	1912	$166.14	
Lumber & Nails	"	8.14	
			$174.28

2596 *Cost of Addition to Apparatus in Corrugated Iron Pump Shed*, 1904-1920.

Description.	Date of acquisition.	Cost.
7"x7"x10" Davidson Pump.....	1915	$394.89

Derivation of Cost.

Description.	Date of acquisition.		Cost.
Pump	1915	M	$160.00
Fittings.	"	"	191.49
Labor 6.30, Lumber 37.10.....	"	"	43.40
			$394.89

2597 *Cost of Additions to Apparatus in Yard*, 1904-1920.

Description.	Date of acquisition.	Cost.
1 1,000,000 Cu. Ft. Holder	1915-18	$86,000.20
1 250,000 " " "	1907	234.81
1 100,000 " " "	1907	45.00
1 30' x 30' Oil Tank	1908 & 16	3,017.91
1 Steel Tar Tank	1919	233.96
1 " Purifier Box (Quintard)	1909	5,219.68
1 " " " (B. H. Co.)	1911-19	3,881.34
1 Deep Water Well	1916	852.26
Purifier Connections	1919	1,923.27
Flight Conveyor	1919	701.60
Total Additions		$102,110.15

	Date of acquisition.	
1,000,000 cu. ft. Holder (B. H. Co.)	1915-1918	
Payments to B. H. Co.	1915	$52,016.20
Tests, Borings, Analysis Etc.	"	129.23
Water for Testing	"	366.35
Sand, Stone & Cement	"	3,427.55
Hauling & Hire of Teams	"	355.60
Blue Prints Photostats Etc.	"	16.83
Large Valves	"	1,332.38
" Pipe & Fittings	"	2,784.01
Small " " "	"	165.76
Inspection of Pipe	"	183.51
" " Steel	"	1,148.34
Pig Lead	"	254.30
Lumber & Hardware	"	366.45
Bolts & Washers	"	31.87
Labor on Holder & Connections	"	4,598.77
Services of Consolidated Staff	"	944.76
Telephone, Petty Cash & Pay Roll	"	260.06
Miscellaneous	"	106.53
4 x 4 7 Cameron Pump	"	89.00
		$68,577.50 To Summary

Derivation of Cost—Continued.

	Date of acquisition.		
Payments to B. H. Co.	1916	$10,798.44	
Tests, Borings, Analysis, Etc.	"	6.32	
Sand, Stone, and Cement	"	56.20	
Hauling & Hire of Teams	"	50.80	
Blueprints, Photostats, Etc.	"	4.15	
Large Pipe and Fittings	"	389.37	
Small Pipe and Fittings	"	86.01	
Inspection of Steel	"	257.04	
Lumber and Hardware	"	97.06	
Bolts & Washers	"	8.23	
Labor on Holder & Connections	"	637.96	
Services of Consolidated Staff	"	693.22	
Telephone, Petty Cash & Pay Roll	"	273.29	
Miscellaneous	"	250.40	
Painting	"	1,697.07	
Fence and Posts	"	527.45	
Pump Shed on Coping	"	78.04	
Dismantle B. H. Co. Boiler	"	4.50	
Foundation for Pump	"	8.93	
		$15,924.48	To Summary

2600

Payment to B. H. Co.	1917	$816.25	
Testing, Borings, Analysis, Etc.	"	5.55	
Small Piping	"	68.15	

Petty Cash & Pay Roll		"	37.24		
Miscellaneous		"	.44		
Painting		"	18.00		
Housing for Pump		"	70.48		
			$1,049.34	To	Summary
Oil Pipes		"	91.19	"	"
Gauge		1918	29.00	"	"
Hose & Fittings		"	328.75	"	"

106—296

Summary for 1,000,000 *Cu. ft. Holder.*

Expenditures during year	1915	$68,577.50
" " "	1916	15,924.48
" " "	1917	1,049.34
" " "	"	91.19
" " "	1918	29.00
	"	328.75
Total Expenditures 1915 & 1918		$86,000.26

Description.	Date of acquisition.	Cost.	
250,000 Cu. Ft. Holder:			
Labor on connections	Feb. 1907	$209.50	
Pay Roll	" "	25.31	
			$234.81
100,000 Cu. Ft. Holder:			
Electric Alarm	March 1907 Constr.		45.00
30′ x 30′ Oil Tank	1908 & 1916.		
Excavation & Concrete Work	Nov. 1908	136.25	
Pay Roll	" "	134.33	
Oil Tank	Dec. "	2,100.00	
Hauling & Grouting	" "	58.89	
Fittings & Conn	1909 E	140.30	
Foundation, Inc. Piles, Etc	" "	434.18	
Ladder	1916 "	13.96	
			$3,017.91
Steel Tar Tank	1919	.....	233.96
Purifier Box:			
Payments to Quintard	1909 L	3,618.92	
Labor $227.31, Sand, Cement, Etc., $69.68	"	296.99	
Hauling & Labor—Conn. & Drains	"	94.60	
Large Valves & Fittings	"	184.61	
Small Pipe " "	"	9.12	
Materials & Supplies	"	468.66	
Oxide	"	411.58	
Freight $36/35, Petty Cash $27.60	"	126.95	
2—#4 Goulds Pumps	"	8.25	
			$5,219.68

Payment to B. H. Co.			
Materials & Supplies	1911 L	$3,073.00	
Sand & Cement $47.45 Lumber 5.60	"	160.62	
Large Fitting	"	53.05	
Oxide	"	30.50	
Pay Rolls 83.75 Petty Cash 11.48	"	410.95	
Thermometer	"	95.23	
	1919	57.99	
			$3,881.34
Deep Water Well:	1916 & 1918.		
Contract on Well	"	550.00	
Pipe & Fitting	"	159.15	
Pay Roll	"	143.11	
			$852.26
Purifier Connections	1919	.....	1,923.27
Flight Conveyor	"	.....	701.66

Description.	Date of acquisition.	Cost.	
Seal Pump	1910	$30.00	
Pipe & Fittings Purification App.	1914	346.82	
Pipe & Fittings Purification App.	1915	222.54	
Pyrometer	1916	75.80	
Steam Valves	"	7.29	
Steam Traps	"	60.00	
Damper Regulator	1917	75.00	
Grate Bars	"	15.10	
1–3 Way & 1–4 Way Valve	"	49.09	
Pipe, Fittings & Covering	"	89.08	
Oil Feed Pumps	"	89.41	
3" Centrifugal Pump	"	158.00	
Hines Eliminator	"	71.30	
Valves and Cooks	"	8.63	
Hand Stoker	1918	474.90	
Steam Line 761.85 Blast Main 535.15	"	1,297.00	
Valves & Fittings Purification App.	"	198.32	
Oiler	"	12.25	
Fan Engine Regulator	"	92.00	
Steam Trap, Pay Roll & Petty Cash	1919	86.88	
Cochrane Separator etc.	"	117.51	
Steel Laced Hose	"	11.23	
Steam Line	"	84.24	
Oil Line	1905	141.03	
Condenser by Pass	1907	287.88	
Oil Line to Dock	1908	1,649.85	
			$5,751.15

Description.	Date of acquisition.	Cost.	
Seal Pump:			
4″ x 4″ x 6″ Pump	1910 M	$85.00	
Pipe Fittings 51.07, Pay Roll 32.64	" "	83.71	
		$168.71	
Credited 1917		138.71	
			$30.00
Pipe & Fittings—Purification App.:			
8″ Galv. Iron Pie & Fittings	1914 L	155.00	
Pipe & Fittings 70.39, Valve & Trap 23.56	" "	93.95	
Misc. Hdware .84 Pay Roll, etc. 97.03	" "	97.87	
			346.82
Pipe & Fittings—Purification App.	1915 "		
Pay Roll			212.54
Pyrometer—Brown	1916 K	.....	75.80
Steam Valves:			
2″ Valves 7.29	"	.....	7.29
4 Steam Traps	1916 L	.....	60.00
Freight and Cartage on Grate Bars	1917 G	.....	15.10
Damper Regulator (#1 Duplex)	" "	.....	75.00
1 2″ 3 way & 1 2″ 4 Way Valves	" K	.....	49.09
Pipe, Fittings & Covering—Puri. App.	" L		
Bars	" "	6.34	

Derivation of Cost of Miscellaneous Items Not Listed in Inventory.—Continued.

Description.	Date of acquisition.	Cost.	
Fittings	1917 L	70.13	
Labor	" "	12.61	
			89.08
Oil Feed Pumps	" M	.....	89.41
3" Centrifugal Pump	" "		
Pump 130.00, #2 Exhauster 15.00	" "	145.00	
Pulley and Pipe	" "	13.00	
			158.00
2605			
Hines Eliminator	1917 M		
Eliminator	" "	$38.40	
Valves & Drilling	" "	32.90	
			$71.30
Valves & Cocks	" "	.....	8.63
Huber Hand Stoker	1918 G		
Stoker	" "	425.00	
Bricks	" "	49.90	
			474.90
Steam Line	" J		
Valves, Fittings & Gaskets	" "	202.37	
Bushings and Miscellaneous	" "	9.41	
Pipe Covering	" "	136.87	
Sprocket Rim & Chain $4.40, Hardware 2.80	" "	7.20	

Pay Roll	"	"	335.89	
				761.85
Blast Mains	"	K		
Material and Labor	"	"	412.24	
Flanges and Rivets	"	"	83.69	
Valve $33.60, Bolts & Washers	"	"	39.22	
				535.15
Valves & Fittings—Purification App.	"	L		
Fittings for Well Pump	"	"	8.16	
3 12" Valves	"	"	178.76	
Labor and Material for Air Pump	"	"	6.77	
Valves $4.40, Pay Roll $4.23	"	"	4.63	
				198.32
Oiler	"	M	.....	12.25
Fan Engine Regulator	"	"	.....	92.00
2606				
Steam Trap	1919	J		
Steam Trap and Petty Cash	"	"	$22.88	
Pay Roll	"	"	64.00	
				$86.88
Cochrane Separator & Petty Cash	"	K	.....	117.51
Steel Laced Hose	"	M	.....	11.23
Steam Line, Boiler to Generator House	"		.....	84.24

Derivation of Cost of Miscellaneous Items Not Listed in Inventory.—Continued.

Description.	Date of acquisition.	Cost.	
Oil Line	1905		
195′ 2″ Pipe $15.84, Flanges $.47	Aug.	16.31	
Lumber	"	66.66	
2″ Pipe $17.00, Valve $1.35, Covering $39.71	Dec.	58.06	
			141.03
Condenser By-Pass	1907		
Material	Feb.	220.78	
Freight	March	9.41	
Labor	April	57.69	
			287.88
Oil Line to Dock	1908		
2445′ of 6″ Pipe	November	1,117.05	
Fittings	December	27.70	
Labor of Laying	"	505.10	
			1,649.85

2607 *Cost of Distribution System.*

Installed Aug. 1, 1904 to Dec. 31, 1908:

Mains	$90,413.18	
Services	20,802.60	
St. Lamps	2,054.16	
Meters	15,830.38	
Meter Installation	11,495.01	
Arc Lamps	1,698.25	
		$142,293.58

Installed since December 31, 1908:		
Mains	$290,525.81	
Services	54,361.91	
Meters	51,582.35	
Meter Installation	16,043.22	
Other Tangible Capital	753.75	
		$413,267.04
Addition to Mains a/c Acquisition College Point System		6,357.00
Total Distribution System		$561,917.62

2608 *Cost of Additions to Office Equipment*, 1904-1920.

Description.	Date of acquisition.	Cost.	
Inventory in 1909	....	$2,045.00	
Cabinet, Fan, Stamp Machine	1910	73.70	
Desk	1911	20.00	
Fan	1912	6.56	
Cabinet, Desks, Chairs, Rug, Safe, etc	1913	449.57	
Typewriter, Envelope Sealer, Calculating Machine	1914	207.01	
Cabinets, Desks, Chairs, Addresser	1915	309.58	
Typewriter, Adding Machine, etc	1916	387.96	
Safe, Stools, Fans, etc	1917	232.90	
Fan & Book case	1918	27.17	
Underwood Duplicator	1919	40.00	
Bryant Boiler	1919	133.34	
			$3,932.79

2609 *Cost of Additions to Store Equipment*, 1904-1920.

Description.	Date of acquisition.	Cost.	
Fire Extinguishers	1909	$29.00	
Shelving $15.00, Paper Holder $4.50	"	19.50	
Fire Extinguishers	1912	13.50	
Lamp Post $64.00, Foundation $12.32	"	76.32	
Sign	"	27.00	
Fire Extinguishers $6.75, Cash Tube $75.00	1913	81.75	
Fitting Rack & Table $121.00	1915	121.00	
Wax Figures $30.00, Sign $27.00, Sink $31.50	"	88.50	
Stove Casters $7.70	"	7.70	
Fire Extinguishers	"	8.00	
" "	1916	11.20	
Heating Appliances $1.78 & Fittings, $14.14	"	15.92	
Pipe & Fittings for Furnace	1917	6.59	
			$505.98

2610 *Cost of Additions to Laboratory Equipment*, 1904-1920.

Description.	Date of acquisition.	Cost.	
Pulmotor & Mask	1913	$160.48	
Adaptor & Wrenches	"	3.98	
Jenkins Calorimeter	1916	220.00	
Thermometers $11.76, Tables $4.50	"	16.26	
Sycrometers $12.00, Pail & Fittings $1.73	"	13.73	
Gauges $75.34, Box $33.48, Glass Enclosure $51.52	"	159.94	
Governors	"	6.00	
Calorimeter Complete	1917	238.70	
Barometer $40.00, Recording Gauge $37.67	1918	77.67	
Gauge	"	29.00	
			$925.76

Description.	Date of acquisition.	Cost.	
50″ Tape	1905	$2.50	
First Aid Cabinet	1906	5.50	
Ellicott Apparatus	1906	20.00	
60″ Bar Photometer	1907	350.00	
Range Boiling Tank	1912	36.00	
Pipe Locator	1913	65.00	
Respirator	1916	40.00	
Cyclone Cleaner Complete	"	117.50	
Screw Bars	1917	35.00	
Hose	1917	15.40	
Service Pumps	1917	30.36	
Stocks & Dies	1919	7.80	
Thawing Equipment	1919	50.00	
			$775.06

2612 *Cost of Miscellaneous Items to Extent Separately Shown by Books.*

Description.	Cost.
Gas Engines & Appliances	$46,473.77
Engineering and Superintendence on certain Items	12,974.42
Interest on certain Items during Construction	1,555.29
Office development of Douglaston extension	2,092.16
Total	$63,095.64

2613 COMPLAINANT'S EXHIBIT 97.

Comp. Ex. 97. May 28/20. J. A. F.

At a Stated Meeting of the Public Service Commission for the First District, Duly Held at Its Office, in the Public Service Commission Building, No. 49 Lafayette Street, in the Borough of Manhattan, City and State of New York, on the 17th Day of September, 1918.

Present:

Charles Bulkley Hubbell,
Chairman;
Travis H. Whitney,
Charles S. Hervey,
F. J. H. Kracke,
Samuel H. Ordway,
Commissioners.

Case No. 2330.

In the Matter of the Publication of and Filing with the Public Service Commission for the First District of Schedules Showing All Rates and Charges Made, Established, or Enforced or to be Charged or Enforced, All Forms of Contract or Agreement, and All Rules and Regulations Relating to Rates, Charges, or Service Used or to be Used, and All General Privileges and Facilities Granted or Allowed by Gas Corporations and the Time Within Which Changes Proposed to be Made in Such Schedules Shall Go into Effect.

Order Prescribing Regulations as to Filing of Rate Schedules by Gas Corporations.

It is hereby ordered:

I. That every gas corporation subject to the jurisdiction of the Public Service Commission for the First District of the State of New York, shall, within fifteen (15) days after the service upon it of a

certified copy of this Order, file with this Commission a printed schedule showing all rates and charges heretofore made and established, and now being charged or enforced, or hereafter to be charged or enforced, for gas supplied by it to consumers within any territory served by it, together with any and all forms of contract or
2614 agreement, and any and all rules and regulations, relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed, by it, to any of its consumers, and such company shall, from and after the date of such filing, keep posted and open for public inspection, as hereinafter provided, copies thereof.

II. From and after the date of such filing, unless the Commission, for good cause shown and upon such conditions as it may prescribe, otherwise orders, no change shall be made by any such gas corporation in any rate or charge, form of contract or agreement or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published in compliance with the terms and provisions of this Order, except after thirty (30) days' notice to the Commission and after publication, in the manner hereinafter provided, for thirty (30) days, and except after application to the Commission where required by law.

General Form of Schedule.

III. All such schedules and all revisions thereof shall be printed on paper of good quality in loose sheet form 8½ by 11 inches in size, so fastened together that any sheet may be removed, a revised sheet substituted or additional sheets inserted.

Contents of Schedule.

IV. Each schedule shall consist of a double sheet used as a cover and title page, and shall contain, in the order named:

(*a*) A table of contents;

(*b*) Any necessary preliminary statement;

(*c*) A statement of each rate charged and, where different rates are charged in different districts within the territory supplied, a statement defining the boundaries of each such district and setting forth the rate or rates charged within each thereof.

Title Page.

V. The title page of every schedule shall show in full:

(*a*) The name and address of the corporation.

(*b*) The serial number of the schedule with proper prefix.

(*c*) The area to which the schedule applies.

(*d*) The date of issue, the date of posting, and the date upon which it became or is proposed to become effective.

2615 (*e*) The name, title and address of officer by whom issued.

(*f*) In the upper left-hand corner the words "Any amendment to this Schedule will be made by issuing a new or revised individual sheet or sheets, filed to become effective as noted thereon."

Standard Sheets.

VI. The Standard Sheet shall be $8\frac{1}{2}$ inches wide by 11 inches long. When convenient, printed matter may be placed upon both sides of such sheets. The "type-page" shall be not larger than $6\frac{7}{8}$ inches by $8\frac{3}{4}$ inches and shall be so placed upon each sheet as to leave not less than the following margins: $1\frac{1}{2}$ inches at the top; $\frac{1}{2}$ inch at the right-hand side; $1\frac{1}{8}$ inches at the left-hand side, and one inch at the bottom. Perforations or holes for binding or filing shall be in the left margin of each sheet.

The margin at the top shall show:

(*a*) On the left-hand side, the name and the post-office address of the corporation filing the schedule or supplement.

(*b*) On the right-hand side, the number and prefix of the schedule (e. g., Con. G. Co. No. 1), with a designation showing whether it is an original or a revised sheet. If a revised sheet, it shall give notice of cancellation, state the sheet or sheets which it cancels, and the date upon which such cancelled sheet or sheets became effective (e. g., Con. G. Co. No. 1, Revised Sheet No. 1; Cancelling Original Sheet No. 1, effective Jan. —, 19—). Subsequent issues shall be consecutively designated Second Revised, Third Revised, etc.

The margin at the bottom shall show:

(*a*) On the left-hand side, the date of issue.

(*b*) On the right-hand side, the date upon which it became or is to become effective.

(*c*) If a revised sheet, a brief statement (in bold-faced type) of the charges, and the date upon which it is to become effective.

(*d*) If issued under the special permission, or an order, of the Commission, the date and number of such special permission or order.

(*e*) The name and post-office address of the officer or agent of the gas corporation who is responsible for the filing of the schedule sheet.

2616 Table of Contents.

VII. The table of contents shall contain a full and complete statement of the contents of the entire schedule, arranged in the order of the sheets. Under general headings referring to sheet numbers,

here shall be shown in a separate column the date when each revised heet became effective. A revised table of contents shall be published nd filed simultaneously with the publication and filing of each evised sheet.

Preliminary Statement.

VIII. The preliminary statement shall describe:

(*a*) The territory served by the corporation.

(*b*) How the corporation's services can be obtained, in detail, tating the kind of application or contract which is required to be igned, the deposit, if any, required, and what must be done by the pplicant.

(*c*) The type of service to which the rates apply, including bound- ries of different types.

Rate Sheets.

IX. Rate sheets shall contain the following:

(*a*) Designation of Rate.—A designation of each rate sheet by a tter and title of the rate (e. g., "Rate A—General Service").

(*b*) Availability of Service.—A statement as to the availability f the service, describing the class of customers to whom the rate is pplicable and any limitation of that class.

(*c*) Rate.—The rate and charge for the furnishing of gas or any pparatus in connection with the use thereof or any privilege, giving e basis or unit rate or rates, or series of unit rates used in com- uting the total charge to the customer, and spelling technical terms full without abbreviations.

(*d*) Discounts.—If any discounts, or reductions in unit rates, are llowed, or any additions are made, a full explanation of the condi- ons under which the same are allowed or are made.

(*e*) Determination of Demand.—If the rate used be a demand te, the exact method of determining the demand.

(*f*) Minimum Charge.—The amount of minimum charge to be aranteed, if any be required, and the basis of such charge.

17 (*g*) Standard Riders.—All riders which may be applied to the particular rate shall be referred to by the number ven to the rider upon the sheet or sheets containing Standard ders.

(*h*) Term.—The term of the contract relative to its duration, n or cancellation.

(*i*) Terms and Conditions.—Any terms and conditions applying ecially to the particular rate, and a reference to the sheet number on which may be found the standard "Terms and Conditions of vice" applicable to all contracts.

(*j*) The date or dates on which any rate or rates at the time being charged for gas went into effect; and

(*k*) The authority by or pursuant to which such rate or rates were prescribed or put in force.

(*l*) If a revised sheet, a brief statement (in bold-faced type, in the margin at the bottom) of the changes.

Terms and Conditions.

X. On this sheet or sheets shall be set forth an exact copy of all of the terms and conditions and rules and regulations which may be contained in any form of contract or schedule rates which in any way affect the furnishing in the first instance, or the continuance or discontinuance of any service.

Standard Riders.

XI. On this sheet shall be set forth an exact copy of every Standard Rider containing any terms and conditions and any rules or regulations, applicable to any rate or service described on the rate sheets, each rider under separate number, so that each such rider may be readily identified and referred to in the Rate Sheets.

Any corporation may in its discretion insert in any contract a standard clause relating to any minor service condition, provided such standard clause shall first have been submitted by the said corporation to, and approved by, the Commission.

Forms of Contract.

XII. Where any form of contract is printed, mimeographed or manifolded, one copy thereof shall be filed with the Commission and one copy attached to each copy of the schedule kept open for public inspection as hereinafter provided.

2618 Cancellation or Revision of Schedule.

XIII. (*a*) A schedule or rate sheet may be cancelled only by a new schedule or revised rate sheet, and the superseded schedule or rate sheet shall be replaced by the new schedule or rate sheet.

(*b*) A revised sheet shall be placed in the Schedule (which shall be properly bound for that purpose) immediately following the sheet which it is to supersede; on the date when such revised sheet becomes effective the sheet which it supersedes shall be removed from the Schedule.

(*c*) If a schedule be cancelled by the issuance of a new schedule, notice of cancellation must be printed in the new schedule, making specific reference to the number of the schedule cancelled.

Single Schedule.

XIV. Only one schedule, including the revised sheets, for each corporation may be in effect at any time.

Notice of Issue.

XV. (*a*) The title page of every schedule and each sheet thereof must show full thirty (30) days' notice, or bear a plain notation of the number and date of the special permission or order of the Commission, under which it is to become effective on less than the regular notice; e. g., "Issued on — days' notice to public and Commission, under special permission (or order) of the Public Service Commission for the First District, State of New York, No. — of date ——."

(*b*) Changes of schedule may be permitted by the Commission on less than the regular thirty (30) days' notice, but such permission will be granted only in cases where actual emergency or substantial merit be shown, or where the change reduces a rate. Application, duly verified, for permission to put in force a schedule or revised or additional sheet or sheets on less than thirty (30) days' notice, shall be addressed to the Public Service Commission for the First District, State of New York, New York City, N. Y., in the form hereinafter prescribed, and must be over the signature of the officer charged with the preparation, posting and filing of schedules, and must specify his title. Action will be taken only upon receipt of the verified application.

2619 Withdrawal of Change.

XVI. After notice of a proposed change in a schedule has been filed and published, the new schedule or revised sheet must be allowed to go into effect and cannot be withdrawn, cancelled, superseded or amended, except upon notice filed and published for at least thirty (30) days after the date upon which the schedule became effective, or upon shorter notice if allowed by the commission.

Copies to be Available for Distribution.

XVII. Printed copies of all schedules in force or to be put in force shall, except as herein otherwise provided, be kept posted for at least thirty (30) days before being put into effect or for such shorter time as may be authorized by the Commission, in two public and conspicuous places in every office or place where applications for service are received, in such manner as to be readily accessible to and conveniently inspected by the public. Every consumer, or applicant for service, shall be entitled to a printed copy of any schedule in force upon payment of a reasonable price therefor; every such copy shall bear a stamp or endorsement stating that such

schedule may be changed in accordance with law or the orders of the Public Service Commission for the First District.

Filing of Schedule.

XVIII. (*a*) Every schedule and every revised or additional sheet shall be filed with the Commission by the proper officer of the corporation.

(*b*) Every schedule and every revised or additional sheet filed with the Commission shall be accompanied by a letter of transmittal in duplicate. The original will be retained by the Commission and the duplicate will be stamped and returned to the filing corporation as its receipt for the schedule or sheets covered thereby.

(*c*) All schedules filed with the Commission must bear consecutive serial numbers prefixed by an abbreviation of the corporation's name commencing with No. 1 for each corporation (e. g., Con. G. Co.—1 N. Y.—No. 1).

(*d*) Schedules and revised or additional sheets sent for filing must be addressed to the Secretary of the Public Service Commission for the First District, at the principal office address of the Commission.

2620 (*e*) Any schedule or sheet which is not numbered consecutively with the last number filed must be accompanied by a memorandum explaining the omission of the missing number or numbers.

(*f*) If a schedule or revised or additional sheet be rejected by the commission as unlawful, or as not in accordance with the terms of this Order, such schedule or sheet shall not thereafter be referred to as cancelled, amended or otherwise, except to note on publication issued in lieu of such rejected schedule or sheet "In lieu of —, rejected by Commission," nor shall the number which it bears be again used.

(*g*) No schedule or sheet will be accepted for filing unless it be delivered to the Commission, free from all charges or claims for postage, sufficiently in advance of the date upon which it is stated to become effective. No consideration will be given to or for the time during which a schedule or sheet may be held by the Post-Office authorities because of insufficient postage. Schedules or sheets filed and issued without proper notice to the Commission will be returned to the sender. Full notice must be given of any reissue thereof, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such schedule or sheet was received and the date of attempted correction.

(*h*) No consideration will be given to telegraphic notices in computing the thirty (30) days required.

(*i*) If publication be not according to these regulations this may be considered by the Commission sufficient cause for rejection of the schedule or sheet when tendered for filing.

2621 Form of Letter of Transmittal and of Application.

XIX. The following forms on paper 8½ by 11 inches in size are prescribed for use:

(*a*) Form of Letter of Transmittal.

.....
(Name of corporation)

(Date).....

Advice No. .....

To the Public Service Commission for the
First District of the State of New York,
New York, N. Y.

Dear Sirs: The accompanying schedule or sheet..... sent to you for filing in compliance with Order in Case No. 2330 of the Public Service Commission for the First District, issued by

..... bearing

..... Schedule of.....Co.

No.....; or

Sheet No..... to .....Co. No.....

Revising Sheet No..... (Cancelling original or revised

Sheet No.....) Effective....., 19....

.....
(Name of corporation)

.....
(Place and date)

(*b*) Form of Application.

To the Public Service Commission for the
First District of the State of New York,
New York, N. Y.

Dear Sirs: The ..... Co.,

by .....
(Name of officer)

its..... hereby applies under
(Title of officer)

2622 Order in Case No. 2330 of the Public Service Commission for the First District for an order granting permission to put in effect.....days after publication at offices and filing with the Commission the following schedule or sheet.....

.....

The proposed change in intended to be published in schedule of .....Co. No. ....., Sheet No. ..... and will revise Sheet No. ..... cancelling original (or) revised Sheet No. ..... or Schedule No. .....

This application is based upon the following special circumstances and conditions.....

.....

.....
(Name of corporation)

By.....
(Officer) (Title)

2623 *Affidavit.*

STATE OF NEW YORK,
County of.....,ss:

....., being duly sworn, says that he is the officer above named, that he has read the foregoing application and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein specifically stated as made on information and belief, and that as to those matters he believes it to be true.

.....
(Name of affiant)

Subscribed and sworn to before me this ..... day of ..... 19...

.....
Notary Public.

Exception of Certain Contracts.

XX. Nothing herein shall be construed as applicable to schedules of rates and forms of contracts relating to service rendered to the City or State of New York, or to the United States Government, save that every gas corporation shall file with the Commission a copy of every contract relating to such service made with the City or State

of New York or with the United States Government, within ten (10) days from the receipt of the signed contract by the company, but in no event shall more than three (3) months from the date of signing of any such contract be allowed to elapse before a copy thereof shall be filed with the Commission.

Nothing herein shall be construed as applicable to any contract between a gas corporation and any other gas corporation relating to service rendered to such corporation, save that every gas corporation shall file with the Commission a copy of every such contract within ten (10) days from the date of execution thereof.

Effective Date.

XXI. This order shall take effect September 17, 1918, and shall continue in force until abrogated or modified by the Commission.

2524 Notice of Acceptance.

XXII. Every gas corporation within the jurisdiction of the Public Service Commission for the First District of the State of New York shall notify the Commission within ten days after service upon it of a certified copy of this Order whether the terms of this Order are accepted and will be obeyed.

By the Commission.
[SEAL.]

JAMES B. WALKER,
Secretary.

2525 STATE OF NEW YORK,
County of New York, ss:

I, James B. Walker, Secretary of the Public Service Commission for the First District, do hereby certify, that I have compared the above with the original approved by said Commission on September 17, 1918, and that it is a correct transcript therefrom and of the whole of the original.

In testimony whereof, I have hereunto subscribed my hand and affixed the seal of the Commission, this 28th day of April, 1920.

JAMES B. WALKER,
Secretary.

2626 COMPLAINANT'S EXHIBIT 98.

Comp. Ex. 98, May 28 '20. J. A. F.

At a Stated Meeting of the Public Service Commission for the First District Duly Held at Its Office, Number 154 Nassau Street, in the Borough of Manhattan, City and State of New York, on the 20th Day of May, 1913.

Present
Edward E. McCall,
Chairman;
Milo R. Maltbie,
John E. Eustis,
J. Sergeant Cram,
George V. S. Williams,
Commissioners.

Case No. 1453.

In the Matter of the Application of the Consolidated Gas Company of New York for Authority to Purchase the Stock of New York and Queens Electric Light and Power Company and the New York and Queens Gas Company under Section 70 of the Public Service Commissions Law.

Order Granting Application.

Application having been made to this Commission by the Consolidated Gas Company of New York by petition dated and verified January 18, 1912, pursuant to the provisions of Section 70 of the Public Service Commissions Law, for authority to purchase, acquire, take and hold all the outstanding common stock of the New York and Queens Gas Company and all the outstanding common stock and all the outstanding preferred stock of the New York and Queens Electric Light and Power Company; and a hearing having been duly had by and before the Commission upon said application on January 31, 1912, and on certain adjourned dates to and including November 12, 1912, Honorable Milo R. Maltbie, Commissioner, presiding, Shearman and Sterling, by John A. Garver of counsel, appearing for the Consolidated Gas Company, Edward M. Stothers appearing for Manton B. Metcalf, a stockholder of the New York and Queens Electric Light and Power Company, and Arthur DuBois,
2627 Assistant Counsel, attending for the Commission; and testimony having been taken upon said hearing; and it having been made to appear by the proceedings on said hearing that said Consolidated Gas Company of New York has acquired an option on all the outstanding common stock of the New York and Queens Gas Company and has acquired an option on a majority of the outstanding common stock and outstanding preferred stock of the New York

Complainants Exhibit 99

TREASURY DEPARTMENT,
U. S. INTERNAL REVENUE.
FORM 1-17.

ORIGINAL.

NOTICE AND DEMAND FOR TAX AND RECEIPT—REGULAR CASES.

PAID BY CHECK No. 3662

COLLECTOR'S OFFICE 1st Phase DISTRICT OF N Y

AT Brooklyn DATE 7-16-19 114

Notice is hereby given that there has been assessed against you the amount set opposite for the liability named which tax is payable to me. Demand is made for the payment of said tax on or before the date given below. Failure to do so will cause a 5 per cent penalty to accrue with interest at 1 per cent per month from due date until paid.

Due date 7-26-19

Bertram Gardner,
Collector of Internal Revenue.

N Y & Queens Gas Co.,
88 Main Street
Flushing, N Y

List 2[illegible] 1919 May 25 0
Add 1 Cap Excess Profits Tax (1918)
(Character of tax and year)
For period ended 6-30-19

TAXES, PENALTIES, ETC.

Amount of tax	$ 471.00
50 per cent penalty	
100 per cent penalty	
5 per [illegible]	
Interest	
Received payment	

PAID
OCT 28 1919
Cashier
1st. Dist. N. Y.
Collector of Internal Revenue.

This notice must be presented at the time payment is tendered, as when properly stamped "paid" by the collector it becomes a receipt for taxes. See instructions on back.

Payment may be made in currency, post-office money order, draft, or certified check on a National or State bank or trust company providing that such check can be collected without cost to the Government. It should also be borne in mind that the date when such check may be cashed and the money deposited is the date of payment, and allowance should be made accordingly. Collectors can not receive payment of taxes in uncertified checks, personal checks, drafts, or vouchers, and all indorsements by collectors on certified checks are made without recourse. Money orders, drafts, and certified checks must be made payable to the Collector of Internal Revenue.

Date Bill Rec'd 7/21/19 Date Goods Rec'd
Rec Book Page
Quality O. K. Order No.
Add & Ext. O. K. Prices O. K.
Charge
Accrued taxes 471 00
Approved General Manager

2629

and Queens Electric Light and Power Company; and the Commission being of the opinion that said application should be granted, it is

Ordered that the purchase and acquisition by the Consolidated Gas Company of New York of all the outstanding common stock of the New York and Queens Gas Company and of all the outstanding common stock and all the outstanding preferred stock of the New York and Queens Electric Light and Power Company be and the same hereby are authorized; provided, however, and this order is upon the express condition that if within one year from and after the date of this order any of the holders of the preferred stock of the New York and Queens Electric Light and Power Company shall offer the same to the said Consolidated Gas Company of New York, said Consolidated Gas Company of New York shall purchase and accept the same and pay therefor not less than 76.13% of the par value thereof, and if within one year from and after the date of this order any of the holders of the common stock of the New York and Queens Electric Light and Power Company shall offer the same to the said Consolidated Gas Company of New York, said Consolidated Gas Company of New York shall purchase and accept the same and pay therefor not less than 55.64% of the par value thereof.

By the Commission.

TRAVIS H. WHITNEY,
Secretary.

[SEAL.]

2628 STATE OF NEW YORK,
County of New York, ss:

I, Travis H. Whitney, Secretary of the Public Service Commission for the First District, Do Hereby Certify, that I have compared the above with the original adopted by said Commission on May 20, 1913, and that it is a correct transcript therefrom and of the whole of the original.

In Testimony Whereof, I have hereunto subscribed my hand and affixed the seal of the Commission, this 20th day of May, 1913.

[SEAL.]

TRAVIS H. WHITNEY,
Secretary.

(Here follows reproduction of Complainant's Exhibit No. 99, marked pages 2629 and 2630.)

2631 COMPLAINANT'S EXHIBIT #100-104, INCLUSIVE.

Pages from monthly reports of Complainant Company, showing gas made, etc., for the years 1918, 1917, 1916, 1915, 1914 and 1913.

Not printed.

COMPLAINANT'S EXHIBIT 105.

Working & Construction Capital—N. Y. & Queens Gas Co.

Comp Ex. 105.

	1904.	'5.	'6.	'7.	'8.	'9.	'10	'11.	'12.	'13.	'14.	'15.	'16	'17.	'18.	'19.	'20.
Materials & supplies, appliances, etc. ..	10	10	10	10	10	12	13	14	14	14	15	15	15	20	35	40	35
(M. & S. Acct.)																	
Operating Exp. advanced ...	4	6	7	8	9	10	10	11	12	10	10	10	12	15	15	20	20
Cash	2	3	4	4	5	6	8	8	9	9	10	10	10	12	15	20	15
Total ..	16	19	21	22	24	28	31	33	35	33	35	35	37	47	65	80	70
Rounded off ..	18	20	22	22	25	30	35	35	35	35	40	40	45	50	65	80	70

2633 COMPLAINANT'S EX. 106.

STATE OF NEW YORK:

Public Service Commission, First District.

In the Matter of the Gas andd Electric Rates Charged by the QUEENS BOROUGH GAS & ELECTRIC COMPANY.

Informal Proceeding.

Opinion of the Commission.

Commissioner MALTBIE:

This proceeding is the first of its kind before the Commission. The company against which complaint was originally made as to its rates for gas and electricity has voluntarily offered to accept the determination of the Commission and to put into effect, at least for one year, whatever rates the Commission may decide are reasonable and proper.

This matter first came before the Commission under Section 71 of the Public Service Commissions Law, which provides that "upon the complaint in writing of not less than 100 customers or purchasers of such gas or electricity * * * as to * * * the price of gas * * * or price of electricity sold and delivered in such municipality, the proper commission shall investigate as to the cause for such complaint." Two petitions were filed, each purporting to contain the names of more than 100 consumers, one relating to gas and one relating to electricity. As these complaints were apparently in proper form, hearing orders were adopted by the Commission and formal proceedings instituted, as provided for by law. Certain complainants were represented by counsel and the company by its president and counsel.

2634 Present Rates.

At the time the complaints were made, the company was charging ordinary consumers of gas $1.30 per M cu. ft., and the minimum rate was $1.25. The city was paying 75 cents.

The electric rates, as is usually the case, had much greater variations. The highest was 15 cents per k. w. h., paid by the vast majority of consumers and generally by those who initiated this proceeding. The lowest was 3½ cents for wholesale power for pumping purposes during certain hours. The city paid from $65 to $100 per lamp per year for street arc lamps, burning all night, and 10 cents per k. w. h. for general municipal lighting.

None of the rates of the present company or of its predecessor companies has ever been regulated by statute except those charged the City of New York, as above stated. The legislation of 1905 and 1906, fixing gas and electric rates generally in Greater New

York, did not affect the Fifth Ward of the Borough of Queens, except as to public lighting. This area is supplied only by the Queens Borough Gas and Electric Company. The district outside of Greater New York is without any limit whatsoever.

The rates in neighboring areas of the city are much lower than in the Fifth Ward. In other sections of the Borough of Queens, gas consumers do not pay more than $1.00 per M cu. ft., and many pay only 80 cents. The range in Brooklyn is the same. The maximum electric rate in these two boroughs, outside of the Fifth Ward of Queens, is 12 cents per k. w. h.

This marked difference is doubtless the principal cause of the pending complaints. The residents of the area supplied by the Queens Borough Company do not understand why they should be charged 25 per cent more than persons living not far distant. Others who live during the winter in Brooklyn or Manhattan pay 60 per cent more in their summer homes in Rockaway, and it seems inexplicable. If Brooklyn and other portions of Queens can be supplied with gas at 80 cents or $1.00, and electricity at 12 cents, why can not the rates in the Fifth Ward be reduced below $1.30 and 15 cents, they ask.

When this matter first came up, the company claimed it had reduced its rates as rapidly as it could afford to, stating that since 1902 the following changes had been made:

2635 Gas.

June 1, 1902 to May 1, 1904	$1.80	max.	$1.60	min.
May 1, 1904 to Nov. 1, 1906	1.60	"	1.40	"
Nov. 1, 1906 to Jan. 1, 1909	1.40	"	1.35	"
Jan. 1, 1909 to present	1.30	"	1.25	"

Electricity.

July 1, 1902 to Nov. 1, 1906	$.20	max.	$.048	min.
Nov. 1, 1906 to Jan. 1, 1909	.15	"	.04	"
Jan. 1, 1909 to present	.15	"	.035	"

The company offered to continue these reductions and to make the rates for general consumption $1.25 for gas and 14 cents for electricity for the year 1911 and to reduce prices still further if the finances of the company would warrant it. The proposal was not approved by all, and as the company perceived that unless the changes were generally accepted, the matter would be brought before the Commission and a decision obtained, it decided to allow the case to proceed.

Company Agrees to Accept Rates.

Early in the proceedings questions arose as to the jurisdiction of the Commission, the assertion being made by the president of the company that certain names attached to the complaints were of persons who were not "customers or purchasers," and consequently that

the complaint was defective and did not comply with the provisions of statute. Subsequently, the company withdrew these objections, and the Commission proceeded to take evidence. The complainants presented nothing. The company submitted considerable data, but before it had proceeded far, although several weeks had elapsed, it transmitted a communication in which it referred to the large expense and inconvenience to which it would be put in order to complete its side of the cases. The communication closed with this paragraph:

"The Company, therefore, in the interest of economy, and in justice to itself and its consumers, asks the Commission to establish maximum gas and electricity rates for the Company, and hereby agrees to put them in force at any time after January 1st,
2636 1911, the date to be fixed by the Commission and to continue them in force during the year 1911 and give them a full, fair and complete trial so as, if possible, to make them a success, without prejudice at the end of the year 1911 to any new proceedings that may be instituted."

The company having agreed to accept the determination of the Commission in advance of its decision, the Commission decided to adjourn the formal proceedings and to finish the consideration of the various factors involved through open, informal conferences with the complainants and the representatives of the company. When there is the possibility that the record may be reviewed by writ of certiorari, the procedure tends to become formal and technical. Every party concerned hesitates to be free and open, for fear that some slip or inadvertent admission may be used against him. Exceptions to rulings are generously made in order that every possible point may be reserved. The record often becomes verbose, cumbersome and discursive without clearly setting forth the fundamental facts.

Findings.

The informal proceedings, of which a record has been kept and in which the various factors have been freely and frankly discussed, have just been closed, and the Commission now announces the following conclusion as to rates in the Fifth Ward, Borough of Queens:

(*a*) That the maximum rate for gas from July 1, 1911 to January 1, 1912 shall be $1.20 per thousand cubic feet;

(*b*) That the maximum rate for gas from January 1, 1912 to July 1, 1912 shall be $1.15 per thousand cubic feet;

(*c*) That the maximum rate for electricity from July 1, 1911 to July 1, 1912 shall be 13 cents per kilowatt hour.

The Commission is considering a sliding scale plan to be put in operation July 1, 1912, through which to secure for consumers reductions in rates from time to time and for the company the returns attributable to efficient management.

Corporate Relationships.

2637 The Queens Borough Gas and Electric Company is the resultant of several corporations. The earliest one doing a gas business was the Rockaway Gas Light Company, incorporated February 19, 1880. All of the rights and property of this company evidently passed to the Town of Hempstead Gas and Electric Light Company in 1882, but the records do not clearly show how they were acquired. The Town of Hempstead Company was incorporated May 20, 1882, and continued its corporate existence until September 19, 1902, when it was merged with the Queens Borough Gas and Electric Company. All of its rights and property had been acquired by the Queens Borough Company on July 1st of that year.

The first electric company appears to have been the Rockaway Electric Light Company, incorporated in New Jersey on May 8, 1890. This corporation as a legal entity has never been terminated, but its assets passed to the Queens Borough Electric Light & Power Company. The latter was subsequently merged into the Queens Borough Gas & Electric Company, which even yet claims to hold in its treasury all, or practically all, of the Rockaway Electric Light Company bonds. Interest on these bonds is not being paid and foreclosure proceedings have not been pressed.

The Citizens Lighting Company was incorporated March 22, 1892, and operated, to some extent at least, until June 29, 1898, when it sold its property and rights to the Queens Borough Electric Light and Power Company. The former company was never merged with the latter, but it has ceased to do business and, apparently has no property of any sort.

The Queens Borough Electric Light and Power Company was incorporated February 28, 1898. It immediately acquired certain rights from individuals, and on June 29, as above stated, it took over all of the property and rights of the Citizens Electric Lighting Company. It continued its corporate existence until September 19, 1902, when it was merged with the Queens Borough Gas and Electric Company, its property having been acquired by the latter company on the first day of the preceding July.

Upon May 29, 1902, when the Queens Borough Gas and Electric Company was incorporated, the Town of Hempstead Gas and Electric Company was doing a gas business, and the Queens Borough Electric Light and Power Company was doing an electric supply business. The new company was formed to combine these two businesses and on July 1st their rights and property were acquired and the corporations were merged with the new company on September 19, 1902.

2638 Book Assets and Liabilities.

The first important factor in a rate case is the fair value of the property actually and necessarily devoted to public use, and one may

urally turns to the records of the company for light. Unfortunately, the Commission has been unable to get the records of the Rockaway Gas Light Company and the Rockaway Electric Light Company. The early records of the other companies are so incomplete that it is impossible to trace the financial operations of the various companies and to ascertain the actual results of operation from year to year. Certain information is obtainable, however, relating to the assets and liabilities of the two companies at the time when they were taken over by the Queens Borough Gas and Electric Company in 1902.

The Town of Hempstead Company had the following liabilities according to its books upon June 30, 1902:

Capital stock	$125,000.00	
Bonds	150,000.00	
Current liabilities	86,464.08	
Surplus	15,756.63	
		$377,220.71

No records have been found to show whether any money or property was received for the capital stock. The bonds were issued for cash to the extent of $67,000, discounts $10,000, plant and improvements $50,000, and unknown $23,000. The current liabilities and surplus were represented by current assets amounting to $25,990.42; the remainder—$76,230.29—having been charged to "real estate, plant and machinery," a ledger account. The assets were as follows according to the books:

Current assets	$ 25,990.42	
Discounts on bonds	10,000.00	
"Real estate, plant and machinery"	341,230.29	
		$377,220.71

It is impossible to trace $148,000 of the latter item, and $50,000 in bonds, par value, were issued to one person for construction of the original plant and improvements thereon. There is nothing to show what was the value of the plant as it then existed, but from various sources it is evident that it was in poor condition and expensive to operate.

2639 The Queens Borough Electric Light and Power Company had outstanding upon June 30, 1902, according to its books, the following liabilities:

Capital stock	$410,000.00	
Bonds	250,000.00	
Current liabilities	40,635.82	
Surplus and reserve	21,311.47	
		$721,947.29

The capital stock and bonds—par value $660,000—had been issued for the following purposes:

Cash paid to Company	$172,800.00	
"Franchise"	238,050.54	
Discounts reported by trustee	5,000.00	
Commissions	16,500.00	
Premiums on securities bought	3,268.75	
Citizens Lighting Co. purchased	45,000.00	
Other stocks and bonds	1,707.50	
"Advance"	5,000.00	
"Services"	2,000.00	
Interest and legal expenses	6,039.83	
New construction and land	12,260.16	
Sanderson & Porter, engineers (no details given for most of this amount)	150,481.22	
Uncertain and miscellaneous	3,392.00	
		$661,500.00

Reconstructing the asset side of the account, we have:

Current assets	$ 27,463.25	
Investments	20,324.76	
"Franchise"	238,050.54	
Discounts, commissions and premiums	24,768.75	
Interest, legal expenses, "services" & "advance"	13,039.83	
Citizens Lighting Co.	45,000.00	
Other stocks and bonds	1,707.50	
"Property and construction"	351,592.66	
		$721,947.29

2640 All but the first two items were charged to the ledger account, "property and construction." It is impossible to say exactly how much represented actual investment in the physical property and how much in other items, such as discounts, commissions, legal expenses, engineering, etc., for many items are grouped under one heading and no details given.

Original Capitalization of Present Company.

In the following table, under the heading "Combined Companies, June 30," appear the entries of the two companies upon the day prior to their taking over by the new company. In the second column appear the opening entries of the new company upon July 1, 1902:

Liabilities.

	Combined Cos. June 30, 1902.	Queens Borough Co. July 1, 1902.
Capital stock	$535,000.00	$2,000,000.00
Bonds, par value	400,000.00	1,600,000.00
Current liabilities	127,099.90	22,302.74
Surplus and reserve	37,068.10	.....
Total	$1,099,168.00	$3,622,302.74

Assets.

Current assets	$53,453.67	$42,500.33
Investments	20,324.76	20,000.00
"Property and construction"	1,025,389.57	3,559,802.41
Total	$1,099,168.00	$3,622,302.74

Examination of the above shows an increase in one day in capital stock and bonds of $2,665,000, offset in part by decreases in other liabilities, making a net increase in real liabilities of $2,523,134.74. Upon the asset side, one notes that investments and current assets were somewhat decreased. The increase in "property and construction," $2,534,412.84, is a balancing entry merely. These great changes in the accounts between June 30 and July 1, 1902, merit an explanation.

The minutes of the first meeting of the stockholders of the new company, held June 23, 1902, show that a Mr. Caleb A. Burbank offered to sell to that company the entire capital stock (par
2641 value $535,000) of the Queens Borough Electric Light and Power Company and the Town of Hempstead Gas and Electric Light Company, and also a license to manufacture gas from garbage and all animal and vegetable matter by a patented process called the Harris Process. In return, Mr. Burbank was to receive in securities of the new company stock having a par value, full paid, of $1,990,000 and bonds, face value, $1,200,000—a total of $3,190,000. A careful examination of the records fails to reveal the transfer to the new company of any other property, rights or licenses. The offer of Mr. Burbank concludes:

"As to the Harris Process for making gas from animal or vegetable matter or waste, the exclusive right of the use of which in that section is also included in this proposed sale to you, two benches for its operation are already constructed upon the property and a contract virtually consummated for the delivery thereto of 25 tons of garbage per day, from which from 150,000 to 250,000 cubic feet of gas, of 30 candle power and over 800 B. T. U. can be made, for the cremation of which the Gas Company is to be paid $1 a ton or $150

per week, which will more than pay the cost of running the benches and making the gas, the latter costing nothing in the holder. With sufficient garbage furnished [at] this contract rate, the value of this process and the right to use it, is so great that at the present rates of paying for gas, it alone would earn at least 4% upon $2,000,000 capitalization."

The prospect of 30 c. p. gas delivered in the holder without cost was indeed attractive, but unfortunately the representations of the vendor were never realized. The process was given a full trial, proved a failure and was abandoned. The company's loss included not only the capital issued for the process but the expense connected with the construction and operation of the experimental plant.

The assets of the company upon July 1, 1902, according to the records now available, may be grouped as follows:

Current assets	$42,500.33
Investments	20,000.00
Franchises	238,050.54
Discounts, commissions and premiums	34,768.75
Interest, legal expenses, etc.	13,039.83
Stocks and bonds	1,707.50

2642

Brought Forward	$350,066.95
Citizens Lighting Co.	45,000.00
Property and Construction	692,822.95
Harris Process (worthless)	2,655,000.00
Total	$3,742,889.90
Less undistributed credits	120,587.16
Net assets	$3,622,302.74

Of this amount, less than $800,000 represented the cost of physical property. It is impossible to fix even an approximate figure, for no details are given for about $200,000 of this amount. The present stockholders are in no way to blame for the inadequacy of the old records, and the fact is stated here principally to show that the accounting entries prior to 1902 are of little aid in determining the fair value of the property. There is considerable information to show that the plant was in poor condition. For example, the amount of gas unaccounted for was high; no depreciation had been written off; extensive repairs had to be undertaken by the new management and operating records were almost entirely lacking.

Changes in Capital Accounts.

The following table shows the condensed balance sheet of the company upon December 31, 1910, and the changes since July 1, 1902:

Liabilities.

	Dec. 31, 1910.	Increase, 1902-1910.
Capital stock	$2,000,000.00	.....
Bonds	2,000,000.00	$400,000.00
Mortgage	33,000.00	33,000.00
Current liabilities	180,443.37	158,140.63
Reserves and surplus	190,322.58	190,322.58
Total	$4,403,765.95	$781,463.21

Assets.

Current assets	$98,408.72	$57,208.39
Investments	.....	D*20,000.00*
Prepayments and suspense	4,593.36	4,593.36
Materials and supplies	26,230.00	24,930.99
Fixed capital	4,274,532.88	714,730.47
Total	$4,403,765.95	$781,463.21

2643 The accounts also show that the increase in fixed capital was paid for by the sale of bonds and investments, by the issuance of a mortgage and bills payable, by increases in other liabilities and by accumulations from earnings for depreciation and other reserves. In addition Mr. V. Everit Macy, the largest stockholder of the company, has advanced $105,388.44 for additions and betterments. This item does not appear among the liabilities, and the Commission is advised that Mr. Macy does not expect to be repaid. It is explained that the company needed money and that Mr. Macy generously furnished it. No entry has been made of these additions among the assets, but they are in use and have been used for some time.

Besides the above, $160,685.96 were written off as depreciation in three years, making the total amount charged upon the books of the company as additions between July 1, 1902, and December 31, 1910, $980,804.87. Of this amount, $434,213.23 were for additions to gas plant, $508,237.66 to electric plant and $38,353.98 to general property.

Appraisal of Physical Property.

It is evident from the above facts that the accounts of the company do not show the fair value of the property at the present time. An inventory and appraisal of the property was begun by engineers employed by the company about the time the formal proceedings were instituted. The Transportation Department of the Commission, under the direction of Mr. E. G. Connette, has made a separate appraisal as of December 31, 1910. Mr. Connette estimates the net

cost of the physical property, exclusive of land, in use upon December 31, 1910, to be:

Gas Department	$707,815
Electric "	637,724
Total	$1,345,539

The company has accepted these estimates, and an examination of the details shows that the unit figures are liberal and perhaps too high. Comparison between estimates and book cost has been made for over one-half of the property, and it was found that the former exceeded the latter. The unit figures are averages for several years where there has been much fluctuation in prices.

As the above estimates generally cover only the cost of
2644 labor and materials, including sub-contractors' profit when proper, some allowance should be made for engineering, supervision, contingencies, incidentals and a general contractor's profit. In view of the size of the company, the nature of the business, the way in which it has grown and the amount of the expenditures which the company could show to have been actually expended, the following estimates were submitted by Mr. Connette for the above items:

Gas Department	$136,345
Electric "	126,608
Total	$262,953

The company argued that an allowance of 25 per cent upon every item in net cost should be made which would be in excess of $336,000. That is certainly excessive, and it is likely that $263,000 is more than should reasonably be allowed. The Commission is gradually collecting accurate data through the examination of accounts and the approval of securities. The indications are that the allowances heretofore made have been too large rather than too small. For instance one account, for which details are given in the records of this company, shows an expenditure of $377,482.37 for labor, materials and equipment. The items for engineering, administration, etc., did not exceed four per cent. Apparently, there was nothing paid to a general contractor, the work having been directed by the company itself. If these are normal conditions, the proposed allowance is too high.

It is common for a new company to let a contract for the erection of the initial plant to a construction company. If the latter were paid the cost of labor and materials plus ten per cent, to cover certain items of expenditure, the price would not be considered unreasonable. But such a plan is not generally followed throughout the life of an undertaking where thrifty, progressive management exists. Additions and extensions are commonly engineered, constructed and supervised by the operating company itself without the intervention of a general contractor. However, if a general contract were let for

the reproduction of the Queens Borough plant and overhead charges computed at the usual rates, the total cost would probably be less than given in the above tables, for the increase in overhead charges would be more than offset by economies in the purchase of materials and apparatus in large quantities and by the more economical methods of construction on a large scale. Allowance having
2645 been made in part for piecemeal construction, the unit prices adopted by Mr. Connette are larger than a general contractor would charge.

The above estimates combined cover the cost to reproduce the physical property in a new condition, but cost is not necessarily any indication of present value. Depreciation is a most important factor. Mr. Connette computed depreciation and present value as follows:

	Reproduction cost.	Depreciation.	Present value.
Gas Department	$844,160	$242,020	$602,140
Electric "	764,332	226,660	537,672
Total	$1,608,492	$468,680	$1,139,812

The bases upon which depreciation has been computed, such as life tables, expired life, etc., have been accepted as fair by the company.

It should be stated that the above estimate covers depreciation due to wear and tear and age, but does not include allowance for future changes in the art and the abandonment or supersession of property because it will become inadequate before being worn out. What these will be, no one can predict with certainty, but they will appear. The data used to determine existing depreciation have been used to fix the amount that should annually be set aside, out of earnings, to meet accruing depreciation. If the above estimate is too low, then the annual payment is too low. But if the above estimate is too low, then the present value is too high and the amount to be accepted as a fair return on "fair value" should be reduced. As it is probable that these refinements would not in this case appreciably affect the final result, they may be disregarded. They are important to the company, however, in determining the disposition to be made of net earnings.

Land.

Thus far, land has not been included, because the questions which arise in connection therewith are of a different character from those already considered.

Upon December 31, 1910, the company was actually using six separate parcels of real estate, all but one being located within the First District. It had recently acquired for $21,000 two other parcels which were not being used and are not urgently needed for immediate use. Purchase was justified by the president of the company on the ground that land in that district is increasing steadily
2646 in value, that it would be cheaper to purchase now and thus secure the increase in value than to wait and pay a much

higher price when more land is actually needed, and that the new pieces may be needed to protect the water rights of one plot already owned. This policy may be wise, but until this new land is used for gas or electric purposes and is necessary for efficient and economical management, it is not incumbent upon the Commission to include it as a necessary part of the property upon which the company is entitled to earn a fair return.

The original cost of five of the six parcels in actual use is shown by the records of the company to have been $43,750. The purchase price of the sixth is not known. Part of it was bought by one of the predecessor companies. The present company acquired part in 1902 from which it is possible to estimate with reasonable accuracy the fair value of the whole, without reference to filling and bulkheads, in that year at about $15,000. If this amount were taken as the cost price of parcel six, the cost of all the land would be $58,750.

The value of the six parcels upon December 31, 1910, is not easily determined. The evidence varies greatly, particularly as to the sixth parcel. One witness called by the company appraised the whole at $314,750, but he had practically no sales and few corroborative facts to support this figure. He appraised the sixth parcel at $174,000. The other witness for the company was about $30,000 less. The entire assessed value for 1911 is $111,000, including one building in Nassau County which was not assessed separately from the land.

The Commission decided to make a separate investigation and to call other experts. The appraised values fixed by these experts ranged from about $125,000 to $145,000 for all and from $30,000 to $40,000 for the sixth parcel. In the light of all facts before the Commission, these amounts seem too low, and the company's estimates too high. It would be unfair to take boom figures, and it would be equally unfair to fix the price at what the property would bring at forced sale. Furthermore, consideration must be given to the fact that the property is covered with certain structures. We must not assume that the buildings are not there and then take the highest estimate a real estate broker thinks might be obtained for the land itself, for if the land is appraised on this basis and the buildings on a use-value basis, instead of a scrap-value basis, there would be duplication and inconsistency. It would also be unfair to assume that the buildings are to be scrapped and the land sold for a less advantageous use than might be made of it. As the buildings
2647 have been appraised on the basis of cost to reproduce less depreciation, the land may be considered for the purposes of the present case as having a fair value of $186,750. This amount includes bulkheads estimated by Mr. Connette to be worth $7,162 and filling to have cost about $6,400. These items should be apportioned between the gas and electric plants as follows:

	Gas.	Electric.
Present value	$101,875	$84,875
Items included in appraisal of physical property	3,222	10,340
Net amount	$98,653	$74,535

Preliminary and Development Expenses.

There are certain expenses connected with every undertaking which are not represented by physical property but which must be incurred before the plant is operated. These relate to the initial promotion of the scheme and the organization of the company. Investors must be interested, lawyers and engineers must be consulted, and franchises and permits must be secured. Interest and taxes during the period of construction must be paid, and as there are no earnings, they must be included as part of the cost of the undertaking. There are also other expenses connected with the experimental and trial operation of machinery and the adjustment of various parts, etc., which antedate operation.

It will be recalled that the estimates already given include practically $263,000 for engineering, supervision, contingencies, incidentals and contractor's profit. Thus, no further allowance need be made under this heading for these items, but it is sometimes customary to group all under one title, "overhead charges."

Ordinarily, one would expect that the company itself would have data upon which to base an estimate of a reasonable allowance for these items. In this case, the company has produced no such data, and as the early records are missing, an estimate must be based upon general knowledge and experience. It is estimated that $130,000 would be ample for all items except interest and taxes during construction.

As to interest and taxes, a very close estimate can be made. Not more than eighteen months would be required to construct the plant, according to the engineers. This does not mean that the
2648 whole undertaking with all its lines was or would be built in eighteen months from the very beginning to the end, but that the equated period would not exceed a year and a half. The initial unit practically determines the limits. As soon as an operating unit in the power station and a few lines are completed, operation of that portion may begin, and when operation may begin, the construction period for that portion ends, and when the construction period ends, interest and taxes may no longer be charged to construction cost; they then become operating expenses and should be paid out of operating income. As other lines are built and additions made, it is proper to charge interest and taxes upon them to capital, but only until the property is ready for use, provided good management has been used throughout. Thus the equated period becomes not the time from the initiation of the idea to the completion of the last remote branch (that may be many years or decades), but

the weighted average time for the completion of each operating unit, due allowance being made for the cost of such unit. A pure average is not correct, for the amount of interest to be paid has relation not merely to the period but to the cost of the work. In this case, the equated period of construction would not exceed eighteen months. The rate of interest would be about six per cent, and taxes would be small.

It is obvious that the whole cost would not bear interest for the equated period, as funds would be provided only as needed. Certain apparatus would be purchased just before operation begins, and therefore it would not be unfair to the company to compute interest and taxes upon one-half "reproduction cost" plus the cost of land and other preliminary and development expenses. (Cf. opinion in Case 1181—Third Avenue Reorganization, Second Application.) Upon this basis, an estimate of $90,000 would be ample.

Working Capital.

Gas and electric companies must purchase materials and supplies, must pay their employees and must distribute their commodity to consumers in advance of payment for such service. This requires a fund ordinarily called working capital. It is reimbursed from operating receipts from time to time, but originally is provided from capital. The amount needed depends upon the advances that must be made and the period for which they must be carried. The bulk of materials and supplies are purchased upon a 30-day basis. Labor must be paid weekly or monthly, but fixed charges are not
2649 paid more frequently than quarterly. Upon the other hand, bills are rendered to large consumers weekly and to small consumers monthly. The Queens Borough Company has few large consumers. Many consumers do not pay promptly, and the City is from three to four months in arrears. It is clear, therefore, that this company must carry regularly the cost of from four to eight weeks' supply. In addition, allowance should be made for unforeseen demands and the storage of supplies to prevent delays in transportation, particularly in winter.

The relation of current assets to current liabilities is not a fair index of the amount of working capital needed, for some companies prefer to finance their daily operations through temporary loans; others issue securities to provide the necessary funds. Working capital does not vary with each change in financial methods, but depends for its justification, so far as rate cases are concerned, upon entirely different grounds. Furthermore, current assets and liabilities vary greatly from month to month. If meters are read just before the end of the month, as is the practice of the Queens Borough Company, the monthly statement will show a large entry under consumers' accounts receivable. If a date is chosen just before dividends are declared, the cash balance will be large; yet it has no relation to working capital, for it has largely been accumulated out of earnings and not from capital.

In this case, the amounts considered reasonable are $30,000 for the gas department and $45,000 for the electrical department.

Going-concern Value.

The representatives of the company have argued that in addition to all of the factors already included there should be added some considerable amount for "going-concern." They say, in substance, that there is an added value in the property: (1) because it has been adjusted, tried out and unified; (2) because the company has a clientele, established connections and a name in the community; (3) because valuable experience and data regarding the business have been accumulated; and (4) because the early years wherein losses usually occur have been passed.

The first fact to be kept in mind in discussing this subject is that the present case is a rate case. In condemnation proceedings these factors have been considered, but fair value for condemnation is not necessarily fair value for rate making, and the courts
2650 have recognized this distinction. (See City of Omaha vs. Omaha Water Co., 218 U. S., 203, and cases cited in that opinion.)

Secondly, some of the elements attributed to going value have already been liberally allowed for under the heading "preliminary and development expenses," and in connection with the appraisal of the physical property in the form of overhead charges. Judge Robert W. Tayler, when valuing the Cleveland street railway, in 1909, gave the following reasons why he allowed nothing for going value:

"I allow nothing for going value. Going value raises a question of definition, and it is sufficiently disposed of, according to my view, by saying that it only has a value, as applied to a street railroad enterprise, because of the expense incident to organization, superintendence, administration, legal expenses and interest during construction; it is involved in the general subject of necessary overhead charge and arises only out of, and is to be defined and limited entirely by, the money necessarily expended to put it into the shape where it has value as an operating instrumentality. Beyond that, I recognize no value to going value or no such thing as going value to be applied to a street railroad enterprise. Nor do I find anything properly allowable for good will, as that term is generally defined. A street railway company which has a monopoly, and especially if it has a franchise value remaining, can have no good will value."

In the third place, much of the information and experience referred to is personal and does not go with the property. It appertains to the individual manager or superintendent, and when he leaves he carries it with him. The company may be able to pay its stockholders large dividends because it receives from its employees more than it pays them, but it is certainly improper to capitalize the experience or ability of such employees or to urge it as a reason for higher rates than should otherwise be charged.

A fourth consideration is that many of the elements included in

"going-concern" are transitory or recurrent. Every new piece of machinery or plant must be tried out and adjusted, and all property, except possibly land, must be replaced from time to time. Thus, the adjustment and adaptation referred to involved continued expense and not alone at the beginning. The data collected must be kept up to date or become valueless, and conditions
2651 change constantly. Advertising and canvassing must be continued from year to year or the business will retrograde or fail to keep pace with the growth of the city. Population is changing and new buildings are being erected. The company that would maintain its position must remain active. Experimentation must go on. New methods and inventions will continue to appear, and these must be tested to separate the wheat from the chaff.

In so far as these elements are transitory and call for expenditures year after year, it is obvious that they should not be paid out of capital, but should be charged as a part of operating expenses. The former practice would lead to over-capitalization and ultimately to disaster. The latter is the sound and prudent course, and the one followed by conservative financiers. It follows that if these expenses are operating charges, they should not be included in the fair value of the property.

The converse of this proposition is that if these various expenses which go to make up "going-concern" are to be charged to operation, the company should be allowed to charge rates that will yield a sufficient income to pay them and also a fair return upon the fair value of the property. If good management and foresight have been used in the initiation and conduct of the undertaking, this statement is sound. But it ordinarily happens during the first few years of operation that the company does not earn a fair return. How, then, are the investors to be made whole?

There are two solutions. One is to capitalize the losses or deficiencies below a fair return and all the other elements which are said to be included in "going-concern." This would be accomplished by using the proceeds from the sale of stocks, bonds or notes to pay expenses for "going-concern" and a fair return to investors. To use money from such sources to pay dividends would be absurd, dangerous and unjustifiable. If such a practice were started, where would it end? Probably in bankruptcy and dissolution.

The use of capital moneys to pay current expenses after operation has been begun is open to similar criticism. Who is to determine whether a canvasser, an accountant, an engineer, or a laborer is to be paid out of capital or earnings? All are connected with the operation of the plant, but if the theory is sound that "going-concern" expenses are to be charged to capital, the wages or salaries paid to certain employees must be paid out of capital. Who is to decide when this shall be done or when it shall cease after it has once been started? How may one determine when an employee is contributing to "going-concern"? It is easy to fix a date when the construction period ends and operation begins,
2652 but how may one know when "going-concern" expenses cease? To follow this solution of the problem would open

the door wide to over-capitalization, financial manipulation and the misappropriation of funds.

The other solution is to charge all such expenses to operation, to attempt to make no fine-spun distinctions and then to permit the company to charge in later years rates sufficient to offset its deficiencies below a fair return in the first few years. This method involves no questions as to capitalization and cannot result in the inflation of securities. Ordinarily, the company which is wisely managed follows this very course and works out an adjustment by itself. Questions arise only when the State, through some agency, is called upon to determine whether the rates are reasonable. Then the rate of return to be allowed upon the investment should be such as to offset losses in early years. This principle is adopted in this case, and no further allowance is made for "going-concern" in determining the fair value of the property. When we come to the discussion of a fair rate of return, the other phases of this principle will be considered.

Résumé.

Summarizing the estimates given by Mr. Connette and the allowances considered ample for items not covered by such estimates, the following table is obtained upon the basis of reproduction cost less depreciation, and plus appreciation:

	Gas.	Electric	Total.
Net cost of property other than land	$707,815	$637,724	$1,345,539
C. P., Eng., Admin., Cont. and incidentals	136,345	126,608	262,953
Reproduction cost	844,160	764,332	1,608,492
Depreciation	242,020	226,660	468,680
	602,140	537,672	1,139,812
Land—present value	101,875	84,875	186,750
	704,015	622,547	1,326,562
Less duplications	3,222	10,340	13,562
Present value of physical property	700,793	612,207	1,313,000
Preliminary and development	110,000	110,000	220,000
Working capital	30,000	45,000	75,000
Total	$840,793	$767,207	$1,608,000

The details of the main items in the above summary will be found in the following tables:

Appraised Value of Tangible Gas Property, Exclusive of Land.

Item.	Net cost.	Contractor's profit, engineering, administration, incidentals and contingencies.	Cost to reproduce new.	Accrued depreciation.	Present value.
General Equipment (Gas)	$4,516	....	$4,516	$1,124	$3,392
General Structures (Gas)	16,982	$3,940	20,922	9,236	11,686
Works and Station Structures	67,061	15,558	82,619	16,509	66,110
Holders	116,841	27,107	143,948	29,411	114,537
Furnaces, Boilers and Accessories	11,679	2,710	14,389	3,757	10,632
Misc. Power Plant Equipment	405	95	500	27	473
Water Gas Sets and Accessories	39,599	9,186	48,785	6,556	42,229
Purification Apparatus	12,674	2,940	15,614	1,778	13,836
Accessory Equipment at Works	47,881	11,108	58,989	10,644	48,345
Trunk Lines and Mains	271,228	62,925	334,153	97,170	236,983
Municipal Street Lighting Fixtures	3,347	776	4,123	1,123	3,000
Gas Services	56,099	....	56,099	35,327	20,772
Gas Meters	45,651	....	45,651	22,793	22,858
Gas Meter Installation	12,602	....	12,602	6,009	6,593
Gas Tools and Implements	11	....	11	3	8
Gas Laboratory Equipment	1,239	....	1,239	553	686
Total	$707,815	$136,345	$844,160	$242,020	$602,140

Appraised Value of Tangible Gas Property, Exclusive of Land.

Item.	Net cost.	Contractor's profit, engineering, administration, incidentals and contingencies.	Cost to reproduce new.	Accrued depreciation.	Present value.
General Equipment (Electric)	$4,837	....	$4,837	$1,209	$3,628
General Structures (Electric)	16,982	$3,940	20,922	9,236	11,686
Power Plant Buildings	76,401	17,726	94,127	21,786	72,341
Furnaces, Boilers and Accessories	82,271	19,087	101,358	37,474	63,884
Steam Engines	93,179	21,617	114,796	40,053	74,743
Electric Generators	33,525	7,777	41,302	14,457	26,845
Accessory Power Plant Equipment	21,633	5,018	26,651	1,464	25,187
Misc. Power Plant Equipment	3,230	750	3,980	1,308	2,672
Sub-Station Buildings	1,641	380	2,021	60	1,961
Sub-Station Equipment	8,367	1,942	10,309	550	9,759
Poles and Fixtures	59,828	13,880	73,708	31,534	42,174
Transmission System	8,676	2,013	10,689	2,214	8,475
Distribution System	60,457	14,026	74,483	13,092	61,391
Line Transformers and Devices	40,027	9,287	49,314	11,884	37,430
Electric Services	19,557	....	19,557	3,859	15,698
Electric Meters	56,833	....	56,833	17,293	39,540
Electric Meter Installation	8,288	....	8,288	3,107	5,181
Municipal Street Lighting System	39,505	9,165	48,670	14,810	33,860
Commercial Arc Lamps	1,794	....	1,794	1,115	679
Electric Laboratory Equipment	693	....	693	155	538
Total	$637,724	$126,608	$764,332	$226,660	$537,672

2655 Investment in Property.

The books and records of the company do not show definitely the amount of unimpaired investment which is represented by the property. However, before determining the amount upon which the company should be allowed a fair return, the available data should be considered.

The "fixed capital" of the company upon December 31, 1910, according to the books of account, was..	$4,274,532.88
Accrued amortization of capital was stated to be....	105,421.23
There remains a net amount of.....	$4,169,111.65
Deducting the securities issued at the time the Harris Process was acquired, less the undistributed credits entered at the time of the merger	3,559,802.41
there is left to represent the outlay in the period from July 1, 1902, to Dec. 31, 1910.....	$609,309.24
The "cost of real estate and improvements" and "cost of equipment," June 30, 1902, as reported to the State Board of Tax Commissioners, was for both of the predecessor companies.....	787,339.83
A total upon the above hypotheses of.....	$1,396,649.07

The accuracy of this figure depends upon the accuracy of the reports to the Tax Commissioners, the adequacy of the amount set aside for amortization and the propriety of the original entries—rather uncertain elements.

Following another process, a slightly different figure is obtained.

Upon June 30, 1902, the Town of Hempstead Gas and Electric Company had upon its books an amount representing real estate, plant and machinery, after deducting discounts, of	$341,230.29
Between July 1, 1902, and December 30, 1910, additions, betterments and replacements were 2656 added to the amount of $507,864.56, as nearly as can be ascertained. Deducting withdrawals and other credits during the same period, amounting to $54,474.32, there would be a net increase of	453,390.24
The total for the gas property to December 31, 1910, would be, therefore.....	$794,620.53
The Queens Borough Electric Light and Power Company had upon its books upon June 30, 1902, "property and construction," "Citizens Lighting Company," and interest, legal expenses, etc., amounting to	$409,632.49

Between July 1, 1902, and December 31, 1910, there was added in the way of electric plant an amount of $561,317 22, from which there should be deducted in the form of withdrawals and other credits, $33,902.57, leaving a net increase in the way of additions, betterments and replacement of.	527,414.65
Upon this basis the total for electric plant would be..	$937,047.14
Both plants would represent a total outlay of.....	$1,731,667.67
Depreciation was written off during a few years, but not for the whole period. Including the amount written off and the amount carried upon the books as accrued, we have for the period 1906-1910....	266,107.19
Deducting this amount from the total outlay, the net investment, according to the books of the company upon December 31, 1910, becomes.....	$1,465,560.48

The Harris Process has been omitted throughout, as there is nothing to indicate that it has any value at the present time.

The values of the above results depends upon the accuracy of the original entries and the amount set aside for depreciation. If the the estimates of Mr. Connette for accrued depreciation be correct, 2657 a different figure is reached. Taking the total outlay upon both plants as above given.	$1,731,667.00
and deducting the accrued depreciation estimated by Mr. Connette	468,680.00
there remains at the end of 1910 a net investment of	$1,262,987.00

This amount is distributed as follows: Gas plant, $552,600; electric plant, $710,387.

It so happens that in this case the actual investment of the present owners is known. According to the data presented by the company, the present owners paid in cash or assumed liabilities for the gas property to the amount of.....	$268,308.51
Adding the net amount of additions, betterments and replacements down to December 31, 1910, as previously stated	453,390.24
there is obtained as the total outlay to December 31, 1910	721,698.75
Similarly for the electric property, the present owners invested or assumed obligations to the amount of.	$667,493.90
which includes $250,000 paid for common stock that was issued for "franchises." Adding the net increases in the way of additions, betterments and replacements, as previously stated.....	527,414.65

there is obtained as the total outlay to December, 1910	$1,194,908.55
The grand total for gas and electric property becomes	$1,916,607.30
from which there is yet to be deducted an amount representing accrued depreciation, estimated by Mr. Connette at	468,680.00
there remains a total net investment of	$1,447,927.30

which is distributed between the two plants as follows: Gas plant, $479,679; electric plant, $968,248. Deducting the stock called "franchises," the total becomes $1,197,927, and the electric plant, $718,248.

Summarizing the results above obtained, we reach the following comparative statement:

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I.	Investment as shown by company reports, etc.	$1,396,649
II.	Investment as shown by the company's books, less accrued depreciation as estimated by Mr. Connette	1,262,987
III.	Investment, according to the cash paid by present owners and obligations assumed, less depreciation as estimated by Mr. Connette	1,447,927
IV.	Ditto, less "franchise"	1,197,927
V.	Present value according to appraisal, including working capital	1,608,000

It should be noted that the last figure above given includes land at its present value, whereas the preceding estimates include cost only. If the increase in the value of land were deducted, "present value"—item V—would still be greater than any of the preceding.

Should Future Expenditures Be Included?

The representatives of the Queens Borough Company have filed a statement of the requirements of the company in the way of improvements and betterments for the immediate future, amounting to $174,600, of which $87,000 relates to electricity supply; $79,100 to gas, and $8,500 to general property. These expenditures may be divided into three groups: (1) repairs and replacements, (2) extensions and additions for future consumption, (3) additional plant to improve service.

The company is not entitled to capitalize or to earn a fair return upon the first group, for all repairs, renewals, and replacements should be charged to earnings.

The second group should also be omitted, for the additional consumption which these additions are to supply should, and doubtless will, provide a fair return upon new investment. When a plant has once been started and is earning a fair return, additional consump-

tion ordinarily earns not only a fair return upon the cost of plant to supply such consumption but an additional profit upon the pre-existing plant. The cost of producing a larger output is ordinarily less per unit, other things being equal. There are exceptions, but nothing has been produced to show that the general rule does not apply to this case.

26594 Furthermore, it is not reasonable to require consumers to pay higher rates than they otherwise would be required to pay in order that these higher rates may provide funds from which to construct additional plant, which becomes the property of the company. Such plant and property is ordinarily paid for out of capital, but whether this course is followed or the stockholders voluntarily relinquish a share of their dividends in order to increase the value of their property, has no relation to this case. Suffice it to say that the consumer should not be required to pay higher rates and thereby make a donation to the company or to its stockholders. The company has not suggested that if such contributions be made, stock, bonds, notes or other liabilities will be issued to those who provide the funds. (Upon this subject, see opinion by Commissioner Prouty in the Railroad Rate Cases, 20 I. C. C. Rep., 265-8, and the decisions of the United States Supreme Court therein cited.)

The third group represents an entirely different class of expenditures. At the present moment, the company does not have sufficient gas and electric plant to afford proper service. The electric plant must occasionally be run beyond rated capacity, and additional equipment is necessary to prevent failure of service in an emergency. The gas plant does not have sufficient condensing and purifying capacity. As the company has expressed its willingness to provide this additional apparatus, it seems reasonable that an allowance should be made for such additions to the plants as will be necessary to handle the business during the current year.

Conclusion as to Fair Value of Property.

After carefully considering all of the above factors, the Commission has determined that the Queens Borough Company is entitled to earn a fair return upon the following amounts:

Gas plant	$860,000
Electric plant	800,000
Total	$1,660,000

It is believed that these figures amply protect the interests of the investors as well as of the public.

Fair Rate of Return.

The rate of return is equally important with the fair value of the property or unimpaired investment. It is obvious that a
26594¼ high figure might be taken as the fair value of the property and the rate of return placed so low that the investor would

not receive adequate remuneration. It is also obvious that the rate of return might be fixed so high that the investor would be adequately compensated even though the amount taken as the fair value of the property were too low. It is immaterial to the permanent investor whether he is allowed 7½ per cent upon a valuation of $1,000,000, or 6 per cent upon a valuation of $1,250,000.

Various standards have been suggested for determining the fair rate of return. The one which in our opinion is properly applicable to this case is that the rate should be such that investors would be induced to provide the funds with which to construct and extend a gas and an electric plant within the area in question. If the state were to fix a rate below this standard, capital could not be secured. If investment were made before the state acted, the original capital might be forced to remain, but additional capital could not be secured unless necessary to protect the first outlay.

The ordinary method of raising funds must also be considered, for money can be secured by the issuance of bonds at a lower rate than stockholders demand. Other things being equal, the rate of interest which must be paid increases as the proportion of the capital raised by the issuance of bonds increases. Under ordinary circumstances, a public service corporation would be conservatively financed if one-half or two-thirds of the funds needed were secured by first mortgage bonds and the remainder by the issuance of capital stock. In a case such as the one now being considered, probably one-half of the cost of the plant could be raised by the issuance of first mortgage bonds upon a basis of from 5 to 6 per cent. As a matter of fact, the par value of the bonds of the present company is equal to the stock. It is also probable that a return of from 8 to 10 per cent upon the stock would attract sufficient capital to provide the remainder.

The following table illustrates the results of certain combinations of the above factors:

Case.	Proportion of capital represented by bonds.	Rate of return thereon.	Proportion of capital represented by stock.	Per cent of return thereon.	Average rate of return upon entire investment.
1	½	6	½	10	8
2	½	5½	½	10	7¾
3	½	5	½	9	7
4	½	5	½	8	6½
5	⅔	6	⅓	10	7⅓
6	⅔	5½	⅓	10	7
7	⅔	5	⅓	9	6⅔
8	⅔	5	⅓	8	6

2659½ To illustrate, assume that the amount of money to be raised is $3,000,000, that one-half of this amount will be raised through bonds and one-half through stock, that bonds are sold upon a 5 per cent basis, and that a 9 per cent return is necessary to attract stockholders. The interest and dividends would be as follows:

5 per cent interest upon the bonds (par value $1,500,000) .	$75,000
9 per cent dividends on stocks (face value $1,500,000) . . .	135,000
Total interest and dividends	$210,000

This is equivalent to 7 per cent upon the total value of the property, assumed to be $3,000,000, as shown by case 3.

The above table shows that in no case would the average rate of return upon the entire amount be over 8 per cent unless a higher rate of return were demanded than 6 per cent upon the bonds and 10 per cent upon the stock.

It is argued that, if the principle is adopted that the amount included for "going-concern" should be limited to expenditures made prior to the time when operation begins, a further allowance should be made in the rate of return if in the early years of operation the plant did not earn a fair return after payment of all proper operating charges. This idea should be considered in every rate case, but in this instance it has thus far been impossible to determne the facts, because the early records of the company can not be obtained. Some records have been found which seem to indicate that the predecessor companies did earn at least a fair return and others which seem to cast doubt upon this statement. The representatives of the company have presented from the records a statement made by the person who sold the stock of the predecessor companies to the purchasers in 1902. This statement contains the following:

"The earning capacity of the [electric] company during the previous year was sufficient to pay 5% upon its common stock, 6% on its preferred stock and all fixed charges and leave a surplus in its treasury sufficient to pay 4% upon $1,000,000 capitalization, and its earnings this year will be largely in excess of last. * * * Its [the gas company's] net earnings for the previous year of over $20,000 were entirely devoted to improvements, and the net earnings for this current year may be expected to be at least double that
2660 sum [$40,000 would be 15 to 20 per cent on the value of the property said to be over $200,000], and the Gas Company is rated by me at or nearly an equal value to the Electric Company. I would not exchange it therefor."

It should also be noted that the gas and electric plants have been in operation for a considerable period. The electric plant was operated as early as 1898 and the gas plant as early as 1894. It might be argued with considerable force that 12 to 17 years should be sufficient for a company to recoup its early deficiencies below a fair rate of return. Such a statement would have special force in the present case, as the general rates of the present and of the predecessor companies have not been regulated by statute. If the company has not recouped itself by this time, it is doubtful whether the present consumers ought to be burdened for this reason.

It has also been suggested that as the company did not set aside until recently a sufficient amount for depreciation, the rates should be

fixed so high that depreciation in past years may now be made good. Prudent management unquestionably requires that if allowance has not been made in past years for depreciation, it should be made up from earnings as rapidly as possible. But the question is, whether present and future consumers should be taxed to pay the bill. The record does not show that the earnings were not sufficient to allow depreciation to be set aside and yet yield a fair return upon value; and if the stockholders have received what should have been used to meet depreciation, the consumers are not at fault. Upon this point the opinion of Mr. Justice Moody in the Knoxville Water Case (City of Knoxville vs. Knoxville Water Co., 212 U. S., 13) is illuminating. He says:

"It was urgently contended that in fixing upon the value of the plant upon which the company was entitled to earn a reasonable return, the amounts of complete and incomplete depreciation should be added to the present value of the surviving parts. The court refused to approve this method, and we think properly refused. A water plant, with all its additions, begins to depreciate in value from the moment of its use. Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of
their life. The company is not bound to see its property grad-
2661 ually waste, without making provision out of earnings for its
replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation at least, its plain duty to the public. If a difference course were pursued the only method of providing for replacement of property which has ceased to be useful would be the investment of new capital and the issue of new bonds or stocks. This course would lead to a constantly increasing variance between present value and bond and stock capitalization—a tendency which would inevitably lead to disaster either to the stockholders or to the public, or both. If, however, a company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon over-issues of securities, or of omission to exact proper prices for the output, the fault is its own. When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return cannot be enhanced by a consideration of the errors in management which have been committed in the past."

After considering all factors, the Commission has concluded that, in view of the circumstances surrounding this company and the character of the area within which it operates, a fair rate of return on both gas and electric undertakings, for the purposes of the present case, would not exceed 8 per cent. This rate would be equivalent to

a dividend of 10 per cent upon stock equal to one-half of the fair value, if bonds to the amount of one-half were financed upon a 6 per cent basis; or 11 per cent dividends, if bonds were on a 5 per cent basis. It is perhaps needless to add that under other conditions as to hazards of the business, prevailing rates of return or any other element, the rate of return here allowed may be either too high or too low.

Estimated Earnings and Expenses.

In order to determine the proper maximum rates for gas and for electricity, it is necessary to estimate the probable consump-
2662 tion, the earnings which would accrue from sources other than the sale of gas and electricity at the maximum rates, and the cost of service. Upon the basis of previous years, the rate of growth and current conditions, it is estimated that for the current year the consumption will be at least: Gas, 177,200 M cu. ft.; electricity, 2,820,000 k. w. h.

Owing to leakage and various losses between the generating plant and consumers' meters, it is necessary to produce a larger amount of gas and electricity than the quantity sold. The average percentage of gas unaccounted for during the last five years has been about 15, and in one year only has it exceeded that amount. The electricity unaccounted for has been about 32 per cent of the amount made. If, therefore, we assume a loss of 15 per cent for gas, 32 per cent for electricity, the company will certainly be fairly treated. The amount of gas which must be manufactured upon these bases, will be about 208,500 M cu. ft., and of electricity 4,150,000 k. w. h.

When computing cost of service, the unit figures to be used become very important. The results of past years cannot be accepted until checked to determine whether they are the normal operating costs under the local conditions which prevail. The latter are fundamental, for it is obvious that costs must be greater where the area is sparsely settled and the use small, than where the population is very dense and the consumption large. The cost of supplies is also an important factor; and in the case of a gas plant, the prices which can be obtained for by-products play an important part.

Certain consumers served by the Queens Borough Company have urged that gas and electricity should be supplied to them at the same rates that prevail in Manhattan or at least in Brooklyn. The company has replied that the local conditions in its area are entirely different from those in Manhattan and Brooklyn, that the population is not only sparse but fluctuating, and that there is in the Far Rockaway district particularly a large summer population and a very small winter population, with the result that a large amount of plant must remain idle during eight or ten months of the year and unusual expenses incurred as the result of such changing conditions. The area is indeed peculiar. The number of meters in use in August is almost twice the number at the end of December. Consumption during August is four or five times what it is during the winter. The power use of electricity is small. Miles of mains lie almost idle dur-

ing the winter. The summer business comes on with a rush and is expensive to handle. It is impossible to disregard these local conditions. They will change as the area builds up, and there
2663 seems to be no reason why the prices for gas and electricity should not steadily decrease. But at present, local conditions must be taken as they exist.

After consideration of operating results and costs, and of present local conditions, the following estimates for the gas division may be considered as about normal for 1911:

Cost to manufacture 208,500 M cu. ft. @ 34c. per M made	$70,890
Other operating expenses (including taxes but excluding depreciation), 177,200 M cu. ft. @ 30c. per M sold	53,160
Depreciation and other reserves	25,000
Return on fair value of property ($860,000 at 8%)	68,800
Total	$217,850

From this total there should be deducted the receipts from the sources which would not be affected by the maximum rate as follows:

Public lighting, 7,200 M cu. ft. @ 75c. per M	$5,400
Private street lighting, special contracts	3,800
Gas jobbing, etc.	1,800
Rent of rooms in office building (one-half total)	1,000
Increase in value of land	10,000
Total deductions	$22,000

Subtracting this figure from the total cost of supply, there is obtained as the amount which should be paid by the consumers served at the maximum rate, in order that all reasonable operating expenses may be paid and a fair return earned upon the fair value of the property, $195,850. Upon the basis of sales of 168,200 M cu. ft., the quotient would be a little over $1.16.

Following the same method, the results for the electric division would be:

Cost of generating 4,150,000 k. w. h. at 1.7c. per k. w. h.	$70,550
Other operating costs (including taxes but excluding depreciation), 2,820,000 k. w. h. sold at 2.8c.	78,960
Depreciation and other reserves	28,000
Return on fair value of property ($800,000 at 8%)	64,000
Total	$241,510

2664 Upon the other side of the account, excluding the current supplied at the maximum rate, there would be the following entries:

Street lighting, 800,000 k. w. h. at 6c. per k. w. h.	$48,000
Lighting municipal buildings, 20,000 k. w. h. at 10c.	2,000
Commercial metered power, 700,000 k. w. h. at 4c.	28,000
Electric jobbing, etc.	1,400
Rent of rooms in office building (one-half total)	1,000
Increase in value of land	6,300
Total deductions	$86,700

Subtracting this total from the cost of service, there is obtained an amount of $156,210. Dividing this amount by the consumption at the maximum rate, 1,300,000 k. w. h., there is obtained an average of over 12 cents per k. w. h.

Depreciation.

Two items in the above computation need a few words of explanation, viz., depreciation and other reserves, and increase in value of land. Reference has already been made to the methods adopted in computing the total accrued depreciation to December 31, 1910. In those computations the engineers computed the scrap value of the property, wearing value, life tables for each class of apparatus or structure, and the expired life thereof, from which are obtained the following results:

	Gas dept.	Electric dept.
Cost to reproduce (excluding land)	$844,160	$764,332
Deduct scrap value of	75,538	80,274
Wearing value (to be amortized)	$768,622	$684,058
Period of service (average)	25 years	20 years
Annual depreciation—straight line	$30,231	$34,343
Rate to amortize (4% sinking fund)	.02401196	.03358175
Annual contribution to sinking fund (4%)	$18,456	$22,972
" " " " " (5%)	$16,105	$20,688

Experience has shown that the straight line method for depreciation produces a larger fund than is necessary. Firstly, some portion of the annual loss is made good by renewals and replacements regularly included in maintenance and already allowed for
2665 in the operating expenses. There are difficulties, however, in ascertaining the precise amount of depreciation thus made good by maintenance. The system of accounts prescribed by the Commission defines repairs as follows:

"When through wear and tear or through casualty it becomes necessary to replace some part of any structure, facility or unit of equipment, and the extent of such replacement does not amount to a substantial change of identity in such structure, facility or unit of equipment, the replacement of such part is to be considered a repair and the cost of such repair is to be treated as an operating

expense and must not be charged as a replacement in any capital account." (Section 15.)

It is further provided that "where capital is substantially continuous and cannot be satisfactorily individualized it shall be kept in efficient operating condition through repair and the renewals and replacements of parts thereof shall be considered repairs." In addition to this general rule, the system of accounts for electric companies distinctly provides that renewals of the electric line (poles, fixtures, cables and wires of the transmission and distribution systems) shall be included in maintenance, as it would be unduly troublesome to ask companies to keep a separate record of each pole or stretch of trolley wire. From the detailed figures of annual deterioration submitted by the appraisers, it appears that $8,500, or fully one-fourth of the total straight-line depreciation of the electric plant, proceeds from the poles and fixtures and transmission and distribution systems. In the case of various other classes of equipment like boilers, piping and other accessories, partial replacements are made and charged to maintenance which in the course of time will completely replace the exhausted capital. So extensive, indeed, are the partial replacements and renewals usually included in current maintenance that many of the largest corporations under the supervision of the Commission have taken the position that no special depreciation fund is required in their cases.

It may be noted that in the year 1910 the amount expended by the Queens Borough Company for renewals and replacements not included in maintenance was only $1,306, all of which was on the gas plant. While provision must be made for the future replacement of large units such as gas holders, power plant equipment, etc., it would appear that the annual expenditures for replacements
2666 for the present are likely to be comparatively small, and that any fund set aside for future replacements could be invested and interest thereon compounded. The annual contribution to a 4 per cent sinking fund to take care of all replacements, according to the above table, would be only $40,000 for both departments and the annual contribution to a 5 per cent sinking fund (5% being the rate of interest which the company pays on its own bonds) would be less than $37,000. If the company were to invest the fund in its own property and if a fair return were to be computed at 7 or 8 per cent, the amount to be set aside annually would be considerably less.

However, experience seems to prove that in actual practice a sinking fund will not accumulate as rapidly as the tables indicate. There are usually withdrawals in early years which decrease the rate at which the amount compounds. There are also occurrences which cannot be foreseen but against which some provision should be made. Allowance having been made for all of these factors, the amounts used in the preceding computations are considered unusually fair to the company and should provide against depreciation of all kinds, including obsolescence, inadequacy and other contingencies. It is probable that in the future those amounts should be reduced.

The question, whether depreciation is a proper operating charge, is no longer open to debate. The opinion of Mr. Justice Moody, already cited, reflects the generally recognized rule that rates should be sufficient to permit current repairs to be made, parts to be replaced, and other charges met, so that by one means or another the investment may be kept unimpaired. In order that this object may be attained, every part of the property must be considered, and wherever there is decrease in value, provision must be made for an offset in one form or another. If a gas company includes a coal mine among its assets and makes no provision against the day when it will be useless, the capital of the company will be impaired just as truly as in the case of a gas holder which was worn out without any provision for its replacement.

Appreciation of Land.

Land differs from most property in that it generally appreciates in value, and the question has been raised, whether land should be included in "fair value" in rate cases at its original cost or at its estimated value at the time the rate is to be fixed. It is well settled that other property should be taken at its then value, but it has been argued that in the case of land the original cost should be
266 used. Counsel for the City of New York in the Consolidated Gas case endeavored to establish this principle, urging that return should not be allowed upon money never spent and that appreciation of land does not represent any investment. Mr. Justice Peckham who wrote the opinion in this case said (Willcox vs. Consolidated Gas Co., 212 U. S., 19, decided January 4, 1909):

"And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase. This is, at any rate, the general rule. We do not say there may not possibly be an exception to it, where the property may have increased so enormously in value as to render a rate permitting a reasonable return upon such increased value unjust to the public. How such facts should be treated is not a question now before us, as this case does not present it. We refer to the matter only for the purpose of stating that the decision herein does not prevent an inquiry into the question when, if ever, it should be necessarily presented."

Commissioner Lane, of the Interstate Commerce Commission, discusses the subject in his opinion in the "Western Advanced Rate Case" and says (20 I. C. C. Rep., 344, decided Feb. 22, 1911):

"Whatever the true economic or legal view may be as to the right of a carrier to consider the increase in value of its land as a part of the value upon which it is entitled to a reasonable return, such increase in value does not of itself establish the right of a carrier to in-

crease rates upon a given service. Certainly if the Supreme Court may decline to lay down the absolute rule that 'in every case failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable,' Reagan vs. Farmers' Loan & Trust Co., 154 U. S., 412, it is a conservative statement of the law to hold that a railroad may not increase the rates upon a number of commodities solely because its real estate has risen in value."

While it is evident, therefore, that each case must be de-
2668 cided upon the facts peculiar to it, the Commission believes it proper in this case to follow the general rule, as stated by Judge Hough of the United States Circuit Court (Consolidated Gas Co. vs. City of New York, 157 Fed. Rep., 855):

"Upon reason, it seems clear that in solving this equation the plus and minus quantities should be equally considered, and appreciation and depreciation treated alike. Nor can I conceive of a case to which this procedure is more appropriate than the one at bar."

Thus, land has been taken at its fair value and not at its original cost, and the annual appreciation of land has been treated as a profit. By this method, all property is treated absolutely alike, as Judge Hough suggests. No difference is made, except that as depreciation represents a decrease in assets, it is placed as a debit against operation, while appreciation is placed as credit because it is an increase in assets. Land has sometimes been treated like other property only to a degree; that is, each class has been appraised at its present worth or value. That has been done in this case. But if property is to be taken at its depreciated value where it has depreciated, an entry must regularly be made in estimated operating expenses equal to the average annual depreciation. Conversely, if land, or any other property which genuinely appreciates in value, is to be taken at its appreciated value, then an entry must be made in the estimated receipts equal to the average annual appreciation. Unless this is done, it is obvious that the consumer will be burdened with all the estimated decreases in assets but not credited with the increases in assets. If the principle laid down by the courts is to be followed in part, it should be followed in whole.

It is suggested that the annual increase in the value of land which is treated as income is not actually received. Increase in the value of unoccupied land is not realized until sold or put into use, but it is real, nevertheless, although payment may be deferred. Likewise, payments to the depreciation fund are not actually expended; yet they have been considered legitimate charges in practically every case. Furthermore, the annual increment is no more indefinite than the total increment—the present value. But if the present value can be determined, it is possible to determine past annual appreciation with positive accuracy, for it is only a simple mathematical calculation. It is also probably as easy to estimate increases
2669 in the near future as it is to estimate what obsolescence, which is a form of depreciation, there will be in the future.

Indeed, the problem of handling appreciation is much simpler than depreciation. If the property is growing more valuable, the investor need not worry; and if the state recognizes his right to earn a fair return upon the increase, he is fully protected. It is not necessary that the increase be represented by stocks or bonds, for if the earning power is there, he will receive a return thereon, regardless of the amount of securities. In fact, the existence of an increase which is not represented by securities is an element of safety, a reserve fund of a valuable kind.

There is a further similarity. The exact amount of depreciation and the annual rate are not definitely known until the piece of property is actually replaced or has become useless. The total appreciation and the average annual rate are not known until the land is sold, but when it has been disposed of (and plants are continually being removed and the land sold), they become absolute certainties. Why should these matters be considered less definite when applied to land than when applied to the buildings thereon? The depreciation of the buildings is a charge against operation; why should not the appreciation of land be a credit?

The entries in the preceding tables representing the increase in land have been carefully computed. It has been possible to ascertain the approximate cost of the land and the date of purchase. Having these facts, one may easily compute the average annual rate of increase. The experts called by the company and the Commission were also examined upon the present trend of prices. The estimated increases used in the above computations are believed to be conservative.

Analyses have been made to determine the effect upon rates if the estimates of the real estate experts for the company were to be used throughout, and it has been found that the gas rate would be lowered a few cents and the electric rate a few tenths of a cent.

Comp. Ex. 107. J. A. F.

New York & Queens Co.—Table 11.

TABLE 11.—*Apparatus & Piping*—(Appraisal as of Dec. 31, 1919.)

Life, years.	Age, years.	Item.		Cost.	Depreciation.	Cost, less depreciation.
47	20	Installed prior to 8/1/04	.....	$64,600.00	$28,036.40	$36,563.60
30	14	1 7′ 6″ Lowe Water Gas Set	(1906)	8,135.21	3,792.60	4,342.61
33⅓	12	1 #7 Root's Exhauster and 7″ x 10″ N. Y. Engine	(1907)	1,506.75	542.40	964.35
30	8	1 8′ 6″ Lowe Water Gas Set	(1911)	16,715.69	4,453.04	12,262.65
20	7	2 Terry Steam Turbines	(1912)	141.51	49.49	92.02
25	2	1 #3 Revivifying Machine	(1917)	40.00	3.20	36.80
33⅓	2	1 1¼″ Pickering Governor	(1917)	36.00	2.16	33.84
25	5	1 6″ x 5″ x 10″ Davidson Pump	.....	414.83	82.95	331.88
25	.5	1 6″ x 4″ x 6″ Worthington Pump	(1919)	102.00	2.04	99.96
33⅓	3	1 ¾″ Fisher Control Governor	(1916)	19.25	1.71	17.54
25	14	1 Tar Washer	(1905)	808.00	452.48	355.52
25	6.5	1 Tar Extractor	(1913)	1,048.47	272.55	775.92
40	8	1 Wylie Meter	(1911)	1,172.35	234.40	937.95
40	14	1 6′ Station Meter	(1905)	1,227.84	429.80	798.04
20	.5	1 Hoist and Motor	(1919)	162.75	4.07	158.68
33⅓	12	1 #7 Root's Exhauster and 7″ x 10″ N. Y. Engine	(1907)	1,506.75	542.40	964.35
25	2	1 #3 Revivifying Machine	(1917)	40.00	3.20	36.80

30	3	2 B. & W. Boilers	(1916-1919)	8,189.11	818.10	7,371.01	
20	.5	1 Cunningham Boiler	(1919)	5,214.53	130.36	5,084.17	
20	5	1 Erie City Boiler	(1914)	2,294.50	573.60	1,720.90	
25	14	1 3′ x 5′ x 6″ Tank	(1905)	105.00	58.80	46.20	
25	2	1 Empire Water Meter	(1917)	80.00	6.40	73.60	
25	.5	1 Moore Pump and Fittings	(1918)	22.00	0.44	21.56	
33⅓	.5	1 Feed Water Heater	(1919)	404.36	6.07	398.29	
25	.5	2 6″ x 4″ x 6″ Feed Pumps	(1919)	296.89	5.93	290.96	
33⅓	1.5	1 10″ x 12″ N. Y. Safety Engine	(1918)	458.57	20.63	437.94	
25	13	1 4½″ x 2½″ x 6″ Davidson Pump	(1906)	88.20	45.76	42.44	
25	13	1 4½″ x 2½″ x 6″ Davidson Pump	(1906)	88.20	45.76	42.44	
25	12	2 Bed Plates	(1907)	11.20	5.28	5.92	
25	9	1 4½″ x 2½″ x 6″ Davidson Pump	(1910)	80.75	29.07	51.68	
		Forward		$115,010.71	$74,095.62	$40,915.09	
		Brought forward		$115,010.71	$74,095.62	$40,915.09	
25	3	1 6″ x 4″ x 8″ Davidson Pump	(1916)	150.00	18.00	132.00	
25	2	1 6″ x 4″ x 8″ Davidson Pump	(1917)	200.00	16.00	184.00	
25	2	Fittings & Petty Cash		62.84	5.02	57.82	
25	.5	1 Vertical Dial Oil Meter	(1919)	61.00	1.44	59.56	
50	13	1 12″ Balanced Governor	(1906)	282.41	73.32	209.09	
50	4	1 16″ Automatic Governor	(1915)	600.00	48.00	552.00	
50	4	1 16″ Balanced Governor	(1915)	325.00	26.00	299.00	
25	9	1 12″ x 16″ x 12″ Air Compressor	(1910)	2,193.75	789.75	1,404.00	
25	1	1 8″ x 12″ x 8″ Compressor	(1918)	1,303.53	52.14	1,251.39	
25	1	1 Kennedy Telemetric Gauge	(1918)	301.00	12.04	288.96	
20	13	1 Hose Cart	(1906)	22.50	14.69	7.81	

Life, years	Age, years	Item.		Cost.	Depreciation.	Cost, less depreciation.
20	13	1 Hose 200′ of 2″	(1906)	84.00	54.60	29.40
25	1	7 7½″ x 7½″ x 6″ Snow Pump	(1919)	365.95	14.63	351.32
20	7	1 Bowser Gasoline Storage	(1912)	174.28	60.97	113.31
25	4	1 7″ x 7″ x 10″ Davidson Pump	(1915)	394.89	63.16	331.73
80	3	1 1,000,000 cu. ft. Holder	(1916)	86,000.25	3,225.00	82,775.26
80	12	1 250,000 cu. ft. Holder	(1907)	234.81	35.28	199.53
80	12	1 100,000 cu. ft. Holder	(1907)	45.00	6.72	38.28
50	10.5	1 30′ x 30′ Oil Tank	(1909)	3,017.91	633.68	2,384.23
50	5	1 Steel Tar Tank	(1919)	233.96	2.33	231.63
50	10	1 Quintard Purifier Box	(1909)	5,219.68	1,043.93	4,175.75
50	8	1 Bartlett Hayward Co. Purifier Box	(1911)	3,881.34	620.96	3,260.38
50	3	1 Deep Tar Well	(1916)	852.26	51.12	801.14
25	5	1 Flight Conveyor	(1919)	701.66	14.03	687.63
50	5	Purifier Connections	(1919)	1,923.27	19.23	1,904.04
47	5.5	Miscellaneous items	.....	5,751.15	686.40	5,064.75
		Total	.....	$229,393.16	$81,684.06	$147,709.10

Comp. Ex. 108. J. A. F.

Public Service Commission for the First District.

File No. —.

Division N. Y. and Queens Gas Co. Contract —. Section —. Acc. No. —.
Computer, L. Z. Checked by W. R. Date, 6/2/19. Sheet No. 7.
Subject, Mains. Computation of. Reference, —.

Depreciation as of 12/31/19.

Ref.	Year.	Cost.*	Age in years.	Depr. rate.	Annual dep.	Accrued dep.	Cost, less depreciation.
.....	Prior 8/1/'04	$117,560.00	20	1.00%	$1,176	$23,520	$94,040
.....	8/1/'04-12/31/'04	8,043.79	15	1.25	101	1,515	6,529
.....	1905	32,366.90	14½	1.25	405	5,872	26,495
.....	1906	20,486.94	13½	1.25	256	3,456	17,031
.....	1907	14,080.05	12½	1.25	176	2,200	11,880
.....	1908	15,758.05	11½	1.25	197	2,265	13,492
.....	1909	16,150.73	10½	1.75	283	2,972	13,179
.....	1910	25,448.84	9½	1.50	382	3,629	21,820
.....	1911	28,815.19	8½	1.45	418	3,553	25,262
.....	1912	10,630.62	7½	1.95	207	1,552	9,079
.....	1913	15,311.64	6½	1.45	222	1,443	13,869
.....	1914	13,423.33	5½	1.90	255	1,402	12,021

*Retirements not deducted.

COMPLAINANT'S EXHIBIT 108—*Continued.*

Ref.	Year.	Cost.*	Age in years.	Depr. rate.	Annual dep.	Accrued dep.	Cost, less depreciation.
.....	1915	19,238.48	4½	1.50	289	1,300	17,938
.....	1916	11,829.44	3½	1.55	183	640	11,189
.....	1917	7,219.51	2½	2.35	170	425	6,795
.....	1918	4,984.06	1½	2.00	100	150	4,834
.....	1919(a)	14,490.17	½	1.60	232	116	14,374
		$375,837.74	11.1		$5,052	$56,011	$319,827
			Douglaston Extension.				
	1919	$122,975.17	....	1.40%	$1,722	.....	$122,975

NOTE.—(a) Exclusive of Douglaston Extension.

*Retirements not deducted.

2673 COMPLAINANT'S EX. 109.

At an Adjourned Meeting of the Public Service Commission for the First District Duly Held at Its Office, No. 120 Broadway, in the Borough of Manhattan, City and State of New York, on the 13th Day of October, 1917.

Present:

Oscar S. Straus,
Chairman;
Travis H. Whitney,
Charles S. Hervey,
Commissioners.

Case No. 2235.

In the Matter of the Hearing on the Motion of the Commission as to the Standards for Measurement of the Quality and Power of Gas Manufactured, Distributed, or Sold by Gas Corporations Within the First District and the Rates or Charges for Such Gas Service Based Upon Such Standards.

Order Fixing Heating Standard for Gas.

By Chapter 125 of the Laws of 1906 and amendatory acts of 1916 and 1917, the maximum price for gas manufactured, furnished or sold in the City of New York, the illuminating power of which is fixed at not less than twenty-two (22) sperm candles as more fully set forth, is prescribed at eighty cents per thousand cubic feet, in the Borough of Manhattan, in the first ward of the Borough of Queens, in the Borough of Brooklyn (including the territory annexed to the County of Kings by Chapter 410 of the Laws of 1915, as amended) and in the Borough of the Bronx, except that portion of it formerly contained in the town of Westchester outside of the villages of Wakefield and Williamsbridge, and at one dollar per thousand cubic feet in the Borough of Richmond and in the second, third and fourth wards of the Borough of Queens (except the territory annexed to the County of Kings by Chapter 410 of the Laws of 1915, as amended).

By the provisions of the Public Service Commissions Law, and particularly by Section 66, Subdivision 5, and Section 72 thereof, this Commission may, by order, fix the maximum price to be charged for gas by any person or corporation furnishing gas service, but at not exceeding that fixed by statute.

By the provisions of the Public Service Commissions Law, and particularly by Section 66, Subdivisions 1, 2 and 3, this Commission has the power by order to fix from time to time standards for the measurement of the purity of gas and for the measurement of the illuminating and heating power of gas to be manufactured,
2674 distributed or sold by persons or corporations for lighting, heating or power purposes, notwithstanding that another

standard for the measurement of any thereof may have been fixed by statute; to require the gas so manufactured, distributed or sold to equal the standards so fixed by it, to determine whether such gas conforms to such standards, and to order reasonable improvements in connection with the manufacture and distribution of gas.

The War Department of the United States by its responsible officers has communicated to the Commission, in writing and verbally, that a public emergency exists requiring that the gas corporations subject to the jurisdiction of this Commission immediately enter into arrangements with the National Government upon suitable terms of compensation to begin the production, as soon as possible, of certain ingredients essential to the conduct of the present war by the United States which can be more effectively recovered from gas manufactured by the said corporations under a heating power standard than from gas manufactured under an illuminating power standard, and requesting this Commission to fix a heating standard for gas manufactured, distributed or sold by gas corporations subject to the jurisdiction of this Commission. Also, a hearing has been duly had in this proceeding by and before the Commission on September 18, 1917 and adjourned dates upon notice to all gas corporations subject to the jurisdiction of this Commission; and the Commission has made investigation and is of the opinion that a public emergency exists rendering it necessary that in the conduct of the war gas corporations manufacturing gas shall produce certain ingredients which can be produced advantageously under a heating value standard, and that it is just, reasonable and proper to fix standards for the measurement of the heating power of gas to which gas corporations subject to the jurisdiction of the Commission shall conform at their election as an alternative to the illuminating standard now fixed by statute, for the period during which the United States may be engaged in the present war; it is

Ordered

I. This Commission hereby fixes a monthly average total heating power of not less than six hundred and fifty (650) British thermal units per cubic foot (ascertained as hereinbelow set forth) as a standard for the measurement of the heating power and thereby the quality of gas to be manufactured, distributed or sold by gas corporations subject to the jurisdiction of this Commission and furnished to consumers at a price not in excess of that now fixed by law or by any order of this Commission. Provided, however, that such heating power standard shall not be, and is not intended to be, in derogation or a repeal of any other standard for the measurement of the quality of gas now fixed by statute, but shall be a standard to which gas shall conform as an alternative, under the election herein provided, to that fixed by statute.

(*a*) The average total heating power, for any three consecutive days in any calendar month, shall not be less than six hundred and fifteen (615) British thermal units per cubic foot.

(*b*) In determining the heating power, the gas shall be corrected to a temperature of sixty (60) degrees Fahrenheit and thirty (30) inches of mercury.

(*c*) Each test to determine the heating quality of the gas shall be made according to approved methods, and in conformance with regulations which may be prescribed by this Commission and at such location or locations as shall be approved by the Commission not less than one-half mile distant in an air line from any manufacturing or distributing station of the gas corporation.

(*d*) The daily heating power of gas at each testing station shall be determined by averaging all the tests made at such station; the daily heating power of gas furnished by the gas corporation
2675 to its consumers shall be determined by averaging the daily heating power of gas at all the testing stations of the supplying corporation; the monthly average heating power of gas furnished by a gas corporation shall be determined by averaging the daily heating power of gas furnished by the gas corporation to its consumer as shown by tests made on not less than twenty days in a calendar month.

II. That the gas manufactured, distributed or sold by gas corporations subject to the jurisdiction of this Commission shall conform to the standard of quality prescribed by any statute now in effect, or, in the alternative, for a period not longer than until three months after the termination of the war in which the United States is engaged, and at the election of any such gas corporation to be made and evidenced only in the manner and in accordance with the terms hereinbelow set forth, to the heating standard prescribed in this Order and elected by such gas corporation.

III. That any gas corporation may exercise the option to furnish gas in conformity with the heating standard fixed in this Order by filing with the Commission a statement in writing, duly authorized by such gas corporation and signed and duly acknowledged, stating that such gas corporation will thereafter and for a specified period, but not longer than the duration of the war in which the United States is engaged and three months thereafter, manufacture, distribute or sell gas within the City of New York which shall conform to the heating standard herein prescribed and in compliance with each and every one of the following terms and conditions:

(*a*) That the rate to be charged or received per one thousand cubic feet for gas manufactured, furnished or sold within the City of New York under the heating standard herein prescribed in Paragraph I shall not exceed the sum of eighty cents or, where such person or corporation is authorized by law or by any order of this Commission to charge a higher rate, shall not exceed such lawful rate.

(*b*) That, in the event that such gas corporation shall propose to furnish gas of a heating quality less than six hundred and fifty (650) British thermal units monthly average total heating power per cubic

foot, and shall notify the Commission in writing (duly authorized by the gas corporation and duly signed and acknowledged) of its intention so to do and of the minimum monthly average total heating power for such gas, the rate to be charged or received per one thousand cubic feet for such gas within the City of New York shall not exceed the rate which such person or corporation is now authorized to receive and collect by law or by order of this Commission for gas furnished by it in the City of New York less a per cent (not including fractions of one per cent) equal to the per cent by which the number of British thermal units monthly average total heating power per cubic foot of the heating power elected shall be less than six hundred and fifty (650) British thermal units.

(*c*) That such gas corporation will provide and maintain such suitable testing stations, apparatus and facilities as may be required and approved by the Commission for use in testing by direction of the Commission the heating power of gas manufactured, distributed or sold by it, and will make all tests subject to the supervision of this Commission and its responsible engineers or agents duly authorized.

(*d*) That such gas corporation will keep posted in its principal office, in a place readily accessible to its customers and open to their inspection, a statement of the average daily heating power of the gas furnished during the preceding calendar month as shown by the tests made under the direction of the Commission as hereinabove provided, in order that the consumers and the public may be advised of the quality of the gas being supplied.

(*e*) That such gas corporation will, upon the application of any consumer who at the time this provision becomes effective
2676 obtains illumination exclusively from open flame burners, provide and install upon such consumer's premises free of any charge, one efficient incandescent lamp complete with mantle, of a type to be certified by the Chief Gas Engineer of the Commission, for each room, but not more than two rooms, occupied by such consumer. Provided, however, that such gas corporation shall not be required to replace, renew or repair any mantle burner so furnished free of charge.

(*f*) That such gas corporation will notify its consumers of their right to have provided and installed incandescent lamps in pursuance of the terms of subdivision (*e*) of this paragraph, by a printed notice on or attached to all bills rendered to the consumers of such corporation during the month following the date of notification filed with the Commission of the election to furnish gas under the heating standard.

IV. That this order shall be without prejudice to any further or other order in respect to rules and regulations governing the testing of gas furnished under a heating power standard or in respect to any other matter covered by the hearing resolution adopted in this case on August 20, 1917, after further hearings in this proceeding or a separate proceeding.

V. That this Order shall take effect at once, and shall continue in force until the further order of the Commission unless abrogated or otherwise changed by order of the Commission.

By the Commission

[L. S.] GEORGE F. DAGGETT,
Acting Secretary.

2677 Mr. Mintz:

Advance Sheets P. S. C. Opinions, Oct. 13, 1917. Case No. 2235.

2678 STATE OF NEW YORK:

Public Service Commission for the First District.

Case No. 2235.

In the Matter of the Hearing on the Motion of the Commission as to the Standards for Measurement of the Quality and Power of Gas Manufactured, Distributed, or Sold by Gas Corporations Within the First District and the Rates or Charges for Such Gas Service Based Upon Such Standards.

Memorandum.

STRAUS, *Chairman:*

At the time this proceeding was instituted on the motion of the Commission, its scope and purpose were outlined in a memorandum filed by Commissioner Whitney.

The Commission had in two prior proceedings (Cases Nos. 2066 and 2207), the records of which have been incorporated in the present proceeding, considered the results of operation by gas companies in the City of New York under the 22 candle-power standard prescribed by Chapter 125 of the Laws of 1906. As pointed out in Commissioner Whitney's memorandum, the testimony before the Commission was in agreement that a heating standard had become preferable to a candle power standard, primarily because at the very least eighty per cent of the gas used was for heating and not for lighting purposes and therefore its proper test was the thermal rather than the illuminating power. As to gas used for illumination, it appeared that the most efficient method of illumination could be secured through the use of mantles, which depended upon heating value and not candle power. As a further important reason for the advisability of a change in the gas standard, it was pointed out in that memorandum that with such change of standard the companies would be in a position to respond to national requirements for certain by-products necessary for war purposes concerning which the Commission had already been advised by the Federal authorities.

The Legislature has expressly empowered the Commission
2679 to change the gas standard, notwithstanding that a particular standard had been previously fixed by the Legislature

itself. The present gas standard in the City of New York is fixed by Chapter 125 of the Laws of 1906, which enacted that a corporation engaged in the business of manufacturing, furnishing or selling illuminating gas in the City of New York except in specified parts,

"shall not charge or receive for gas manufactured, furnished or sold in said city a sum per one thousand cubic feet in excess of"

specified rates which now, under the amendments to the Act, are fixed at eighty cents for nearly all parts of the City. By Section 2 of the Act it is provided that

"The illuminating gas furnished by any such corporation, association, copartnership or person shall have an illuminating power of not less than"

what is briefly termed 22 candles, tested at a distance of not less than one mile from the distributing holder. The provisions of this Act are inapplicable to gas furnished or sold to the municipality of The City of New York. (Sec. 4, now Sec. 5 of the Act.)

The passage of chapter 125 of the Laws of 1906 was preceded by a famous and thorough legislative investigation which terminated in a recommendation of such legislation. Its passage was succeeded by a protracted litigation terminating in a decision of the Supreme Court of the United States, in January, 1909, (212 U. S. 19), upholding the constitutionality of the statute. In the delegation of powers to the Commission, the Legislature expressly imposed a limitation upon the rate making function of the Commission in the provision of Section 72, Public Service Commissions Law, that the Commission may not fix a gas rate in excess of that fixed by the statute, to wit, 80 cents per thousand cubic feet. The investigation, the public discussion necessary to secure the legislation, the character of the litigation and the reservation by the Legislature to itself of the power to raise the 80 cent gas rate were such as to make the Eighty Cent Gas Law, in the minds of the people of New York City, a fundamental provision of law. It should not be changed except by the authority which created it or by the authority which sustained it. As to the possibility that the law might at some time prove a hardship to the companies, the Supreme Court said

Willcox v. Consolidated Gas Co., 212 U. S. 19, decided January 12, 1909, (pp. 54-55).

2680 "Upon a careful consideration of the case before us we are of opinion that the complainant has failed to sustain the burden cast upon it of showing beyond any just or fair doubt that the acts of the legislature of the State of New York are in fact confiscatory.

"It may possibly be, however, that a practical experience of the effect of the acts by actual operation under them might prevent the complainant from obtaining a fair return, as already described, and in that event complainant ought to have the opportunity of again

presenting its case to the court. To that end we reverse the decree, with directions to dismiss the bill without prejudice."

The companies have the undoubted right at any time to make such application to the Supreme Court of the United States, if in their opinion the law creates a confiscatory result. This Commission cannot hamper such rights of the companies. On the other hand, this Commission should not, in the light of the history of that law, do anything which would lessen the obligations of the companies or take any step that would change the processes available to the gas corporations for relief from any of the obligations of that law. In fact the Commission does not have the power directly to authorize a higher rate for gas than prescribed by the law, and, while it has the power to change the standard of the quality, it does not appear to have the power indirectly to do what it cannot do directly, that is, by lowering the quality to force consumers to use a greater quantity of gas to secure service equivalent to that received under the present statutory quality, and thus produce higher bills to the consumers. The Commission would seem limited to a consideration of a change of standard for the measurement of the quality of gas now legally required. This, however, does not prevent the fixing of a scale of correspondingly decreasing quality and rate.

That the Commission should have power to fix another standard for the measurement of the quality of gas must have been clearly in the mind of the Legislature when it expressly provided, by Section, 66, subdivision 3, of the Public Service Commission Law, that the Public Service Commission shall

"have power by order to fix from time to time standards for the measurement of the purity of gas and for the measurement of the illuminating power of gas and for the measurement of the heating power of gas, to be manufacturer, distributed or sold by persons, corporations or municipalities for lighting, heating or power puposes, notwithstanding that another standard for the measurement of any thereof may have been fixed by statute * * *

2681 A national emergency now confronts the Commission which makes it imperative that, in the exercise of powers conferred upon the Commission it take action, more immediate than was originally contemplated, to coordinate the industry of manufacturing and supplying gas in the City of New York to paramount national needs. Any delay in the action necessary to place the companies in a position to meet the requisition of the government for a certain by-product of gas which can be recovered in sufficient quantity only if gas be manufactured under a thermal standard would jeopardize national interests. The Federal Government has made direct representations to the Commission that it is urgently necessary that the operations of the principal gas plants in this City and elsewhere be made available for the production of an important ingredient essential to war operations. To accomplish this, it becomes necessary for the period of war to permit the gas companies to exercise the option of furnishing gas on a thermal basis.

It is not contemplated that this service should be uncompensated, for the National authorities are prepared to pay a fair equivalent. Because of this readiness of the National authorities to guarantee against loss and possibly even allow a reasonable profit, the national exigency should not be made the opportunity of the gas companies for a betterment in earnings or profits at the expense of the consumers, through a lowering of quality by means of a change in standards. Any right to an increase in rates should be determined through the exercise of legal processes available to the gas companies. Any action herein at the present time does not permit a decrease in the value of service available to consumers at the present eighty cent gas rate; but because of a National emergency will give freedom and opportunity for the production of a different standard of gas so as to be able to serve the National requirements.

The Commission has given careful consideration to data and testimony that would disclose the thermal content of the gas now actually furnished by the companies under existing requirements of law. By authorization of the Commission, Mr. W. F. Hine, its Chief Gas Engineer, has established testing stations throughout the City, and from January to the present time has supervised tests in these stations, as well as secured the results of tests conducted in testing stations maintained by the City under procedure agreed to. The results of these tests, down to and including August 31st, are set forth in Exhibit I herein. A summary sheet of this Exhibit is as follows:

Company.	Testing station.	Illuminating value in candles. No. tests.	No. max.	Min.	Ave.	Heating value in B. T. U. No. tests.	Max.	Min.	Ave.
Consol.—Br. 1	Grand	87	23.4	19.6	22.0	86	704	640	665
" —Br. 2	"	86	24.2	19.4	22.0	86	693	620	666
" —Br. 3	"	87	22.7	19.4	22.1	86	686	635	665
" —Br. 3	E. 79th St.	133	24.0	20.8	22.6	132	703	649	671
" —Br. 4	" ..	132	24.1	21.1	22.6	131	707	651	672
" —Br. 6	" ..	132	24.3	20.5	22.6	131	708	649	670
"	59 Walker	162	24.9	19.8	22.2	402	706	642	668
Consolidated	All	819	24.9	19.4	22.3	1054	708	620	669
New Amsterdam	Grand	88	23.6	19.4	21.9	85	691	628	664
"	E. 79th ...	133	24.6	21.4	22.6	130	712	652	672
New Amsterdam System	.....	221	24.6	19.4	22.3	215	712	628	669
N. Y. Mutual	Grand	88	23.2	19.1	21.4	86	675	641	656
Standard	E. 79th ...	133	24.0	21.3	22.6	132	715	655	672
Cen. Union	3rd. Ave. ..	242	26.1	19.5	22.7	116	721	652	675
N. Y. & Queens	Flushing ..	88	23.4	20.5	22.3	64	679	619	651
Consolidated System	.....	1591	26.1	19.1	22.3	1667	721	619	668
B. U. G.—Wmsburg	Lee	98	26.1	19.5	22.6	63	671	608	638

Tabulation of Tests Made from January 1st to August 31st, Inclusive—Continued.

Company.	Testing station.	Illuminating value in candles. No. tests.	No. max.	Min.	Ave.	Heating value in B. T. U. No. tests.	Max.	Min.	Ave.
B. U. G.—Nassau	Lee	97	26.2	19.5	22.7	63	730	617	639
" —Fulton	Court	129	25.8	17.3	21.7	119	691	586	630
" —Citizens	"	139	27.0	16.9	22.4	138	697	568	637
" —Metro	4th Ave.	239	24.3	19.1	21.8	134	679	608	636
Brooklyn Union System		702	27.0	16.9	22.2	517	730	568	636
Bronx Gas	Morris Pk.	199	27.4	17.8	23.0	88	737	614	680
Kings Co.	N. Utrecht	154	25.4	20.2	22.7	89	665	599	627
Bklyn. Boro.	Coney I.	135	25.3	18.7	21.9	77	663	608	636
Queens Boro.	Hammels	163	26.7	20.7	23.5	145	750	615	663
N. Y. & Richmond	N. Brighton	202	23.1	18.2	21.1	61	669	607	636
Independent Companies		853	27.4	17.8	22.6	460	750	599	659
All Companies		3146	27.4	16.9	22.4	2644	750	568	659

2683 From this summary it appears that the average thermal content of gas furnished during this period under the requirement of 22 candle power was actually 659 British Thermal Units per pubic foot; that is to say, at least eighty per cent of the gas used by consumers for heating purposes, although furnished under a candle power standard, actually gave those consumers the benefit of 659 thermal units per cubic foot, which they were free to use, whether for household, commercial or scientific purposes, to its greatest efficiency or inefficiency. To illustrate, the practice has been in use by large concerns of buying coal on the basis of its B. T. U. content, yet it has never been contended that the coal producer should be paid on the basis of the thermal units utilized by the purchaser. If such a principle were adopted the most efficient user of coal or gas would pay the highest price per quantity unit and the most improvident user the lowest price. In the case of the Consolidated System, which furnishes over sixty per cent. of the gas used in the City, the average thermal content was 668. In the Brooklyn Union System, which furnishes some thirty per cent. of the gas used within the City, it was 636. In the case of the five so-called independent companies which produce about five per cent. of the gas used within the City, the average thermal content was 659.

The companies contend, however, that such an average should not be taken into consideration in the fixing of a measure of a heat standard in changing from a light standard of 22 candle power. They contend that candle power is variable and therefore the heat content is variable; that there is no exact relation between a lighting and heating content; that, as these variations are so great, devices must be so designed as to meet these variations without the opportunity of constant adjustment, with resulting loss in efficiency; that gas produced under a standard which would obviate the greater part of the variations would allow a higher percentage of efficient use, and that gas at a standard of 585 British Thermal Units would give consumers at least as much efficiency as gas of 22 candle power.

In support of these contentions the Consolidated System produced as a witness Captain O. H. Fogg, formerly an employee of the company in charge of the Bureau of Utilization, who testified that using, under exact laboratory conditions, a 22 candle power gas, which happened to have a thermal content of 660, he was
2684 able to design devices which developed in the laboratory an efficiency of sixty-seven per cent. of the thermal content and that when such devices were put out in service they were so inefficient as to require a re-study, and that testing these devices in the laboratory under the variations incident to gas actually furnished to the consumer, an efficiency of only fifty-eight per cent. was developed; that the gas furnished under a thermal standard would be free in large measure of such variations that caused the drop from sixty-seven per cent. to fifty-eight per cent. in efficiency, and that, therefore, gas furnished under a standard of 585 British Thermal Units would allow consumers to utilize more thermal units per cubic foot than would be possible with 22 candle power gas.

It will be noticed that this conclusion cannot necessarily be drawn

from such premises. Captain Fogg admitted that he had made no tests other than of 22 candle power gas. He did not test gas of the 660 quality, other than as the 22 candle power gas happened to contain that content, nor did he test gas with the 585 content, either under laboratory or service conditions, nor did he test gas of decreasing thermal or lighting content in order to determine at what point the greatest efficiency was obtainable. In his tests as to the percentage of efficiency he used only range burners, whereas other users of gas than cooking may utilize the heat content much in excess of sixty-seven per cent whether the measure be 660, 585 or lower. It would appear, therefore, that his tests and his testimony cannot sustain the conclusion that was sought to be drawn from his testimony, and its effect is largely negatived by the following question and answer, at page 216 of the record:

"Commissioner Whitney: Assuming that you have two tanks of gas, and one is 585 gas and the other is 660 gas, of uniform quality in two tanks, and the devices you are going to use are adjusted to their highest efficiency for the particular quality of gas, of which gas will you have to use the greater quantity in order to raise a given quantity of water to a given number of degrees?

The Witness: You have to use the greatest quantity of the low-heat-value gas under those conditions.

Commissioner Whitney: That is the 585 gas?

The Witness: Yes."

The fact is that consumers using gas for essentially heating purposes now have the opportunity of utilizing, as far as may be scientifically possible, the heat content of the gas actually furnished
2385 at 22 candle power, and Captain Fogg's answer above clearly discloses the fact that, if gas be furnished having a thermal content substantially lower than that now actually received by consumers, such consumers will have to use a greater quantity of gas in order to produce the results possible under the gas now actually furnished. In further substantiation of this admission by Captain Fogg is the testimony of Mr. W. F. Hine and Mr. R. S. McBride, associate scientist of the Bureau of Standards of Washington. Mr. Hine testified, at pages 52 and 53 of the record, as follows:

"By Mr. Ransom:

Q. That is, a man who now was using, say 8,000 cubic feet of gas per month, if there was a lowering of the standard through abolition of the candle power standard and substitution of 565 or 585 B. T. U.'s, that man would have to use, to obtain equal service and results, more than 8,000 cubic feet in a month?

A. Yes.

Q. So that unless the change is to mean in effect an increase in the rates or an increase in the returns of the company, a decrease in the number of B. T. U.'s required as a minimum standard must be accompanied by a proportioned change in the cost per thousand cubic feet of gas?

A. Generally speaking that is so."

"Chairman Straus: What I want to find out, and I think the witness has answered very clearly, is that if the number of B. T. U. units are materially lowered, that in order to obtain the same light or heat more feet of gas would have to be used than before?

The Witness: Yes, sir.

Chairman Straus: You are clear about that?

The Witness: Yes, sir.

By Mr. Ransom:

Q. In so far as light is concerned you would have to use very much more gas to obtain an equal quantity of illumination based on the illuminating basis?

A. Through an open flame burner, yes.

Q. Very much more?

A. Very much more.

Q. On the heat proposition, whether heat is a means of generating light or heat for other purposes, you would have to use more gas to obtain equal service?

A. Yes, sir."

Mr. McBride, at pages 98, 101 and 107 of the record testified as follows:

"Q. So that would you say that the usefulness of a given quantity of gas, let us say a thousand cubic feet, and the results secured by the customer were increased or decreased by a decrease in the number of thermal units per thousand cubic feet of gas?

A. The service which a customer can get from any gas
2686 depends primarily upon the amount of heat which that gas will give when burned.

"Q. So that the relation between the price of the gas and the efficiency of gas is a relation between the price per thousand feet and the number of B. T. U.'s and it is not a relation merely between price and number of thousand feet irrespective of B. T. U.'s.

A. I think that the heat unit must be taken into account in determining which is the better gas to supply.

Q. And the correct price?

A. Yes, and in a certain sense the price must always enter into any determination of standard, because the quality of a thing is not the only thing that determines its desirability to a user. The amount of service which you get for each dollar that you pay out determines the satisfaction, whether it be gas or any other commodity that you buy.

Q. So, if the consumers were ordinarily receiving gas, let us say, of 685 B. T. U.'s and that was reduced so that they began to receive gas containing 300 B. T. U.'s that would necessarily have a relation to price?

A. Unquestionably.

Q. And the price would be based upon the decreased number of heat units obtained?

A. I would rather say that the desirability of changing the heat

unit supply would depend upon whether you could make an appropriate change in price.

Q. That is, the desirability of change in the standard, would in your judgment, depend upon the possibility of bringing about a proportionate and appropriate reduction in price?

A. If the price cannot be reduced in at least approximately the same percentage as the heat utility is reduced, I see no reason for reducing the heat units.

"Q. Taking for example, a thousand cubic feet of gas which at the present time we will say contains 685 B. T. U.'s and the company changes its standard and its method so that they only supply 500 or 550 B. T. U.'s per thousand cubic feet of gas. The price per thousand cubic feet of gas for the 685 B. T. U.'s is 80 cents. Would you say that the price should be such that for his 80 cents after the change in standard, the customer should get approximately exactly the same number of B. T. U.'s which he formerly got for his 80 cents?

A. I think he should."

"By Commissioner Hervey:

Q. Do you think the value of the gas to the consumer reduces in exact proportion as the reduction of B. T. U.'s?

A. Almost exactly.

Q. Would you regard a 325 B. T. U. gas as worth half as much as a 650 B. T. U. gas to the consumer?

A. With certain appliances it would be difficult to accomplish a change as great as that, but assuming appliances were properly replaced or readjusted, I should say that the relation was approximately two to one."

2687 It would seem, therefore, that from all the data and testimony available the Commission must conclude at the present time that on a change of standard the actual thermal content of gas now furnished must be taken as the basis of measurement for a thermal standard. In respect to Exhibit 1 herein previously referred to Mr. McBride testified, at pages 130 and 131 of the record, as follows:

"Q. What do you think 22 candles means interpreted in heat units?

A. Varying according to the kind of gas, that is, whether straight water gas or mixed coal and water gas, depending upon the skill of the manufacturers and depending upon the kind of oil which he gets in the making of water gas, or the kind of coal for the making of coal gas. I consider that 22 candles means from perhaps 630 to 675 annual average. I mean by that that if the gas maker regularly meets the 22 candle power requirement he can be expected to supply from 630 to 675 B. T. U.'s per cubic foot on the average throughout the year depending upon the various conditions which I have stated.

"Q. You would not attempt to draw any definite conclusions from the results shown by these tests in Exhibit 1, would you?

A. I would, for the reason that they confirm very closely the ex-

perience which I have had in examining results from many other localities, and from localities where tests have extended over considerable periods of time. However, figures are more pertinent, in any locality than data from any other locality."

Accordingly, the standard herein proposed provides that without derogation of standards now fixed by statute any company may, either because of proposed or actual contracts with the National Government, or otherwise, have the option to adopt as a standard for the furnishing of gas to consumers a thermal content of 650 B. T. U.'s per cubic foot to be furnished at the statutory rate. This, in the opinion of the Commission, taking into consideration deviations below the legal candle power, represents as nearly as can now be determined, the thermal content of gas now furnished under the legal requirement of 22 candle power. The order further provides that if the thermal content is reduced, whether through national requirements or large quantities of by-products, through economy in manufacture, or otherwise, a discount shall be allowed on the bills for gas to consumers equivalent to the reduction in the thermal content from the standard fixed by the order.

It must be clearly understood, however, by the public that 588 the price of gas is not hereby affected and is to remain as fixed by statute unless changed by a legal process outside of this proceeding. If a discount on bills is allowed, it must be understood to be only because national authorities are requiring by-products in such quantities as to cause a reduction in thermal content. The national authorities are anxious that consumers shall not suffer in the amount of their gas bills because of the abstraction of by-products, and the order, therefore, provides for a discount on bills corresponding to a reduction in content. The Commission has no doubt, from information given to it, that in the contracts between the Government and the gas companies due allowance will be made, as a part of the cost of furnishing by-products, for any reduction in income to the companies arising from discounts made necessary by such reduction in thermal content.

Obviously when the Government ceases to require by-products there will be no necessity for discounts on consumers' bills. In fact, not later than three months after the termination of the war the companies will have the right to return, upon proper notice to the Commission, to the candle power standard fixed by statute.

Whether the Commission will change permanently the standard of gas is a matter for future and further evidence and consideration. The occasion of national requirements, with the financial guarantees that the Federal contracts will contain, presents an opportunity for study, during the period of the war, of methods of manufacture, efficiency of utilization and extension of the uses of gas, for heating purposes.

The Commission is mindful that it promised an opportunity for public discussion and argument before reaching a conclusion as to permanent change of standard. Exigencies presented directly to the Commission by Gen. Crozier and other officers of the War De-

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partment are such that the Commission feel under the paramount necessity, without any further loss of time, of suspending further hearings at this time, and reaching the conclusion herein expressed, and as further set forth in detail in the order herein, in order that the national authorities may be free to use the conclusions herein as a basis for negotiations and contracts with the gas companies that must be entered into at once. The public may be assured that its interests have been fully protected by the Commission, while
2689 at the same time, the companies, because of the attitude of the national authorities, will not be put at any loss or disadvantage by reason of the change. Such status is now affected as are all individuals and corporations by the conditions and requirements of the war and must be dealt with outside of any consideration of a change of standard.

The Commission appreciates the expressed readiness of the companies to place themselves at the disposal of the Government. It has, therefore, in order to expedite negotiations to the extent of its power given the companies the option and freedom to conclude contracts based on the option now allowed, so that without loss of any time they may proceed to the production of the necessary by-products.

COMPLAINANT'S EXHIBIT 110.

2690 *Order of Special Term Allowing Writ of Certiorari.*

At a Special Term of the Supreme Court, Part II Thereof, Held at the Court-house, New York County, February 28, 1918.

Present—Hon. Edward G. Whitaker, Justice.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. NEW YORK AND QUEENS GAS COMPANY, Relator,

against

OSCAR S. STRAUS, TRAVIS H. WHITNEY, CHARLES S. HERVEY, F. J. H. Kracke and Charles Bulkley Hubbell, Commissioners, Constituting the Public Service Commission of the State of New York for the First District, Respondents.

Order Allowing Writ.

On reading and filing the petition of the New York and Queens Gas Company, duly verified herein on the 26th day of February, 1918, and on motion of Sherman & Sterling, attorneys for the relator, it is

Ordered:

I. That the said petition be and the same is hereby granted and that a writ of certiorari issue out of and under the seal of this Court, directed to and commanding Oscar S. Straus, Travis H. Whitney,

Charles S. Hervey, Charles Bulkley Hubbell and F. J. H.
2691 Kracke, constituting the Public Service Commission of the State of New York, for the First District, to certify and return to this Court, at the office of the Clerk of the County of New York, within twenty days after the service of the said writ, all and singular their proceedings, orders, evidences, decisions and determinations in the premises, as prayed in the said petition.

II. That within the same time a copy of the said return be served upon Shearman & Sterling, attorneys for the relator, at their office, No. 55 Wall Street, Borough of Manhattan, City of New York.

Notice of the application for the writ of certiorari herein is hereby dispensed with.

Enter,

E. G. W.,
J. S. C.

2692 COMPLAINANT'S EXHIBIT 111.

Petition for Writ of Certiorari—Submitted to Special Term.

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. NEW YORK AND QUEENS GAS COMPANY, Relator,

against

OSCAR S. STRAUS, TRAVIS H. WHITNEY, CHARLES S. HERVEY, F. J. H. Kracke and Charles Bulkley Hubbell, Commissioners, Constituting the Public Service Commission of the State of New York for the First District, Respondents.

Petition for Writ of Certiorari.

To the Supreme Court of the State of New York:

The petition of the New York and Queens Gas Company respectfully shows:

I. At all the times subsequent to about the 12th day of July, 1904, your petitioner was and it now is a corporation duly organized under and by virtue of the Transportation Corporations Law of the State of New York, having an authorized and issued outstanding capital stock of $600,000, par value, and authorized by its charter to manufacture and supply gas for lighting streets and public and private buildings in the City of New York, Borough of Queens, County of Queens, City of New York.

2693 II. On or about the 29th day of July, 1904, your petitioner acquired a certain plant and gas works, located in the former Village of Flushing, in the Third Ward, Borough of Queens, in the City of New York, together with a system of mains and service pipes, for the distribution of gas from such plant and works to various

portions of said Ward, said plant, gas works and the distributing system having been employed for many years by predecessor corporations in the manufacture and sale of gas in said Ward. On or about said 29th day of July, 1904, your petitioner also acquired various consents to lay conductors for conducting gas through the streets, lanes, alleys, squares and highways of said Ward, granted to various individuals and corporations by the former municipal authorities having jurisdiction so to do prior to the consolidation of said Third Ward into and as part of the City of New York and, in part, it acquired a certain franchise granted by the Commissioners of Highways of the former Town of Flushing to the Flushing Gas Light Company, on the first day of May, 1897, whereby and whereby authority was granted to the said Flushing Gas Light Company to lay its conductors, mains and pipes for conducting gas through, along, upon, over, under and across the public highways, roads, streets, lanes, avenues, places and squares in the said Town of Flushing not included in any incorporated village, for the purpose of lighting public highways, roads, streets, lanes, avenues, places and squares and public and private buildings, upon the conditions, (1) that said corporation should at no time disturb or break the earth, pavement or macadam or flagging therein for the purpose of laying any conductors, mains or pipes without first having obtained
2694 the written permit of the Commissioners of Highways of said Town, or their lawful successors, (2) that said corporation should in no case lay any conductor or main until the line of such conductor or main in such highway, road, street, lane, alley, avenue, place or square should have first been located on the ground therein by the Commissioners of Highways of the Town of Flushing or their lawful successors, and (3) that such consent should terminate with the expiration of fifty years from the date thereof.

III. Since the month of July, 1904, your petitioner has operated the gas works, plant and distributing system so acquired by it and has, from time to time, extended, enlarged and improved the same, and your petitioner is now engaged in the manufacture and sale of gas for public and private purposes in various portions of the Third Ward of the Borough of Queens.

Your petitioner has no mains or service pipes in that portion of said Ward known as Douglaston, including Douglas Manor, or Little Neck, all of which communities lie east of Alley Creek and are widely and permanently separated from the other territory served by your petitioner by the waters of Alley Creek and low marshy land along the banks of the same and by the waters of Little Neck Bay.

The nearest mains of your petitioner to said communities extend only to Bayside, nearly half a mile east of Alley Creek and more than a mile from the nearest portions of said communities.

IV. Pursuant to Chapter 480 of the Laws of 1910, as amended, the Public Service Commission for the First District was established,

of which the respondent, Oscar S. Straus, is now the Chair-
2695 man, and the respondents, Travis H. Whitney, Charles S. Hervey, Charles Bulkley Hubbell and F. J. H. Kracke are the remaining members; and upon them is conferred, by said statute, their jurisdiction and authority as such Commission; and, by virtue of the said Act, the Commissioners are charged with the supervision of gas and electric companies and are given power to order reasonable improvements and extensions of the works, lines, conduits, ducts and other reasonable devices, apparatus and property of gas and electric corporations.

V. On or about the 23d day of July, 1914, the Public Service Commission for the First District, as then constituted, upon its own motion, gave notice of a hearing for the purpose of inquiring and determining whether an order should be made directing your petitioner to extend its gas mains, service and other apparatus to such extent as might be necessary to furnish gas to the residents of Douglaston and Little Neck, in the Borough of Queens, City of New York; and, pursuant to such notice, hearings were held on said question before said Commission on the 29th day of July, 1914, and on other days to which said hearing was adjourned, at which hearings evidence was adduced by said Commission in support of such proposed extension and evidence was adduced by your petitioner in opposition thereto, but as the hearings were held in midsummer, when the petitioner's principal officers and witnesses were out of town, no complete presentation of the case from the petitioner's point of view was made; and at least four of the Commissioners voted in favor of the said order upon the assumption of an irrelevant fact, which did not exist.

2696 VI. On the 19th day of March, 1915, said Commission, as then constituted, notwithstanding such incomplete presentation and hearing, made its order, whereby it was directed that your petitioner should extend its gas mains and services in such a manner as might be required reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York, and known as Douglaston, including Douglas Manor, that construction of said proposed extension should be begun not later than April 30, 1915, and be completed, as far as Alley Road or Main Avenue, Douglaston, by September 1, 1915, and that on or before April 30, 1915, your petitioner should file with said Commission a general plan or lay-out, showing a proposed transmission and distribution system to be installed pursuant to the terms of the said order. A copy of the said order is hereto annexed and marked "Exhibit A."

The Chairman of the Commission, in voting against the adoption of the said opinion, caused the following minute to be entered upon the record in said proceedings:

"Record me in the negative, on the ground that it is an unreasonable order, in that the expense cannot possibly be met within a

reasonable time and the company would not receive a reasonable return upon the cost of the extension."

VII. Thereafter and on or about the 10th day of April, 1915, your petitioner duly filed with said Public Service Commission for the First District its duly verified petition, praying for a rehearing upon said order, on the grounds that said order was unjust
2697 and unreasonable and amounted substantially to a confiscation of the property of your petitioner, that said order was illegal and void because in contravention of the Fourteenth Amendment to the Constitution of the United States, in that it deprived your petitioner of its property and denied to your petitioner the equal protection of the laws, that the evidence presented in said proceeding was insufficient to justify the issuance of said order, that said order was arbitrary and oppressive and that the extension required to be made by said order was not a reasonable improvement or a reasonable extension within the meaning of Subdivision 2 of Section 68 of the Public Service Commissions Law, and upon the further ground that said Commission erred as in said petition more particularly set forth.

VIII. On the 27th day of April, 1915, the said Commission made an order denying the aforesaid application for a rehearing.

IX. Thereafter, on the application of your petitioner, this Court, on the 30th day of April, 1915, duly made an order, directing that a writ of certiorari issue out of and under the seal of the Court to the said Public Service Commission, as then constituted, which said writ, duly allowed and issued on the same day, directed that within twenty days after due service of the said writ upon it, the said Commission should certify and return to the said Court, at the office of the Clerk of the County of New York, all and singular the record before it and the proceedings had by and before it and upon the said proceedings, which resulted in the orders made by the said Commission on March 19, 1915, and April 27, 1915, with
2698 its decisions and orders thereupon, whenever made, together with all and singular the evidence, oral and documentary, submitted to it upon all the hearings in connection with the said proceedings, with all its determinations, to the end that the said proceedings, actions and decisions in the premises might be reviewed and corrected and that this Court might cause further to be done therein what of right and according to law ought to be done.

X. The return having been duly made by the Commission, as in and by said writ directed, the said proceedings were duly heard in the Supreme Court, Appellate Division, First Department, and thereafter the said Court, upon the opinion of Mr. Justice Smith, reported in 171 App. Div., 580, which is hereby referred to as though at length incorporated herein, unanimously sustained the said writ and directed that the order and the determination of the said Commission, made March 19, 1915, reviewed under said writ, be and the same was thereby annulled.

XI. Thereafter, an appeal was duly taken by the said Commission to the Court of Appeals, which said Court thereafter and on the 3d day of October, 1916 (219 N. Y., 84), reversed the aforesaid order of the Appellate Division and reinstated the order of the said Commission, holding that the Appellate Division erred only in deciding the facts for itself instead of granting a rehearing.

XII. A writ of error was thereafter and on the 31st day of January, 1917, allowed by the Chief Judge of the said Court of Appeals, to review the judgment of that Court in the United States Supreme Court, which said Court thereafter, and on or about Decem-
2699 ber 10, 1917, affirmed the said judgment and dismissed the said writ (— U. S., —); and the mandate of the United States Supreme Court, affirming the said judgment, was remitted to this Court and duly filed in the office of the Clerk of the County of New York, and an order entered by this Court, in and for the said County, on January 31, 1918, making the order and judgment of the United States Supreme Court the judgment of this Court.

XIII. Thereafter and on January 4, 1918, your petitioner, in good faith and not for the purpose of delay, applied to the said Commission for a rehearing, upon the ground of newly discovered evidence as in its said petition, a copy whereof is hereto annexed, marked "Exhibit B," and made a part hereof, is set forth.

XIV. Thereafter and on February 1, 1918, the Commission made an order denying the said application, a copy of which said order is hereto annexed, marked "Exhibit C," and made a part hereof. On the same day, the said Commission made its further order in the said proceedings, wherein and whereby it was directed that your petitioner extend its gas mains and services in such a manner as might be required reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York, and known as Douglaston, including Douglas Manor; that the time within which the construction of the said proposed extension of gas mains and services be begun, pursuant to the order of the Commission made in said proceeding on March 19, 1915, be and the same was thereby fixed at not later than March 1, 1918; and that the time within which the construction of the said
2700 proposed extension, as far as Alley Road or Main Avenue, Douglaston, be completed by your petitioner be and it was thereby fixed at July 1, 1918; and that the time on or before which your petitioner file with the Commission a general plan or lay-out, showing a proposed transmission and distribution system to be installed by it, suitable and adequate to furnish reasonable service to the community known as Douglaston, including Douglas Manor, pursuant to the terms of the said order of the Commission, as then constituted, made March 19, 1916, be and it was thereby fixed at or before March 1, 1918; and that the time in which the extension be completed by the Company and in service be fixed at not later than July 1, 1918; and that said order take effect forthwith, and that within ten days after the service thereof your petitioner notify the Commission in writing whether the terms of the order of March

19, 1915, were accepted and would be obeyed within the time specified in the said order of February 1, 1918, a copy of which said order is also hereto annexed, marked "Exhibit D" and made a part hereof.

XV. The said orders of March 19, 1915, and February 1, 1918, now remain in full force and effect, to the great harm, prejudice and detriment of your petitioner.

XVI. Your petitioner further shows that on the original hearing your petitioner and the Commission entirely overlooked the uncontroverted scientific fact that the transmission of illuminating gas over a long distance, under pressure, as contemplated by said order, causes the liquefaction and deposit of a large portion of the luminants contained in the gas, reducing the illuminating power
2701 of the gas from thirty to fifty per cent, according to weather conditions, so that the illuminating power of the gas delivered to a large portion of its consumers, and to be delivered to Douglaston and Douglas Manor, would never exceed eighteen candle power and, under varying conditions, might be much less, instead of twenty-two candle power, as required by Chapter 125 of the Laws of 1906, as more fully appears from the affidavit of John B. Klumpp, verified herein on February 9, 1918; and the affidavit of Maynard H. Spear, verified herein on February 25, 1918, both of which are hereto annexed and made a part of this petition.

XVII. Your petitioner further shows that subsequent to the issuance of the said order of March 19, 1915, The City of New York, as your petitioner is informed and verily believes, adopted a final map for the territory in which your petitioner is operating, from which it appears that the grade of Broadway, through which your petitioner is directed by the said order to lay its said high pressure main, is to be raised by a fill of from one to sixteen feet over a distance of thirty-five hundred feet, all as more fully appears from the aforesaid affidavit of Maynard H. Spear; so that it would be an absolute waste of your petitioner's funds to require it to lay the said high pressure main at the present time, and later to relay the said main at large additional expense, particularly in view of the fact that the houses, which are not piped for gas, are now being supplied with electric current and gas would not be used for lighting but only for cooking during hot weather. All of which, your petitioner also offered, in its said application for rehearing, to establish by competent evidence.

2702 XVIII. Your petitioner further shows that since the order of March 19, 1915, was issued, the price of materials and labor has enormously increased, so that the expense of laying such additional mains will be at least fifty per cent. greater than that estimated by the Commission's own engineers upon the original hearing. In addition thereto, the cost of operation has increased to such an extent that the actual cost of gas supplied by your petitioner to its present consumers in the Third Ward, Borough of Queens, at the statutory rate of $1.00 per thousand cubic feet, including therein

interest at six per cent. on its investment in property devoted to gas purposes, is not less than $1.30 per thousand cubic feet of gas delivered. In view of this situation, it will be impossible for your petitioner to earn any return whatsoever on the investment necessary to be made in order to reach the new territory, and would not be able to earn any return whatever upon the reasonable value of its entire property devoted to the manufacture and distribution of gas.

XIX. Your petitioner further shows that the extension required to be made by the said order is equal to an extension of about sixteen per cent of its existing system, which has gradually grown to its present condition over a period of about half a century; and to make the six miles of transit main, required by the order to be laid, available, it will be necessary to lay an addition thereto, about eleven miles of distributing mains and four miles of service pipe, aggregating about four hundred tons of pipe, requiring fifteen cars to transport it from the mill. Throwing this additional work upon the already overburdened mills and railroads would not be
2703 looked upon with favor by the Federal authorities, as is evident from the Annual Report of the Comptroller of the Currency to the Second Session of the Sixty-fifth Congress of the United States, dated December 3, 1917, and the more recent correspondence between the President and the Secretary of the Treasury.

XX. Your petitioner further shows that since the adoption of the said order of March 19, 1915, proceedings have been instituted on the motion of the Commission on the question of the elimination of the grade crossing over the tracks of the Long Island Railroad, at Main Avenue, Douglaston, known as Case No. 2193, from which it appears that plans were submitted for a slight depression of the tracks at the point of crossing and for a detour of the highway overhead to the east of the present grade crossing, which said plans are opposed by the Douglaston Civic Association, the Douglas Manor Association and other persons affected by such elimination; and your petitioner is informed and verily believes that no definite plans have been adopted for this crossing by the Commission, so that it is impossible for your petitioner to prepare plans for carrying its main across the railroad tracks at Main Avenue, Douglaston, as in and by said order is directed.

XXI. Upon the grounds aforesaid, your petitioner accordingly made application to the Commission for a rehearing; but the said Commission, notwithstanding your petitioner offered to establish the foregoing facts by competent proof, arbitrarily and without regard to your petitioner's rights in the premises and for the purpose of penalizing your petitioner and coercing it into making such ex-
2704 tension, notwithstanding the matters and things aforesaid, denied such application, thus exposing your petitioner to the possibility of the heavy penalities and forfeitures provided for in the Act aforesaid, should it attempt to deliver gas through the distributing system provided for in the said original order, and threatens to compel an early compliance with the Commision's said original order or to punish your petitioner for non-compliance because

it honestly and in good faith and in the exercise of its constitutional rights, appealed to the Courts for a review of the Commission's said original order, as appears from the opinion of Commissioner Hervey, a copy of which is hereto annexed, marked "Exhibit E".

XXII. Your petitioner therefore respectfully submits that the said Commission, in refusing to hear the evidence offered by your petitioner, acted so arbitrarily as to be beyond the usual exercise of discretion and judgment, and the said order of February 1, 1918, denying your petitioner's application for a rehearing, is contrary to law and wholly unjust and unreasonable.

XXIII. The said order of the Commission constitutes a final determination of the rights of your petitioner, in that said order cannot be reviewed by an appeal to any court or to any other body or officers, and your petitioner has no other remedy to review said order, except by writ of certiorari, issued from and out of this Court, directing the Commission to return to this Court the records and all and singular the proceedings, orders, evidence, and decisions in the premises.

XXIV. Not less than four months have elapsed since said determination was made and became final and binding; and
2705 the time has not elapsed within which a writ of certiorari may be issued under the statute in such case made and provided.

XXV. No previous application for a writ herein has been made.

Wherefore, Your petitioner prays that a writ of certiorari be allowed and issued out of this Court, directed to Oscar S. Straus, Travis H. Whitney, Charles S. Hervey, Charles Bulkley Hubbell and E. J. H. Kracke, Commissioners, constituting the Public Service Commission of the State of New York for the First District, requiring and commanding them to return to this Court all and singular the records and proceedings had by and before them in and upon the hearing and determination in the aforesaid proceedings, and which were determined in and by the said orders of March 19, 1915, and February 1, 1918, and the order denying your petitioner's application for a rehearing, dated February 1, 1918, together with all the testimony and evidence upon which they proceeded in arriving at their determination in the premises, to the end that the said order of February 1, 1918, denying your petitioner's application may be reviewed and reversed, vacated, annulled, set aside or modified; and that your petitioner have such other and further relief as to the Court may seem just.

NEW YORK AND QUEENS GAS COMPANY,
By LEWIS B. GAWTRY, *Vice-President.*

SHEARMAN & STERLING,
Attorneys for Petitioner.

Office and P. O. Address,
55 Wall Street, N. Y. City, N. Y.

COMPLAINANT'S EXHIBIT 112.

Cost of Land of New York and Queens Gas Company.

Compl. Ex. #112.

Mary Rogers	Plot A..	$1,200.00		
J. F. Rogers et al	" B..	2,100.00		
Cecelia Rogers	" C..	700.00		
E. & D. Kirby	" D..	3,101.25		
Flushingside R. & C. Co.	" E..	520.00		
Mary Powers	" F..	608.00		
McMahon	" G..	8,410.00		
Raynor (Curetti)	" H..	3,991.65		
		$20,630.90	41,804 sq. feet	—49.35 cents per sq. foot
Deduct for Kirby House		2,000.00		
Cost of land acquired since Aug. 1, 1904		$18,630.90		—44.57 " " " "
Balance of area (applying average price paid for land acquired since Aug. 1, 1904)		29,237.03	65,589 " "	—44.57 " " " "
Total cost of land		$47,867.93	107,402 " "	—44.57 " " " "

(Here follows Complainant's Exhibit No. 113, marked page 2707.)

2708 COMPLAINANT'S EXHIBIT 114.

Copied from Minute Book of New York & Queens Gas Company.

Page 1.

Certificate of Incorporation of the New York and Queens Gas Company.

We, the undersigned, all being persons of full age and citizens of the United States and at least one of us a resident of the State of New York, desiring to form a corporation pursuant to Article VI of the "Transportation Corporation Law," do hereby certify:

First. The name of the corporation is to be "New York and Queens Gas Company."

Second. Its objects are to be manufacturing and supplying of gas for lighting the streets and public and private buildings of cities, villages and towns in the State of New York.

Third. The amount of its capital stock is to be Six Hundred Thousand Dollars ($600,000).

Fourth. The term of its existence is to be fifty years.

Fifth. The number of shares of which

(Page 2.)

the stock shall consist is to be six thousand (6,000) of the par value of One Hundred Dollars ($100) each.

Sixth. The number of its directors is to be three (3).

Seventh. The names and places of residence of the directors for the first year are as follows:

Charles Thomas, Flushing, New York.

J. Frederick Eagle, Borough of Manhattan, The City of New York, N. Y.

Harry L. Snyder, Montclair, New Jersey.

2709 Eighth. The operations of the corporation are to be carried on in the City of New York within the Borough of Queens, County of Queens, State of New York.

Ninth. The corporation shall have power to purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations.

The capital stock or any part thereof

(Page 3.)

of the corporation, now authorized or as increased, may in the discretion of the Board of Directors be issued and sold without previous offer to then existing stockholders.

Directors need not be stockholders in the corporation.

In witness whereof we have made, signed and acknowledged this certificate in duplicate this 7th day of July, 1904.

(Signed) CHARLES THOMAS.
J. FREDERICK EAGLE.
HARRY L. SNYDER.

STATE OF NEW YORK,
City and County of New York, ss:

On this 7th day of July, 1904, before me personally came Charles Thomas, J. Frederick Eagle and Harry L. Snyder, to me severally known and known to me to be the persons described in and who made and signed the foregoing certificate and severally acknowledged to me that they made, signed and executed the same for the uses and purposes therein set forth.

[SEAL.] THOMAS ROBINSON,
Notary Public, New York County.

2710 Pages 4 and 5 are blank.

Page 6.

Minutes of the First Meeting of the Directors, Being Also All the Incorporators of the New York and Queens Gas Company, Held at No. 40 Wall Street, in the City of New York, on the 13th Day of July, 1904, at 12 o'clock Noon.

Present: Messrs. Charles Thomas, Harry L. Snyder and J. Frederick Eagle.

On motion Mr. Thomas was elected Chairman, and Mr. Snyder Secretary of the meeting.

Evidence was presented that the certificate of incorporation had been filed in the office of the Secretary of State and in the office of the Clerk of the County of Queens.

On motion the Board then proceeded to the election of officers with the result that the following persons were elected to the positions respectively stated, to wit:

Charles Thomas, President.
J. Frederick Eagle, Vice-President.
Harry L. Snyder, Secretary.
Harry L. Snyder, Treasurer.

2711 Page 7.

A code of by-laws was thereupon presented and unanimously adopted; said by-laws being copied in this minute book from pages 290 to 296 inclusive.

The following proposition dated July 12, 1904, was presented by Mr. Henry R. Wilson:

New York and Queens Gas Company:

I offer to sell and deliver to you the entire outstanding stock (to wit: $300,000 common and $50,057 14/100 preferred) of the Newtown and Flushing Gas Company, with the entire outstanding bonds of that company (to wit: $300,000) for $1,250,000, payable as follows:

$600,000 thereof in your capital stock, being the entire authorized stock of the company $650,000 in your corporate bonds of $1,000 each, dated August 1, 1904, and payable thirty years after date, with interest at 5% (both principal and interest payable in gold), with the option to you to redeem said bonds or any thereof at 110 per cent, with accrued interest, provided however, that said bonds should be secured by your first mortgage, and shall be of an issue of not exceeding $1,000,000 secured by such mortgage; all other details of said bond and mortgage to be as approved by you;

2712 Page 8.

you to pay me in addition on or before August 1, 1904, an amount equal to six months' interest on said Newtown and Flushing bonds and 3% on its said preferred stock.

Some of your board are now already familiar with the value of the property offered, and I shall be very glad to present such further information as you may desire.

HENRY R. WILSON.

July 12, 1904.

Upon consideration of such offer the following preamble and resolution were offered and unanimously adopted.

Whereas, the directors believe and hereby adjudge and determine that the property offered by said Henry R. Wilson is worth at least the price which he demands therefor.

Resolved that the Company accept the offer of said Henry R. Wilson and purchase from him the entire capital stock (to wit, the 300,000 common and $50,057 14/100 preferred in par value) of the Newtown and Flushing Gas Company, with the entire outstanding bonds of that Company (to wit $300,000 in par value), for $1,250,000 plus an amount equal to six months' interest on said bonds and

2713 Page 9.

3% on said preferred stock, payable as follows: $600,000 in the capital stock of this company,

$650,000 in bonds of this company of $1,000 each, dated August 1st, 1904, and payable thirty years after date with interest at 5% (both principal and interest payable in gold), with an option to the company to redeem said bonds or any thereof on any interest date

at 110% with accrued interest, said bonds to be secured by the company's first and general mortgage and to be of an issue of not exceeding $1,000,000 secured by such mortgage,

A sum equal to six months' interest (to wit $7,500) on said Newtown and Flushing bonds and three per cent (to wit, $1,500) on its preferred stock in cash on the first day of August, 1904.

And that the officers of this company be and they hereby are authorized to consummate this transaction and accept said property and issue, deliver and make payment of such consideration therefor.

Thereupon the following resolutions were offered and unanimously adopted:

2714 Page 10.

Resolved, that in order to acquire, extend and improve its plant and borrow money to meet its obligations and for other lawful purposes of its incorporation, this company make and execute its corporate bonds to the par value of $1,000,000 to consist of 1,000 bonds of the par value of $1,000 each to bear date August 1, 1904, payable August 1, 1934, with interest payable semi-annually on the first days of February and August in each year at the rate of five per cent per annum until the principal sum shall be paid, both principal and interest payable in gold coin of the United States of the present standard of weight and fineness said bonds to be redeemable by the company on any interest date, and 110 per cent of their par value, with accrued interest and that said bonds be signed and executed by the President or Vice-President and by the Secretary in the name and behalf of this company, and that the Secretary affix the corporate seal thereto, the coupons attached to such bonds to bear the engraved signature of the Treasurer of the company, also

Resolved, that to secure the payment of said bonds and the interest thereon this company execute to the Lincoln Trust Company, of the City of New York, a mortgage or deed

2715 Page 11.

of trust bearing date August 1st, 1904, covering all its properties, rights privileges and franchises, acquired, and to be acquired, and that the President and Secretary be, and they hereby are, authorized and directed to execute and deliver such mortgage under the corporate name of the company and in its name and behalf, provided, however, that said mortgage shall not be delivered until the consent thereto of two thirds of the stockholders of said corporation shall have been given in writing or by vote at a special meeting according to law, and also

Resolved, that the form, language and terms of said bonds and mortgage be approved and fixed, except so far as above detined, by the President of the company in its behalf.

On motion duly seconded the Lincoln Trust Company of the

City of New York, was unanimously appointed transfer agent of the stock of the company.

On like motion the First National Bank of New York was unanimously appointed registrar for the stock of the company.

On motion the meeting thereupon adjourned.

(Signed) H. L. SNYDER,
Secretary.

2716 Page 12.

Meeting of the stockholders of the New York and Queens Gas Company, held at 40 Wall Street, Borough of Manhattan, City of New York, on the 15th day of July, 1904, pursuant to waiver signed by all the stockholders, which is as follows:

I hereby waive notice of a meeting of the stockholders of the New York and Queens Gas Company to be held at 40 Wall Street, Borough of Manhattan, City of New York, on the 15th day of July, 1904, for the purpose of adopting by-laws of the company.

Dated, New York, July 15th, 1904.

HENRY R. WILSON.

There were present persons representing the entire capital stock of the company. On motion, Mr. Wilson was appointed Chairman and Mr. Eagle Secretary of the meeting.

A set of by-laws prepared by counsel for the company was presented to the meeting, which after consideration and upon motion were unanimously adopted as by-laws for the company. The by-laws hereby adopted are the same as those adopted by the incorporators and directors of the company at a meeting held on the 13th day of July, 1904,

Page 13.

and are found in this Minute Book from pages 290 to 296 inclusive.

On motion the meeting adjourned.

(Signed) J. FREDERICK EAGLE,
Secretary of Meeting.

2717 Page 14.

Minutes of a Special Meeting of the directors of the New York and Queens Gas Company held at No. 40 Wall Street, in The City of New York on the 18th day of July, 1904, at 10 o'clock A. M.:

Present: Messrs. Thomas, Snyder and Eagle.

Waiver of notice of the meeting signed by all the directors was read and ordered on file.

The Secretary reported that the purchase of the stock and bonds of the Newtown and Flushing Gas Company from Henry R. Wilson had been duly consummated according to the offer of said Wilson as accepted by the directors; and thereupon the following preamble and resolution were moved, seconded and unanimously adopted:

Whereas, the New York and Queens Gas Company lawfully owns all the stock of the Newtown and Flushing Gas Company a stock corporation organized for and engaged in business similar to that of said possessor corporation, be it

2718 Page 15.

Resolved, by the Board of Directors of the New York and Queens Gas Company that said Newtown and Flushing Gas Company be, and the same hereby is, merged with and into the New York and Queens Gas Company and that a certificate of this company's ownership of all the stock of said Newtown and Flushing Gas Company and of this resolution of the Board of Directors to merge said corporation be executed by the President and Secretary of this company, with the corporate seal attached, and be filed in the office of the Secretary of State, to the end that this company do thereupon acquire and become and be possessed of all the estate, property, rights, privileges and franchises of said Newtown and Flushing Gas Company, and that they be vested in and held and enjoyed by this company as fully and entirely without change or diminution as the same were before held and enjoyed by said Newtown and Flushing Gas Company, according and subject to the provisions of the law of the State of New York.

The meeting thereupon adjourned.

(Signed) H. L. SNYDER,
Secretary.

2719 Page 16.

Minutes of a Meeting of the Directors of the New York and Queens Gas Company Held on the 3d Day of August, 1904, at 208 Fifth Avenue in the City of New York.

Present: Messrs. Charles Thomas, Harry L. Snyder and J. Frederick Eagle.

A waiver of notice of the meeting, signed by all the directors, was presented to the meeting and on motion ordered on file.

Mr. Eagle's resignation as director of the company was presented, and on motion was duly accepted.

On motion, duly seconded, Mr. Frank Tilford was elected to fill the vacancy occasioned by the resignation of Mr. Eagle and thereupon took his seat in the Board.

The resignation of Mr. Thomas as President of the company was presented to the meeting, and on motion, duly seconded, was accepted.

On motion, duly seconded, Mr. Frank

2720 Page 17.

Tilford was elected President of the company.

Mr. Thomas offered his resignation as director of the company, and on motion, duly seconded, his resignation was accepted.

On motion, duly seconded, Mr. Henry R. Wilson was elected director of the company to fill the vacancy occasioned by the resignation of Mr. Charles Thomas.

On motion, duly seconded, Mr. Charles Thomas was appointed 2nd Vice-President and General Manager of the Company.

The resignation of Mr. Eagle as Vice-President of the Company was presented to the meeting, and on motion, duly seconded, was accepted.

On motion, duly seconded, Mr. Henry R. Wilson was elected Vice-President of the company.

On motion the meeting adjourned.

(Signed) H. L. SNYDER,
Secretary.

2721 Page 18 is blank.

Page 19.

We, being all the directors of the New York and Queens Gas Company, hereby waive notice of a meeting of the directors to be held at the office of the company, 208 Fifth Avenue, New York City, on the 21st day of October 1904, at 10 o'clock, for the purpose of acting upon a proposition to request the Union Trust Company of New York to cancel the mortgage of the Newtown and Flushing Gas Company to the Union Trust Company of New York, which mortgage was dated the 1st day of August, 1900, and for the purpose of transacting any other business which may come before the meeting.

Dated, New York, October 21st, 1904.

(Signed) HENRY R. WILSON.
" H. L. SNYDER.
" FRANK TILFORD.

Comp. Ex. 115. J. A. F.

New York & Queens Gas Company.

Defendants' Exhibit A-20 as to Revenues and Expenses During 1920 Extended to Cover Five Months' Period Ending May 31, 1920.

	Five months ending May 31st.			
	1919.	1920.		
Gas Sales (M Cu. Ft.).				
Municipal buildings	780.8	703.0	(D)	*77.8*
Prepayment	31,819.0	36,545.5		4,726.5
Commercial metered lighting	102,309.0	135,850.3		33,541.3
Total Gas Sales	134,908.8	173,098.8		38,190.0
Operating Revenues.				
Gas Sales:				
Municipal building @ $.75	$ 585.60	$ 527.25	(D) $	*58.53*
Prepaid Gas @ $1.00	31,819.15	36,543.55		4,724.40
Commercial metered lighting @ $1.00	101,477.60	135,552.12		34,074.52
Total Gas Sales	$133,882.35	$172,622.92		$38,740.57
Rent of Gas Appliances	4,882.35	6,024.91		1,142.56
Gas Merchandise & Jobbing Revenue	1,732.92	6,136.26		4,403.34
Total Operating Revenue	$140,497.62	$184,784.09		$44,286.47
Per M sold	$0.0414	$1.0675		.....

COMPLAINANT'S EXHIBIT 115—*Continued.*

	Five months ending May 31st.		
	1919.	1920.	
Operating Revenue Deductions.			
Production expenses	$98,577.30	$132,520.17	$33,942.87
Transmission & distribution expenses	11,555.80	18,476.41	6,920.61
Commercial administration	8,782.29	13,616.80	4,834.51
Promotion of business	1,012.81	1,207.17	194.36
General & Miscellaneous expense	10,682.40	15,342.14	4,659.74
Renewals & Replacements	4,047.16	5,192.96	1,145.80
Total Operating Expenses	$134,657.76	$186,355.65	$51,697.89
Tax Accruals	11,000.00	10,750.00	*250.00*
Uncollectible Bills	648.37	260.18	*388.19*
Total Revenue Deductions	$146,306.13	$197,365.83	$51,059.70
Per M sold	$1.0845	$1.1402	.....
Operating Deficit.			
Excess of expenses over revenue	*5,808.51*	*12,581.74*	*6,773.23*
	Per M c. ft. sold.		
Operating Revenue.	$1.0414	$1.0675	
Revenue Deductions:			
Production	.7307	.7658	
Transmission & distribution	.0857	.1067	

94299

Vol. IV

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 296.

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, AND ALFRED M. BARRETT, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT, APPELLANTS,

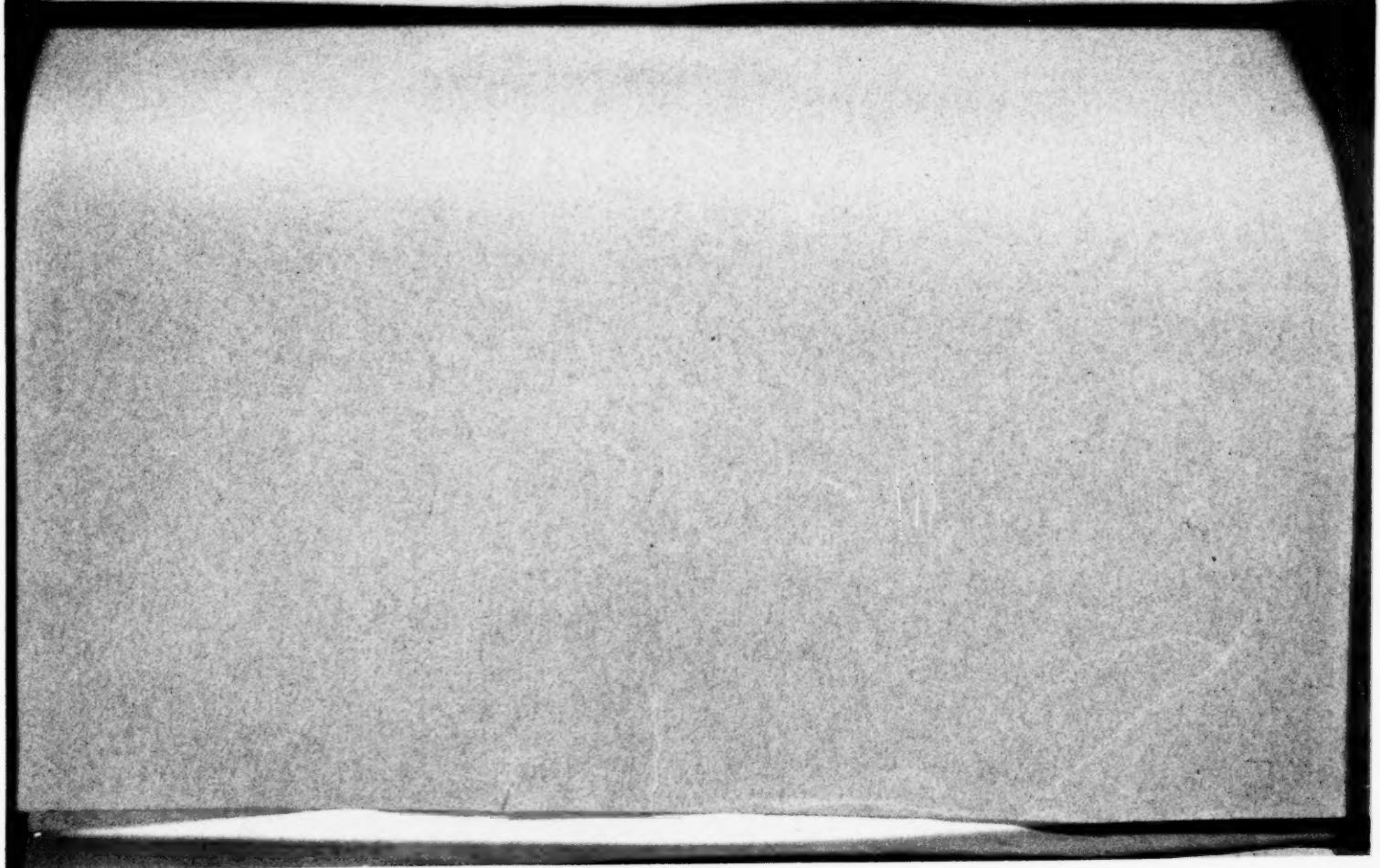
vs.

NEW YORK & QUEENS GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 11, 1921.

(28,225)



(28,225)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

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VOLUME IV.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 28, 1921.

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	Original.	Print.
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	Original.	Print.
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CHARTS TOO LARGE FOR FILMING

EXTRACT FROM LAW RELATING TO TAXATION OF SPECIAL FRANCHISES

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosure for electrical conductors and other appurtenances upon, above and under ground, all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through streets, highways or public places; all railroad structures, substructures and superstructures; tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate in, under, above, upon, or through any streets, highways or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

2732

Defendant's Exhibit A

Form A-1-13

REPORT

OF THE

Newtown and Flushing Gas Company
by
New York and Queens Gas Company
into which the Newtown & Flushing Gas Co was merged July 8, 1904

TO THE

Recorded

State Board of Tax Commissioners

OF THE

STATE OF NEW YORK

FOR THE

Year Ending June 30, 1904

2731

This report should be accompanied by maps showing the location and extent of all property subject to taxation as a "Special Franchise."

2731

Defendant's Exhibit I

2

Office of the

State Board of Tax Commissioners

ALBANY,....

SIR:

The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the Report of your company required by Section 43, Chapter 712, Laws 1899.

☞ It is requested that you complete and forward such report as required by that Act on or before December 1, 1901.

Very respectfully

STATE BOARD OF TAX COMMISSIONERS

EXTRACT FROM LAW RELATING TO TAXATION OF SPECIAL FRANCHISES

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Defendants Exhibit I

3

SCHEDULE A

Title of Company Newtowns and Flushing Gas Company

General Offices at 88 Main Street, Flushing, New York.

Date at close of Fiscal Year August 1st

For information concerning this Report address Chas. G. M. Thomas Vice President
208 — 5th Avenue, New York City.

OFFICERS OF THE COMPANY WITH P. O. ADDRESS:

President Frank Tilford

Vice-President Henry R. Wilson

Secretary Harry L. Snyder

Treasurer " "

General Manager & Vice President Chas. G. M. Thomas

DIRECTORS OF THE COMPANY:

Name	*P. O. Address*
Frank Tilford	208 - 5th Ave. New York City
Henry R. Wilson	" Irving Place "
Harrison E. Dawley	"
Lewis B. Dawley	

Same as last reported

Note: If this information was given in former report and copies filed state such fact, giving only additional rights since last report.

Copy of special Law, grant, ordinance or contract or reference to general law under which "special franchise is held, possessed or enjoyed and statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed."

SCHEDULE C

5

Defendant's Exhibit A

Defendant's Exhibit A

4

SCHEDULE B

Description of special franchise, showing streets, highways or public places possessed or rights enjoyed and in what tax district or districts same is located.

Note: If this information was given in former report and map filed, state such fact, giving only additional grants since last report.

Same as last reported.

CAPITAL STOCK—SCHEDULE E

	No. Shares	Total Par Value	Dividends Declared During Year		Market Value During Year		
			Rate	When Payable	Highest	Lowest	Present
Common issued.....	3000	300,000	1%	Feby 1, 1904	Unlisted no market quotations known.		
Preferred issued.....	500	50,000	1%	Feby & August	"	"	"
Total.....							

FUNDED DEBT—SCHEDULE F

Designation of Lien	Date	Maturity	Amount Outstanding	Interest		Market Value During Year		
				Rate	When Payable	Highest	Lowest	Present
Mortgage subject to a prior mortgage covering the entire plant of the Company's property securing $75,000 of bonds	Aug. 1, 1900	Aug. 1, 1930	300,000	5	Feby & Aug	About 90 There was no market for the bonds but a few private sales were made at 90		

Statement of Assets and Liabilities June 30, 1903

SCHEDULE D

Assets	Amount	Liabilities	Amount
Cost of Real Estate & Improvements	[illegible]	Capital Stock	[illegible]
Cost of Equipment	[illegible]	Funded Debt	[illegible]
Stock & Bonds of other Companies	[illegible]	Accounts and Bills Payable	[illegible]
Material and Supplies	[illegible]	Int. on Funded Debt Due & Accd.	[illegible]
Accounts and Bills Receivable	[illegible]	Rentals Due and Accrued	[illegible]
Cash on hand	[illegible]	Dividends unpaid	[illegible]

Allegheny County Collection

2737

☞**NOTE: Use one of these forms for each township, city, and for each ward in a city where the tax rates differ, stating name of district.**

FORM A-1

Tax District .....

GAS

REPORT

43 Miles

OF THE

Newtown and Flushing Gas Company by New York and Queens Gas Company into which it was merged July 18 1904

OF

TANGIBLE REAL PROPERTY

Located in, upon, under or above Streets, Highways, and Public Places

---

☞Pursuant to the provisions of Section 43, Chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office on or before December 1st, 1904

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

b3/8

2741

	AMOUNT
Gross Receipts	$ 97,914.69
Interest and Dividends	None
Rentals (not including Leases)	None
Advertising	None
Sales of Stocks	None
Sales of Bonds	None
Bills Payable	7,000.00
Other Sources	None
Rents Received for Tracks and Terminals	14,376.27

Defendant's Exhibit I

GAS

Laid Previous to June 30 1908 Report only on property located in, upon, under or above Streets, Highways and Public Places.

Diameter of pipe inches	Length in Feet: Cast Iron	Length in Feet: Steel and Wrought Iron	Average Age years	Weight per foot	Valves and Boxes: Number	Valves and Boxes: Size in inches	Valves and Boxes: Age years	Hydrants: Number	Hydrants: Age years	Service Connections: Size and Number	Service Connections: Length in feet	Service Connections: Age	Service Connections: Kind	Kind of Paving
3"	6342	None	Unknown											
4"	12642	"	"											
6"	3283	"	"											
8"	6432	"	"											
10"	11387	"	"											
12"	2492	"	"											

Laid from June 30 1908 to Nov 1 1908

Pavement under which pipes are laid

Pavement under which pipes are laid

State of New York } ss:
County of West Chester

Charles Thomas Vice President of the Flushing and Newtown

being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters therein set forth, to the best of my knowledge and belief.

Subscribed and sworn to before me

Charles Thomas

Defendant's Exhibit I

11

SCHEDULE K

AND SAME OUTSIDE WITH ASSESSMENTS IN EACH TAX DISTRICT

PRESENT VALUE OF PROPERTY *Outside* STREETS, HIGHWAYS AND PUBLIC PLACES. (Allowing depreciation.)	ASSESSMENT OF REAL ESTATE *in* STREETS, HIGHWAYS, ETC., IN 1908	ASSESSMENT OF REAL ESTATE *Outside* STREETS, HIGHWAYS, ETC., IN 1908	REMARKS
36320	75,000 (includes intangible rights & intangible property as contemplated in Special Franchise Tax Law)	36320	The foregoing figures except those in the last two columns are necessarily estimated

Defendant's Exhibit L

SCHEDULE G

Report below must be MADE IN DETAIL as called for.

DISBURSEMENTS		AMOUNT
	$	
Salaries of General Officers		1 530
Salaries of Clerks and Office Expenses		6 170 55
Law Expenses		1 238 35
Other Operating Expenses		46 698 96
Maintenance { In Streets		2 018 37
Maintenance { Outside Streets		
Reconstruction { In Streets		424 23
Reconstruction { Outside Streets		
New Construction (Extension) { In Streets		21 174 91
New Construction (Extension) { Outside Streets		1 160 15
Rentals		15 000
Interest paid		None
Rents paid for Tracks and Terminals		470 24
Taxes on Capital Stock and Earnings paid Comptroller		None
Taxes paid on Special Franchise		510 73
Taxes on Real Estate in this State other than Special Franchise		None
Taxes on Personal Estate in this State		None
Taxes on Property in other States		None
Payments Covered by Sec. 46, Tax Law. — Percentage on Gross Earnings paid Municipality		
Other Items		None
Dividends paid % Common Stock		3 000
Dividends paid % Preferred Stock		3 000
Amount paid for New Street Paving		None
Surplus		9 253 45
Total		109 110 91

Detailed statement of shares of stock actually owned in other corporations which are taxable on their capital stock and all other non-taxable securities owned.

DESCRIPTION	AMOUNT
None	
TOTAL	

STATEMENT OF COST TO REPRODUCE NEW PROPERTY IN STREETS, HIGHWAYS, ETC.; VALUE, LESS DEPRECIATION

SCHEDULE K

NAME OF EACH TOWNSHIP AND CITY WHEREIN LOCATED AND WARDS IN CITY WHERE DIFFERENT TAX RATES PREVAIL	PRESENT VALUE OF PROPERTY in *Streets, Highways and Public Places* (Allowance for depreciation)	PRESENT VALUE OF PROPERTY *outside Streets, Highways and Public Places* on Basis of Cost of Reproduction, (New)
Borough of Queens	$ 60,047.00	$ 54,854.00
The City of Flushing		50,000

SCHEDULE H

STATEMENT IN DETAIL OF RENTALS PAID

NAME OF LESSOR	ANNUAL RENTAL PAID BY LESSEE	PORTION USED FOR PAYMENT OF INTEREST ON DEBT OF LESSOR	PORTION USED FOR PAYMENT OF DIVIDENDS ON CAPITAL STOCK OF LESSOR
None			

Total amount of Annual Rental.....

SCHEDULE J

STATEMENT IN DETAIL OF RENTALS RECEIVED

NAME OF LESSEE	THE ANNUAL AMOUNT
None	

ble only to Railroad Corporations

SCHEDULE M

DETAILS OF ROADS OWNED AND LEASED

From	To	Total Mileage	Miles Owned	Miles Leased

Defendants Exhibit 9
Stipulation

The accompanying blanks are an integral part of this report. A separate blank should be used for *each township, city, and for each ward in a city where the tax rates differ*. Additional blanks will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not contain the proper blanks for the different fields of construction needed to make a satisfactory report, other blanks will be furnished on request, covering surface street railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam, heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them.

The Law requires that every report made under this section shall have annexed thereto the affidavit of the President, Vice-President, Secretary or Treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK,
County of New York } ss.

Charles Thomas Vice President

of the Newtown and Flushing Gas Company

being duly sworn, deposes and says that the foregoing Statements have been compiled from the books and records of this Company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said Company and the value thereof at the close of the year ending June 30, 1903, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

Charles Thomas

[L. S.]

Subscribed and Sworn to before me this
25th day of November, 1904

Thomas Robinson
Notary Public

New York County, N. Y.

Defendants Exhibit J

New York & Queens Gas Co.

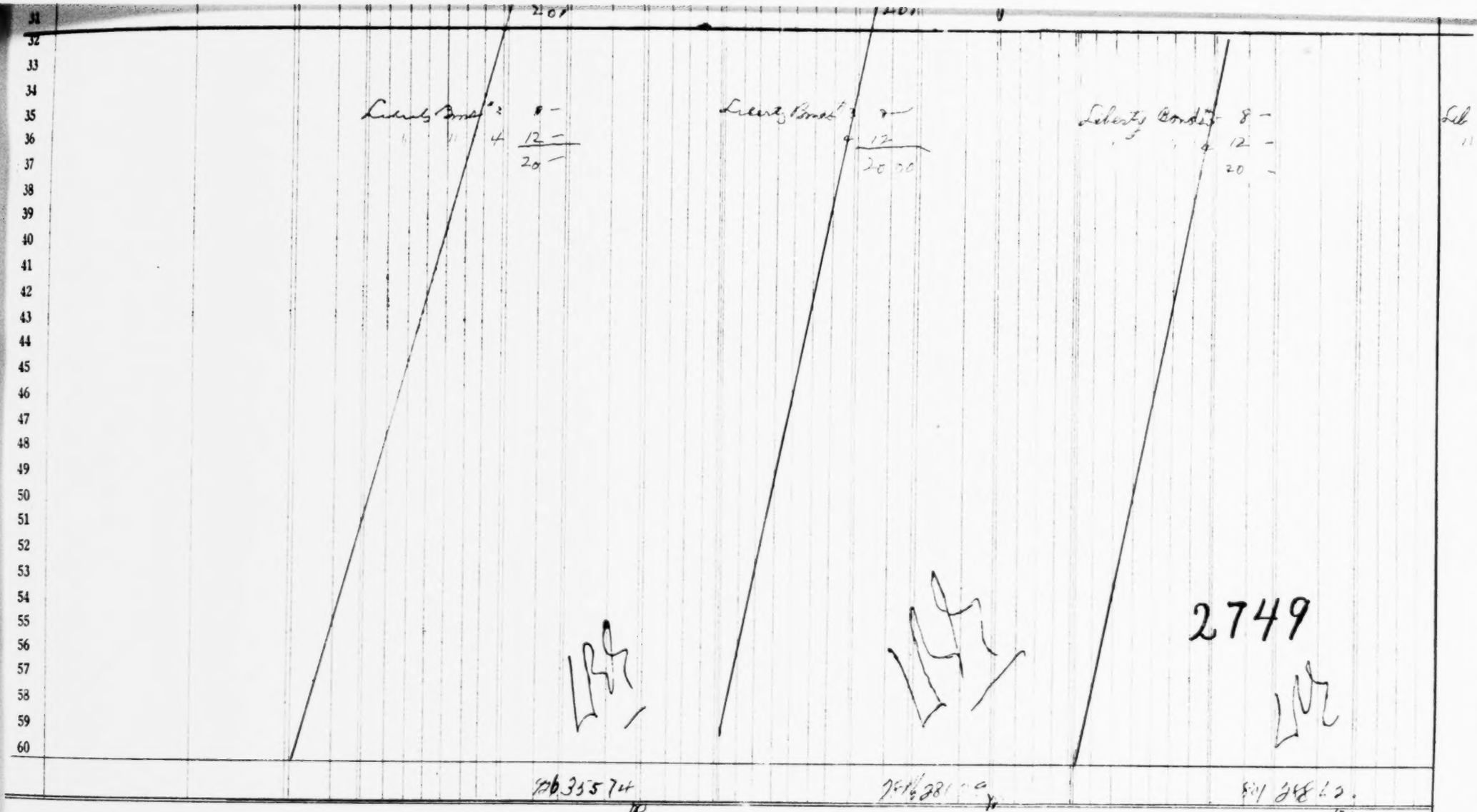
Location of Work Shop

For Month Ending Jan 31

No.	NAMES	EMPLOYMENT	RATE Amt.	Per	1	2	3	4	5	6	7	TIME Days	TIME Hrs	AMOUNT	M A Y	L A B	L A B	8	9	10	11	12	13	14	TIME Days	TIME Hrs	AMOUNT	M A Y	L A B	L A B	15	16	17	18	19	20	21	TIME Days	TIME Hrs.	AMOUNT	M A Y	L A B	L A B	22
1	J Fenton	Fitter	43	hr	✓	9	9	9		9	9		44	19 33	14	1	1	9	9	9	10		9	9		35	23 65	19	1	1	9	10	10	9	9	9			17	24 51	19	1	1	9
2	H Jarvis	"	38½	"	✓	9	9	4½	9	9			40½	15 75	12	1		9	9	9	4½		9	9		49½	19 23	17	1	1	9	4½	9	4½	10	9			46	17 88	12	1	1	9
3	W Edgar	"	47	"	✓	9	9	9		9	9			34 35 38	5		2	9	9	9	9		9	9		34	35 38	5		2	9	9	9	9	9	9			34	33 38	5		2	9
4	J Sheridan	"	43	"	✓	9	9	9		9	9			115 19 38	19	1	1	1	1	10	9		9	9		37	24 57	9	1	1	9	11	10	9	9	9			37	24 57	9	1	1	9
5	Chas Vogt	"	42	"	✓	9	9	9		9	9			34 22 68	17		4	9	9	9	9		9	9		34	22 68	18			9	9	9	9	9	9			34	22 68	18			9
6	W Webb	"	40	"	✓	10	9	9		10	10			115 17 20	12	1	1	10	10	9	9		10	9		37	22 80	17	1	5	9	9	9	9	10	10			36	22 40	18	1	1	9
7	Chas Wansen	"	36½	"	✓	9	9	9		11	11			117 17 69	16	1	1	10	10	10	10		10	10		60	31 67	16	1		10	9	10	9	11	11			60	21 67	18	1	1	11
8	H Kleinau	"	36½	"	✓	9	9	9		10	10			47 16 97	14	1	1	11	9	10	9		10	10		39	21 31	14	1	1	9	9	9	9	11	10			37	20 35	14	1	1	10
9	J Berman	Chauffeur	33⅓	hr	✓	9	9	9		9	9			34 18 00			1	9	9	9	9		9	9		34	18 00			1	9	9	9	9	9	9			34	18 00			1	9
10	C Lindemann	"	33⅓	"	✓	9	9	9		9	9			34 18 00			1	9	9	9	9		9	9		34	18 00			1	9	9	9	9	9	9			34	18 00			1	9
11	W Butler	Helper	30⅓	"	✓	10	9	11		5	10			44 13 44	13	1	1	1	1	10	9		10	10		37	17 41/2	13	1	1	9	10	9	10	10	10			38	17 72	13	1	1	10
12	Gorsuch	"	25	"	✓	9	9	4½		9	9			11 6½ 10 13				9	9	9	9		9	9		34	13 30				9	9	9	9	9	9			34	13 30				9
13	Valentine	"	27½	"	✓	9	9	9		9	9			11 5 13 30				9	9	9	9		9	9		34	15 00				9	9	9	9	9	9			34	13 00				9
14	A Campagna	Ass't Fireman	38	"	✓	9	9	9		9	9			34 15 12	16	1	1	9	9	9	9		9	9		34	15 12	16	1	1	9	9	9	9	9	9			34	15 12	16	1	1	9
15	A Culmpagna	Janitor	300	Wk	2	2	2			2	2			12 3 00				2	2	2	2		2	2		12	3 00				2	2	2	2	2	2			12	3 00				2
16	Railroad Bob	Foreman	53⅓	hr	30	27	28			30	28															28	29				1								Jan 2					
17	"	"	50	"	✓	9	9	9		9	9			40 29 93	7½																													
18	"	"	41⅔	"		9	9	9		9				35 14 58																													
19	"	Labor	44⅔	"	✓	9	9	9		9	9			111 19 86																										11		4	2 56	P&C			
20	"	"	38⅓	"	✓	8	9	11		9	8			86 33 44																										11		4	1 7				
21	"	"	36⅓	"																																				8		3	11				
22	Horse Wagon	—	33⅓			9	9	9		9				33 11 67	10	1	2	5																						11		4	1 33				
23														355 30																															
24																																													
25																																													
26																																													
27																																													
28																																													
29														Sick Benefit 1 51												Sick Benefit 1 51												Sick Benefit 1 51							
30														Insurance 50												Insurance 20												Insurance 20 1							
31														20 1																															
32																																													

1919

| | | |



We certify that the above named have worked the number of hours set opposite their names.

W Parsons

T B McKennon

Approved

Wm Rapp

General Manager

We certify that the above named have worked the number of hours set opposite their names.

W Parsons

T B McKennon

Approved

Wm Rapp

General Manager

We certify that the above named have worked the number of hours set opposite their names.

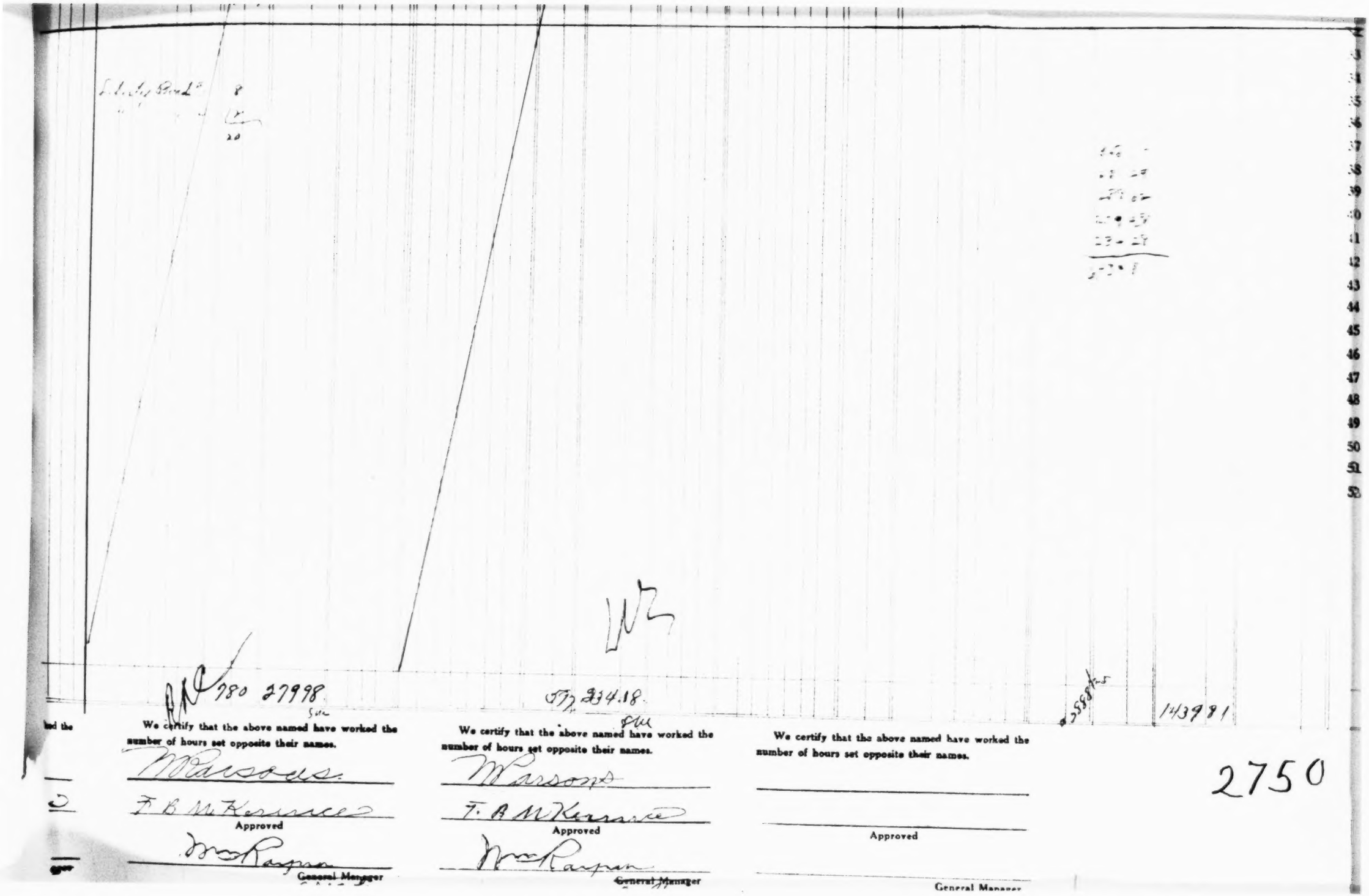
W Parsons

T B McKennon

Approved

Wm Rapp

General Manager



780 27998

We certify that the above named have worked the number of hours set opposite their names.

Approved

General Manager

We certify that the above named have worked the number of hours set opposite their names.

Approved

General Manager

We certify that the above named have worked the number of hours set opposite their names.

Approved

General Manager

2750

Shop

LABOR ACCOUNT

Defendants Exhibit J

FOR MONTH ENDING

January 31st 1919

	GAS OPERATING			
1A	Superintendence			
1B	Boiler Labor			
1C	Generator Labor			
1D	Purifier Labor			
1E	Miscellaneous			
	Total			
	WORKS—REPAIRS			
8	Works and Station Structure			
9	Power Plant			
10	Gas Apparatus			
11	Works—Tools			
	Total			
	TRANSMISSION AND DISTRIBUTION			
12	Transmission Pumping			
13	Distribution Superintendence			
14	Distribution Supplies and Expenses		49 28	
15	Gas Meter and Installation Work		986 74	
16	Work on Consumer's Premises		435 72	
16½	" " " "			
16A	" " " "		23 98	
16B	" " " "		22 91	
17	Repairs of Gas Mains		117 85	
18	Repairs of Gas Services		94 17	
19	Repairs of Meters		1 99	
20	Repairs of Distribution Tools			
21	Repairs of Appliances		87 58	
22	Repairs of Street Lamps			
33	Stable Expense			
33½	Repairs to Automobiles			
	Total			29 22
	Carried Forward			

Shop

LABOR ACCOUNT

FOR MONTH ENDING

January 31st 19

	Brought Forward			29 22
	CONSTRUCTION			
D1	Office			
D2	Holders			
D3	Store			
D4	Stable			
E	Works and Station Structure			
F	Holders			
G	Furnaces, Boilers and Accessories			
H	Steam Engines			
J	Misc. Power Plant Equipment			
K	Water Gas Sets and Apparatus			
L	Purification Apparatus			
M	Accessory Equipment at Works			
N	Trunk Lines and Mains			
N	Trunk Lines and Mains (City Inspections)			
O	Gas Services	3	23	
O	" " (City Inspections)			
P	Gas Meters			
R	Gas Meter Installation	74	68	
S	Gas Tools and Implements			
T	Gas Laboratory Equipment			
	Total			22 91
	COMMERCIAL			
23A	General Labor	54	12	
23B	Accounting			
23C	Contracts			
23D	Collecting, Regular	15	12	
23D	" Prepayment			
23E	Meter Reading	2	44	
23G	Cashier			
23H	Stoves			
25	Canvassing and Soliciting			
27	General Office Expense			
27	" " " Def. Emergency			
35	Relief Dept. & Pensions			
	Total			71 68
	Total Amount of Pay Roll			1439 81

2751

Defendants Exhibit K

New York & Queens Gas Co.

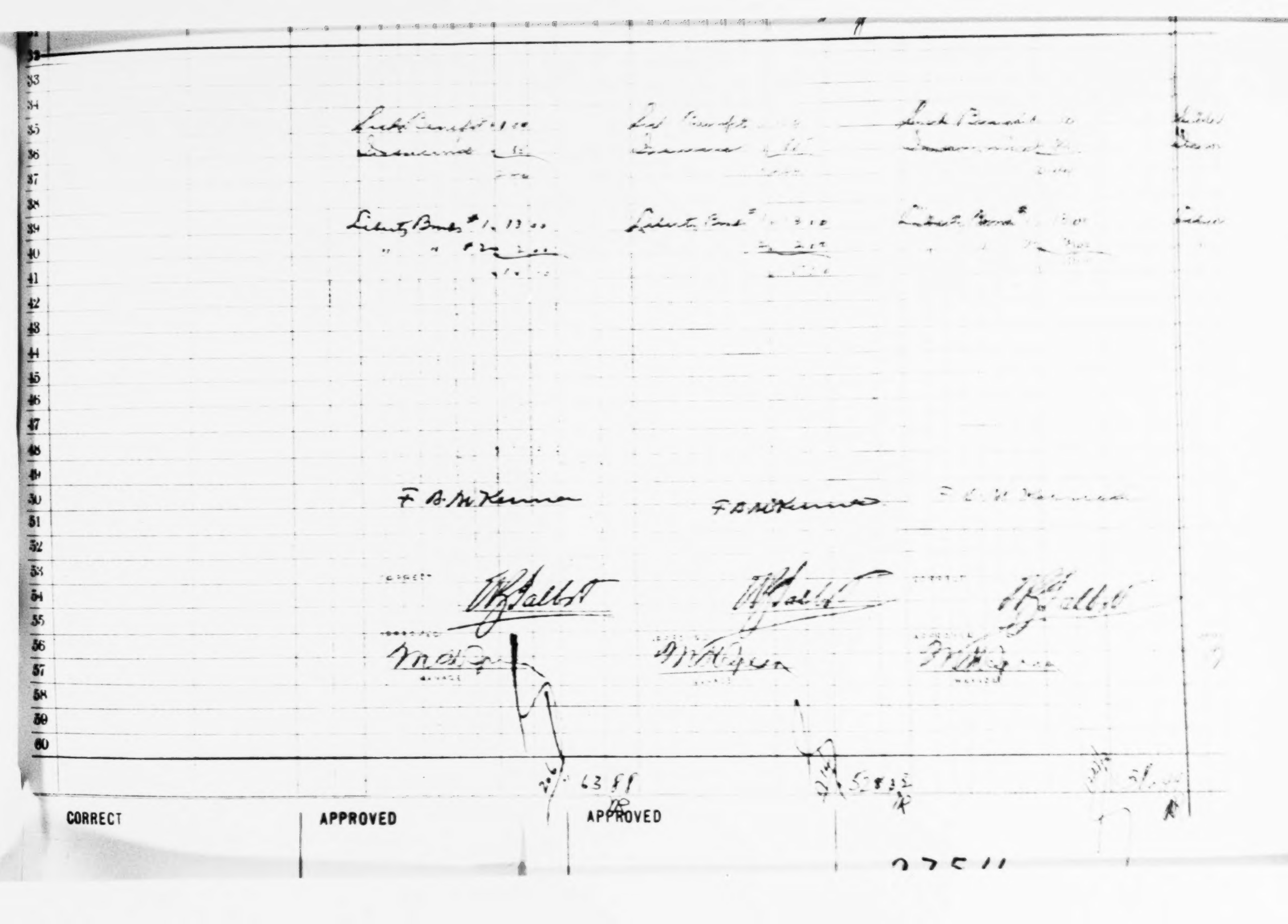
For Month End

Location of Work Steps 100 County St Flushing

No.	NAMES	EMPLOYMENT	RATE Amt.	RATE Per		TIME Days	TIME Hrs	Left Brooklyn AMOUNT			1	2	3	4	5	6	7	8	TIME Days	TIME Hrs	Left Brooklyn 30 AMOUNT			9	10	11	12	13	14	15	TIME Days	TIME Hrs	Left Brooklyn AMOUNT			15
1	P Centoney	Fitter	36 3/3	Hr							15	12	13	13	12	9	9																		
2	A Jarvis	"	33	"							17	9	9	16	+	9	9																		
3	L Edgar	"	40	"		9		1	360		10	10	9	11	2	10	10		62		1	24	80	10	10	10	9	+	10	10		51	1	23	60
4	L McKay	"	42 7/9	"		9		1	385		16	9	4½	16	+	4½	9		54		1	25	74	9	9	9	4½	+	9	9		44½	1	21	17
5	P Cutler	"	33 1/3	"				1	—		13	+	12	+	+	9	9		45		1	15	—	9	9	9	+	+	12	9		41	1	16	—
6	W Strong	Water Carrier	33 1/3	"				1	—		5	+	5	8	+	+	+		18		1	6	—	+	+	8	5	+	+	5		18	1	6	—
7	J Sheridan	Fitter	36	"		18		1	648		15	9	17	23	13	14	12		103		1	37	08	13	10	14	14	+	9	15		75	1	27	—
8	A Powers	"	36 3/3	"		16		1	587		13	5	11	11	+	4½	4½		49		1	17	97	6	9	9	9	+	13½	9½		56	1	20	53
9	E Kelker	"	33 1/3	"		9		1	3—		9	9	9	20	14	10	9		80			26	67	9	9	9	4½	+	9	9		49½		16	50
10	W Stacom	"	35	"		12		1	420		12	12	11	18	13	9	9		84		1	29	40	10	10	10	11	+	10	10		61	1	21	35
11	M Ahern	"	33	"				1	—		13	10	13	+	+	10	9		55		1	18	15	9	9	9	+	+	9	9		45	1	14	85
12	E Boyt	"	33	"		18		1	594		16	16	16	26	18	12	10		114			37	62	10	9	9	9	+	9	9		55		18	15
13	W Webb		33 1/3	"		14			467		15	13	15	16	18	10	10		97			32	33	9	9	9	9	+	10	10		56		18	67
14	L Warner	"	27 7/9	"		9			250		15	10	12	16	16	9	9		87			24	17	11	9	9	6	+	9	9		53		14	72
15	L Kiernan	"	30	"		18		1	540		15	13	15	16	18	10	10		97			29	10	9	9	9	9	+	10	10		56		16	80
16	J Glennon	Chauffeur	28	"		15		1	420		9	9	10	18	+	9	8		63		1	17	64	9	9	9	9	+	9	9		54	1	15	12
17	J Sheehan	"	22 7/9	"		10			222		15	12	10	13	13	9	9		81			18	—	9	9	9	10	+	9	9		55		12	22
18	W Cutler	Helper	25	"		16		1	4—		19	16	13	12	+	9	9		78		1	19	50	9	10	6	+	+	6	5		36	1	9	—
19	T McKenna	"	27	"		15			405		9	12	12	14	+	9	9		70			18	90	9	9	9	9	+	9	9		54		14	58
20	J Jeanpegan	Air Driver	25	"		9		1	225		16	11	17	18	18	11	10		96		1	24	—	10	10	9	10	+	10	9		58	1	14	50
21	E Smith	Helper	22 7/9	"				1	—		9	10	9	10	10	9	9		66		1	14	67	10	9	9	9½	+	11	10½		54	1	12	—
22	J Griffin	Janitor	18 1/3	"		9			165		9	9	9	9	+	9	9		54			9	90	9	9	9	9	-	9	9		54		9	90
23	Sullivan Bros	Foreman	50	"					—		+	+	+	+	+	+	+		—			—		+	+	+	+	+	+		+			
24	do	"	46 7/9	"					—		+	+	+	+	+	+	+		—			—		+	+	+	+	+	+		—			—
25	do	Horse & Wagon	33 1/3	"					—		+	+	+	+	+	+	+		—			—		+	+	+	+	+	+		—			—
26	do	Laborer	33 1/3	"					—		+	+	+	+	+	+	+		—			—		+	+	+	+	+	+		—			—
27	do	"	30 5/9	"					—		+	+	+	+	+	+	+		—			—		+	+	+	+	+	+		—			—
28	S N I	"	22 1/2	"							15	9	12	12	12	11	12		103			26	11	12	11	9	9	9	9		80			16	29

Bonus Amount 9	10	16	17	18	19	20	21	22	TIME Days	TIME Hrs	Federal Bonus AMOUNT 32	23	24	25	26	27	28	29	TIME Days	TIME Hrs	Federal Bonus AMOUNT 33	30	31	TIME Days	TIME Hrs	AMOUNT	TOTAL TIME Hours	Mins.	RATE AMT.	RATE Per	TOTAL AMOUNT	Amount of Last Part Week Payroll	
9	90	13	9	9	12	1	6	10	MAS	60	1 " " 22 —	9	9	10	7	2	9	8	MAS	54	1 " " 19 80	9	9		18	6	60	273		36¾	Hour	100	10	3. 80	1
7	16	9	9	9	11	+	9	9	9+5	56	1 " " 18 48	10	9	9	6	+	9	9	9+5	52	1 " " 17 16	10	10		20	6	60	244		33	-	82	17	10 29	2
3	60	10	9	9	9	2	10	9	12+5	58	1 " " 23 20	10	10	10	9	2	10	9	12+5	60	1 " " 24 —	9	10		19	7	60	267		40	-	106	80	23 60	3
1	17	10	9	9	4½	+	9	9	12+5	54½	1 " " 21 60	9	9	9	9½	+	9	9	12+5	49½	1 " " 21 17	9	9		18	7	70	235½		42½	-	100	73	23 53	4
16	—	9	10	9	4½	+	9	9	10+5	50½	1 " " 16 83	10	10	9	—	+	9	9	10+5	47	1 " " 15 67	9	9		18	6	—	208½		33⅓	-	69	50	14 —	5
6	—	9	9	9	9	+	7	7	10+5	50	1 " " 16 67	7	8	9	5	+	9	7	10+5	45	1 " " 15 —	7	7		14	4	66	145		33⅓	-	48	33	9 33	6
27	—	15	15	15	14	7	14	12	10+5	92	1 " " 33 12	15	11	15	9	3	10	11	10+5	74	1 " " 26 64	15	11		26	9	36	388		36	-	139	68	30 24	7
20	53	6	6	4½	9	+	9	11	11+5	45½	1 " " 16 68	9	4½	9	4½	+	9	9	11+5	45	1 " " 16 50	4½	9		13½	4	95	225		36⅔	-	82	50	4 02	8
16	50	9	9	9	9	+	9	9	10+5	54	1 " " 18 —	10	9	9	5	+	9	9	10+5	51	1 " " 17 —	9	9		18	6	—	261½		33½	-	87	17	16 67	9
21	35	10	10	9	10	+	10	9	10+5	58	1 " " 20 30	10	9	9	10	+	10	10	10+5	58	1 " " 20 30	10	9		19	6	65	292		35	-	102	20	23 45	10
14	85	10	10	9	9	+	9	9	9+5	56	1 " " 18 48	9	9	12	+	+	9	9	9+5	48	1 " " 15 84	9	9		18	5	94	222		33	-	73	26	17 82	11
18	15	9	9	9	9	+	9	9	9+5	54	1 " " 17 82	9	9	11	12	2	13	12	9+5	68	1 " " 22 44	14	12		26	8	58	335		33	-	110	55	22 44	12
16	67	9	9	9	9	+	9	9		54	1 " " 18 —	9	9	9	9	+	9	9		54	1 " " 18 —	9	9		19	6	33	294		33½	-	98	—	19 33	18
14	72	12	9	9	11	+	9	12		62	1 " " 17 22	10	9	9	12	+	9	9		58	1 " " 16 11	10	10		20	5	55	289		27⅞	-	80	27	18 33	14
16	80	9	9	9	9	+	9	9	9+5	54	1 " " 16 20	9	9	9	9	+	9	9	9+5	54	1 " " 16 20	9	10		19	5	70	298		30	-	89	40	12 60	15
5	12	9	10	9	11	+	+	9		48	1 " " 13 44	9	9	9	9	+	9	9		54	1 " " 15 12	9	-		9	2	52	243		28	-	68	04	19 32	16
2	22	10	11	11	9	+	9	9		59	1 " " 13 11	9	9	9	12	+	9	9		57	1 " " 12 67	9	9		18	4	—	280		22⅞	-	62	22	14 67	17
9	—	6	11	7	+	+	10	9	7+5	43	1 " " 10 75	9	+	9	12	+	9	10	7+5	49	1 " " 12 25	9	9		18	4	50	240		25	-	60	—	15 —	18
4	58	9	9	9	9	+	9	9	8+5	54	1 " " 14 58	10	9	9	5	+	9	9	9+5	51	1 " " 13 77	9	9		18	4	86	262		27	-	70	74	17 82	19
4	50	9	9	10	10	+	9	10	7+5	57	1 " " 14 25	10	9	+	9	+	9	9	7+5	37	1 " " 9 25	9	10		19	4	75	276		25	-	69	—	14 —	20
2	—	9	9	9	4½	+	9	9		49½	1 " " 11 —	9	9	9	4½	+	9	9		49½	1 " " 11 —	9	9		18	4	—	237		22⅞	-	52	67	9 —	21
9	90	9	9	9	9	+	9	9	5+5	54	9 90	9	9	9	9	+	9	9	5+5	54	9 90	9	9		18	3	30	243		18⅓	-	44	55	8 25	22
	—	+	+	+	+	+	+	+		—	—	7	5	5	5	5	6		38	19 —	+	+		—		38			50	-	19 —		12 50	23
	—	+	+	+	+	+	+	+		—	—	6	11	9	9	9	12	10	66	23 83	+	+		—		66			36⅔	-	23 83	83	13 —	24
	—	+	+	+	+	+	+	+		—	—	6	11	9	9	9	9	10	63	21 —	+	+		—		63			33½	-	21 —	78	12 —	25
	—	+	+	+	+	+	+	+		—	—	18	11	9	9	9	9	10	75	25 —	+	+		—		75			33½	-	25 —		24 —	26
	—	+	+	+	+	+	+	+		—	—	+	+	+	+	+	+	+	+	—	+	+		—		—			30⅔	-	—		—	27
16	39	9	15	9	14	+	14	12		73	2 0 28	15	9	9	9	+	9	9	6	16 66	9	10		19	5	25	314		27⅔	-	87	22		28
3	38	9	9	9	9	+	9	9		54	13 50	9	9	9	9	+	9	9		54	13 50	9	9		18	4	50	139½		25	-	34	88		29
																																		30

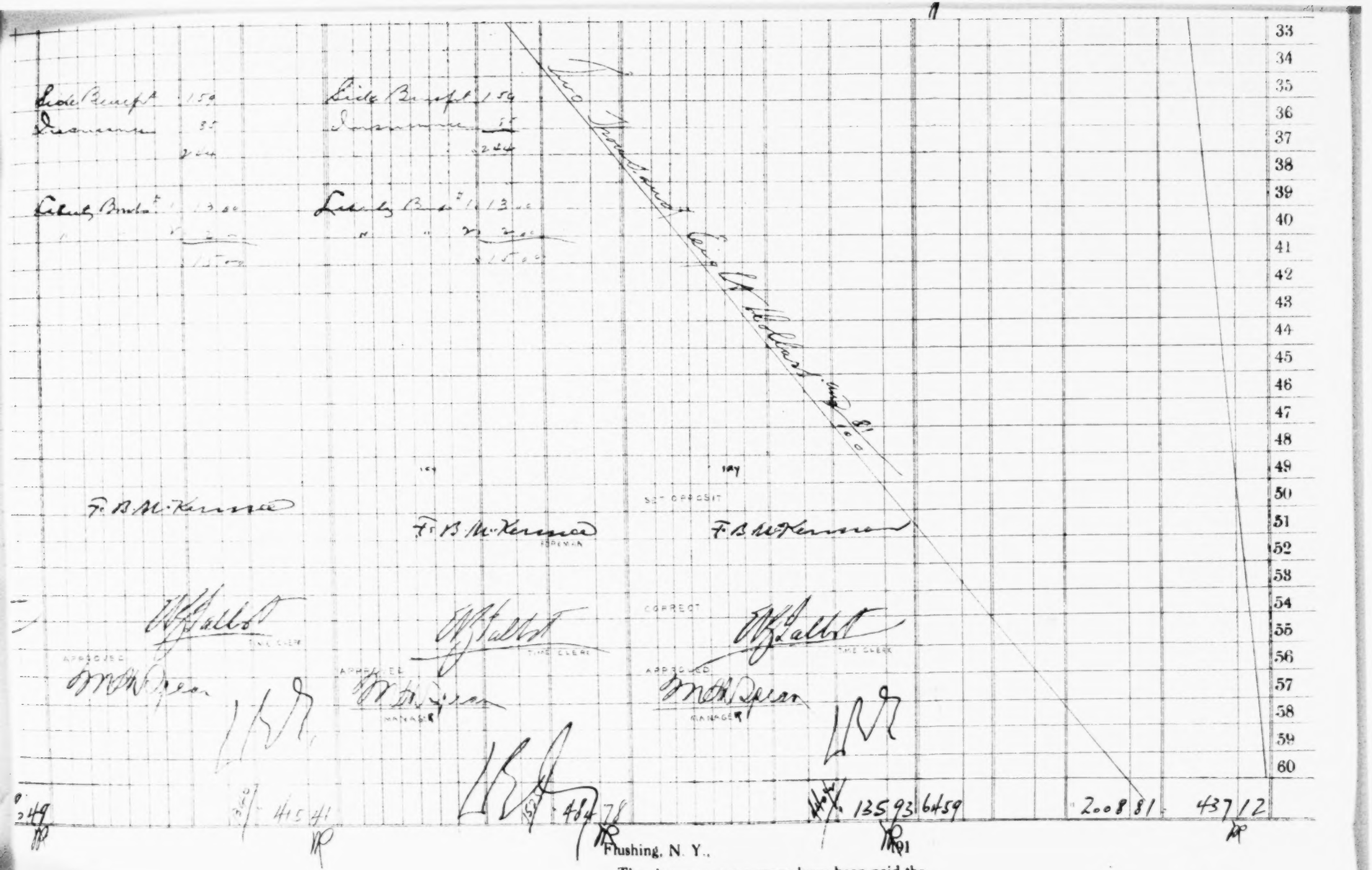
2752



CORRECT

APPROVED

APPROVED



Flushing, N. Y.,

The above-named persons have been paid the amounts set opposite their respective names and as per

DIST. DEPT. Defendant's Exhibit K

LABOR ACCOUNT

FOR MONTH ENDING January 31 1918.

GAS OPERATING				
1A	Superintendence			
1B	Boiler Labor			
1C	Generator Labor	31 27		
1D	Purifier Labor			
1E	Miscellaneous			
	Total		31	27
WORKS—REPAIRS				
8	Works and Station Structure	4 67		
9	Power Plant	11 76		
10	Gas Apparatus	24 88		
11	Works—Tools			
	Total		41	31
TRANSMISSION AND DISTRIBUTION				
12	Transmission Pumping	3 33		
13	Distribution Superintendence			
14	Distribution Supplies and Expenses	39 70		
15	Gas Meter and Installation Work	1230 71		
16	Work on Consumer's Premises	315 45		
17	Repairs of Gas Mains	44 38		
18	Repairs of Gas Services	33 26		
19	Repairs of Meters	12 72		
20	Repairs of Distribution Tools	7		
21	Repairs of Appliances	27 22		
22	Work on Consumer's Premises	39 37		
23	Repairs of Street Lamps	87 47		
23A	Stable Expense	26 04		
32½	Auto Expense			
	Total		1866	65
	Carried Forward		1946	23

LABOR ACCOUNT

FOR MONTH ENDING January 31 1918.

	Brought Forward		1946	23
CONSTRUCTION				
D1	Office			
D2	Holders			
D3	Store			
D4	Stable			
E	Works and Station Structure			
F	Holders			
G	Furnaces, Boilers and Accessories			
H	Steam Engines			
J	Misc. Power Plant Equipment			
K	Water Gas Sets and Apparatus			
L	Purification Apparatus			
M	Accessory Equipment at Works			
N	Trunk Lines and Mains			
N	Trunk Lines and Mains (City Inspections)			
O	Gas Services	2 94		
O	" " (City Inspections)			
P	Gas Meters			
R	Gas Meter Installation	11 84		
S	Gas Tools and Implements			
T	Gas Laboratory Equipment			
	Total		14	78
COMMERCIAL				
23A	General Labor	45 55		
23B	Accounting			
23C	Contracts			
23D	Collecting			
23E	Meter Reading	2 25		
23F	Supplies and Expenses			
25	Canvassing and Soliciting			
	Total		47	80
	Total Amount of Pay Roll		2008	81

2756

Commercial administration	.0651	.0787
Promotion	.0075	.0070
General & Miscellaneous	.0792	.0886
Renewals & Replacements	.0300	.0300
Total	.9982	1.0766
Taxes	.0815	.0621
Uncollectible Bills	.0048	.0015
Total	$1.0845	$1.1402
Operating deficit	.0431	.0727

(Here follow reproductions of Defendants' Exhibits A to A12, B, C, D, E, F, G, H, I, J, and K, marked pages 2723 to 2746, inclusive.)

2747 DEFENDANTS' EXHIBIT "L."

Tax report New York and Queens Company, 1919.
Not printed.

2748 DEFENDANTS' EXHIBIT "M" and "N."

Defendants' notices to produce.
Not printed.

2749 DEFENDANTS' EXHIBIT O.

Def'ts' Ex. O. June —/20.

Resolution of Commission Directing Hearing as to Standards in Measurements or Quantity and Power of Gas, Submitted in Support of Motion.

At an Adjourned Meeting of the Public Service Commission for the First District Duly Held at Its Office, No. 120 Broadway, in the Borough of Manhattan, City and State of New York, on the 20th Day of August, 1917.

Present:
Oscar S. Strauss,
Chairman;
William Hayward,
Travis H. Whitney,
Charles S. Hervey,
Commissioners.

"A."

Case No. 2235.

In the Matter of the Hearing on the Motion of the Commission as to the Standards for Measurement of the Quality and Power of Gas Manufactured, Distributed, or Sold by Gas Corporations Within the First District and the Rates or Charges for Such Gas Service Based Upon Such Standards.

Hearing Resolution.

Resolved that a hearing be had by and before the Public Service Commission for the First District, at the Hearing Room of the Commission, No. 120 Broadway, Borough of Manhattan, City of New York, on September 18, 1917, at 2.30 P. M. and at any time
2750 or times thereafter to which the same may be adjourned, for the purpose of inquiring and determining as to

(1) Whether standards should be fixed for the measurement of the quality and power of gas manufactured, distributed or sold by gas

Corporation within the First District, based upon the unit of heat per cubic feet of gas;

(2) Whether the gas so manufactured, distributed or sold at prescribed rates or charges should be required to equal the standards so fixed by the Commission;

(3) Whether there shall be prescribed minimum and maximum pressure at which gas shall be delivered by said corporations;

(4) Whether any reasonable improvements should be required in respect to the quality of the gas supplied and the methods employed in the manufacture, distribution and supply of gas, as will best promote the public interest, preserve the public health and protect those using such gas and those employed in the manufacture thereof; and

(5) Whether just and reasonable rates or charges shall be prescribed for the service to be furnished by said gas corporations proportioned with the quality and power of gas manufactured, distributed or sold under the standards so fixed by the Commission.

All to the end that the Commission may make such order or orders in the premises as may be just and reasonable and prescribe the details thereof and the time within which the same shall be complied with.

2751 Further Resolved that at least five days' notice of said hearing be given to each gas corporation subject to the jurisdiction of this Commission by service upon it, either personally or by mail of a certified copy of this resolution.

By the Commission,
[L. S.]

GEORGE F. DAGGETT,
Acting Secretary.

2752 DEFENDANTS' EXHIBIT P.

Def'ts' Ex. P.

Memorandum of Commission Adopted Upon Relator's Refusal to Accept Order Fixing New Dates for Commencement of Construction, Submitted in Support of Motion.

Public Service Commission of the State of New York for the First District.

"C."

Case No. 1856.

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of the NEW YORK AND QUEENS GAS COMPANY to Such Extent as May Be Necessary to Serve Residents of Douglaston, Douglas Manor, and Little Neck, in the Borough of Queens, City of New York.

Memorandum Concerning the Company's Statement of Claimed Reasons for Non-compliance with the Order of the Commission as Unanimously Affirmed by the Highest Courts.

HERVEY, *Commissioner:*

Following the unanimous action of this Commission on February 1, 1918, denying the New York and Queens Gas Company's second application for a rehearing as to the Commission's Order of March 19, 1915, unanimously upheld by the Court of Appeals of the State of New York and the Supreme Court of the United States,
2753 and following also the Commission's action in fixing new dates within which the order of March 19, 1915, shall be complied with by the Company and expressing the Commission's complete willingness to accord the Company any further extensions of time warranted by any facts, brought to the Commission's attention upon an application therefor, the New York and Queens Gas Company wrote the Commission as follows, under date of February 18, 1918:

"It is impossible for this Company to comply with the terms of the order of March 19, 1915, in the above case, without violating the statute law of the State.

"The effect of compression upon gas quality has been recognized by the Commission in the Second District, in their order taking effect January 1, 1917, establishing a 585 heat unit standard. In that order, it was provided that if gas should be delivered at a pressure above five pounds per square inch, it should be tested for heating quality before compression. It would seem to be a wasteful expenditure of capital to require the Company at this time to expend money for a purpose which will inevitably deprive it of an adequate return upon the reasonable value of all its property invested in the gas business, to require it to commence the work before the frost is out of the ground, and to compel it to lay mains at a grade which is certain to be changed in the near future, when it is absolutely certain that the service will be interrupted, because the mains will have to be
removed when the City commences to fill the street to grade
2754 and will have to be relaid, at great expense, when that work is completed.

"We shall be glad to discuss this situation with the Commission but, as the order of March 19, 1915, now stands, we are forced to give you formal notice that its terms are not accepted and will not be obeyed by the Company."

No doubt deliberately, the Company is very vague and indefinite in its purported statement of reasons for continuing its defiance of the reasonable orders of this Commission and the mandates of the highest Courts.

If the Company's pretended difficulty is as to the candle-power standard of gas, fixed by chapter 125 of the Laws of 1906, that can be no real objection, inasmuch as the Commission, on October 1, 1917, entered an Order in Case No. 2235, authorizing and enabling

this and every other gas company under its jurisdiction to change from a candle-power to a heat-unit standard and to reduce the heat-unit content or quality of its gas to 585 b. t. u.'s or whatever content the Company deems may be most efficiently and economically produced. The Company has not availed itself of that option, and has failed to do so only through its own choice. If the Company wishes different provisions as to candle-power standard, it may apply in Case No. 2235, and is not warranted in raising that issue in this proceeding (Case No. 1856). Moreover, there is no requirement of statute or order that this Company furnish 22-candle-power gas to consumers in Douglaston, Douglas Manor or Little Neck. The provision of law is only that the gas shall be of that candle-power, when "tested at a distance of not less than one mile from the distributing
2755 holder." The Commission has not ordered the installation of any particular system of gas transmission or distribution. The order of March 19, 1915, requires the Company to file with the Commission a general plan showing a proposed transmission and distribution system. At the time of the making of the order, the Company had a high pressure main in operation, extending a considerable distance from its works in Flushing, and therefore knew the effects of the compression of gas. The Company would thus experience no more difficulty in fulfilling this requirement as to gas destined for Douglaston than for gas for any other part of its franchise territory. If, however, the Company does not now wish, or think it most advisable to install a high-pressure system to Douglaston, there is no provision of the order preventing it from installing a low-pressure system, as it at first contemplated.

If the Company's pretended difficulty arises from the pressure requirements of the 1906 statute, the Company must be aware that these requirements were held unconstitutional by the Supreme Court of the United States in 1908 (Willcox v. Consolidated Gas Company, 212 U. S., 53) and cannot be regarded as bothersome now. In fact, the Commission has in force reasonable and valid orders in relation to gas pressure and the admeasurement thereof (see Order of January 24, 1913, in Case No. 1579, relative to gas pressure in Queens Borough); and if the Company desires any other or further provision on the subject of pressure as to this Douglaston extension, it may make due application therefor to the Commission. It is not warranted in interposing such an objection to complying with the
2756 order as to the making of the extension (Case No. 1856).

As to the suggestion that the Company should not be required "to commence the work before the frost is out of the ground," the Commission specifically said, in its opinion of February 1, 1918, that "of course no Commissioner would try to compel the laying of gas mains at a time when the ground is frozen" and that any needed extensions would be granted to that end.

The present action and attitude of the Company in view of the merited rebuke which its effort to "pick and choose" received at the hands of the Supreme Court of the United States, may reasonably be regarded as a deliberate effort to carry on corporate operations outside the law and to create disrespect for the law and the courts at a

time when a higher standard of accountability would seem to be demanded. The Public Service Commissions Law was, as the Courts have held, designed to afford to the public prompt relief and adequate protection from just the kind of a course this Company is pursuing, and the Company's refusal to comply is a defiant challenge of the ability of public authority, through laws and courts, to accomplish legitimate public ends in a reasonable, ordered, and well-considered way.

I ask that Counsel to the Commission be authorized and directed to do all in his power to bring this Company and its officers to compliance with their legal duties and charter and franchise obligations, and to secure their punishment if non-compliance is continued.

2757 DEFENDANTS' EXHIBIT Q.

Defts.' Ex. Q.

Affidavit of Maynard H. Spear, Submitted to Special Term, Part II, on Application for Writ of Certiorari.

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. NEW YORK AND QUEENS GAS COMPANY, Relator,

against

OSCAR S. STRAUS, TRAVIS H. WHITNEY, CHARLES S. HERVEY, F. J. H. Kracke, and Charles Bulkley Hubbell, Commissioners, Constituting the Public Service Commission of the State of New York for the First District, Respondents.

STATE OF NEW YORK,
County of New York, ss:

Maynard H. Spear, being duly sworn, deposes and says:

1. I am, and since 1908 have been, the Secretary, General Manager and Engineer of the New York and Queens Gas Company, the relator herein, and reside in Flushing, Borough of Queens. I have been actively engaged in the manufacture and distribution of gas since 1896.

2. I was present at the original hearings had before the Commission in Public Service Commission Case No. 1856, and am
2758 able to state that the only plan under consideration and adopted by the Commission provided for the high pressure system described in Exhibits 3 and 9, copies of which are hereto annexed and made a part hereof; the cost of a low pressure system being admittedly much greater, and, therefore, entirely out of the question.

3. The effect of transmitting illuminating gas over a long distance, under pressure, causes the liquefaction and deposit of a large

portion of the luminants contained in the gas, a result which is greatly accelerated when the transmission is made during very cold weather, or even in warm weather during sudden changes of temperature; and gas transmitted through a high pressure main such as the Public Service Commission has directed the Company to lay from its works to Douglaston and Douglas Manor will, under an initial pressure of thirty to forty pounds, as contemplated, have its illuminating power reduced from thirty to fifty per cent, so that the illuminating power of the gas delivered to the consumers would never exceed eighteen candle power and, under varying conditions, might be much less. It will be physically impossible for the Company to supply twenty-two candle power gas to Douglaston and Douglas Manor (as required by Laws 1906, Chapter 125) through a high pressure system such as is contemplated by the order of March 19, 1915.

4. This question as to the effect of compression upon gas transmitted through high pressure mains, over a long distance, with relation to candle power, was entirely overlooked by the Commission's Engineers and myself, upon the original hearing herein, as well as by the Commission itself.

2759 5. I have examined the final map of the County of Queens, dated May 12, 1915, and adopted by the Board of Estimate and Apportionment of the City of New York January 28, 1916, and approved by the Mayor February 8, 1916, and filed in the Topographical Bureau of the City of New York, Borough of Queens, and find that the grade of Broadway (Jackson Avenue), through which the proposed main is to be laid from Cemetery Lane to the City boundary line, is to be changed, and that the present grade, between 225th Street Bayside, and Main Avenue, Douglaston, a distance of thirty-five hundred feet, is to be raised by a fill of from two to sixteen feet.

6. I have also been informed that the City contemplates instituting proceedings to widen and improve that portion of Broadway through which the proposed main would have to be extended.

MAYNARD H. SPEAR.

Sworn to before me, February 25, 1918.

M. A. CROSS,
Commissioner of Deeds.

N. Y. County Clerk's No. 255.
Commission expires Sept. 18, 1919.

2760 *Exhibit No. 3, Annexed to Affidavit of Maynard H. Spear*

Douglaston, Douglas Manor, Douglaston Park, and Little Neck.

Aug. 1914.

	2".	3".	4".	6".	Houses.
Broadway	....	....	....	15600	....
"	....	....	14500	....	....
Main Ave.	....	....	3100	....	22
Hamilton	600	....	....	....	7
Pine	....	960	....	....	12
Orient	....	1050	....	....	8
Poplar	840	....	....	....	9
Willow	660	....	....	....	8
Prospect	450	....	....	....	2
Willow	350	....	....	....	4
Cherry	750	....	....	....	10
Prospect	300	....	....	....	6
Hillside	....	1300	....	....	5
West Drive	....	4270	....	....	13
Bay Ave.	1300	....	....	....	12
Cedar Lane	540	....	....	....	4
Forest	180	....	....	....	1
Ridge Rd.	2070	....	....	....	10
Park Lane	670	....	....	....	5
" "	150	....	....	....	1
" "	300	....	....	....	1
Arleigh Rd.	1700	....	....	....	10
Holly Wood	1170	....	....	....	6
Manor Rd.	340	....	....	....	3
" "	1170	....	....	....	4
Westmoreland	500	....	....	....	2
Beverly	950	....	....	....	3
"	480	....	....	....	1
Grosvenor	970	....	....	....	3
Richmond	780	....	....	....	3
Knoll Wood	330	....	....	....	3
Kenmore	450	....	....	....	2
Douglas	150	....	....	....	1
"	230	....	....	....	1
East Drive	540	....	....	....	2
" "	1080	....	....	....	3
Centre "	750	....	....	....	2
" "	970	....	....	....	3
2761					
Douglaston Ave.	....	1200	....	....	10
Dartmouth Rd.	635	....	....	....	5
Princeton Rd.	270	....	....	....	2

	2".	3".	4".	6".	Houses.
ginia Rd.	990	....	....	....	5
levard	....	559	....	....	1
adway	....	....	1303	....	2
adway	....	....	3000	....	21
le Neck Ldg. Rd.	....	2000	....	....	17
House Ldg. Rd.	....	2250	....	....	21
View Ave.	....	1950	....	....	9
nd View Ave.	....	900	....	....	2
Ave.	1200	....	....	....	6
nton Ave.	900	....	....	....	8
name, St.	600	....	....	....	3
st End Drive.	700	....	....	....	3
rathon Ave.	700	....	....	....	4
eens Pl.	600	....	....	....	2
stmoreland Ave.	800	....	....	....	1
nwood Ave.	900	....	....	....	4
mmit St.	300	....	....	....	1
ust Pl.	400	....	....	....	1
House Ldg. Rd.	900	....	....	....	6
tter Ave.	900	....	....	....	1
tion Rd.	500	....	....	....	3
	33015	16430	21903	15600	332

015 Ft. 2" main laid @ 37c. per foot	$12215.55	
430 " 3" " " " 47c. " "	7722.10	
903 " 4" " " " 68c. " "	14894.04	
600 " 6" " " " 91c. " "	14196.00	
mpressor installed	1500.00	
tra for drawbridge at creek	1000.00	
vement to replace	7900.00	
Total cost of mains	$59427.69	$59427.69

The maps submitted by Douglaston Civic Association ow in Douglaston, Douglas Manor and Douglaston rk 219 houses, and Little Neck has by actual count 3 houses, so we will assume that every house is occu-ed and will be a consumer.

762

rvice 50' @ 23c. per foot	$11.50	
lt. meter	5.35	
overnor	3.15	
aterial & Labor	2.00	
	$22.00	
32 Services etc. @ $22.00 each		$7304.00
otal cost of mains, services & meters		$66731.69

219 Consumers	@ 20,000 cu. ft. per year	4,380,000 cu. ft.
113 "	" 15,000 " " " "	1,695,000 " "
Total estimated consumption		6,075,000 " "

Profit @ .0945 per M — $574.09 or 8/10% on total investment.
Total length of mains 86948 feet.
262 ft. to a house, cost $201 per house.

The above figures do not include any amount for engineering supervision, contingencies, overhead charges nor interest and taxes during construction.

EXHIBIT No. 9, ANNEXED TO AFFIDAVIT OF MAYNARD H. SPEAR.

Public Service Commission, First District.

Estimate by W. F. Hine, Chief Gas Engineer, P. S. C., of Cost of Distribution System to Supply Douglaston, Little Neck, and Douglas Manor with Gas.

Case No. 1856.

33,015 ft. of 2 inch mains at 0.275	$9,079.13	
16,430 ft. of 3 inch mains at 0.424	6,966.32	
21,903 ft. of 4 inch mains at 0.545	11,938.14	
15,600 ft. of 6 inch mains at 0.847	13,213.20	
2763		
Pavement (Company's estimate)	7,900.00	
New Compressor	2,000.00	
Line under creek	2,000.00	
332 services comp. with meters at 22.00 (Company's estimate)	7,304.00	
Total Cost of Installation including all engineering, supervision, contingencies, etc.		$60,400.79
Interest during construction—(Assuming 4 mo. for construction and interest at 6%)		604.01
Total		$61,004.80

2764 DEFENDANTS' EXHIBIT R.

EXHIBIT B.

Application to Commission for Rehearing After Affirmance in United States Supreme Court.

Public Service Commission of the State of New York for the First District.

Case No. 1856.

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of the NEW YORK AND QUEENS GAS COMPANY to Such Extent as May Be Necessary to Serve Residents of Douglaston and Little Neck, in the Borough of Queens, City of New York.

Application for Rehearing.

To the Public Service Commission of the State of New York, for the First District:

The petition of the New York and Queens Gas Company respectfully shows, on information and belief:

I. On the 19th day of March, 1915, your Honorable Commission made an order herein, directing that the petitioner extend its gas mains and services in such a manner as may be required reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York, known as Douglaston,
2765 including Douglas Manor; that construction of said proposed extension be begun not later than April 30, 1915, and be completed, as far as Alley Road or Main Avenue, Douglaston, by September 1, 1915; and that on or before April 30, 1915, your petitioner file with your Honorable Commission a general plan or layout, showing the proposed transmission and distribution system, to be installed pursuant to the terms of the said order, that shall be suitable and adequate to furnish reasonable service to the community known as Douglaston, including Douglas Manor, and that this extension be completed and in service not later than September 10, 1915; and that the said order take effect forthwith and that within ten days after service thereof, your petitioner notify the Commission, in writing, whether the terms of the said order would be accepted and obeyed.

II. Thereafter and on or about April 10, 1915, your petitioner made application to your Honorable Commission for a rehearing in this proceeding, upon the grounds in said petition particularly set forth, which said application was thereafter and on the 27th day of April, 1915, denied.

III. Proceedings were thereafter instituted by your petitioner in the New York Supreme Court and, on the 30th day of April, 191[illegible] an order was obtained, directing that a writ of certiorari issue out of and under the seal of said Court, to your Honorable Commission, as then constituted, which said writ was duly allowed and issued on the same day, and directed that within twenty days after due service of the said writ upon your Honorable Commission, you certify and return to the office of the Clerk of the County of New York all and singular the record before you on the proceeding had be-
2766 and before you in and upon this proceeding, with your decisions and orders thereupon, together with all and singular the evidence, oral and documentary, submitted to you as such Public Service Commission, upon all the hearings in connection with the aforesaid proceedings, with all your determinations, to the end that your proceedings, actions and decisions in the premises might be reviewed and corrected.

IV. The return having been duly made by your Honorable Commission, as in and by said writ directed, the said proceedings were thereafter duly heard in the New York Supreme Court, Appellate Division, First Department, and an order entered by the said Appellate Division on the 3d day of March, 1916, sustaining the writ aforesaid and directing that the order and determination of your Honorable Commission, made March 19, 1915, reviewed under said writ, be, and the same was thereby, annulled.

V. Thereafter an appeal was duly taken by your Honorable Commission to the Court of Appeals, which said Court thereafter and on the 3d day of October, 1916, reversed the aforesaid order of the Appellate Division and reinstated the order of your Honorable Commission.

VI. A writ of error was thereafter and on the 31st day of January, 1917, allowed by the Chief Judge of the said Court of Appeals, to review the judgment of that Court in the United States Supreme Court, which said Court thereafter and on or about the 10th day of December, 1917, affirmed the said judgment and dismissed the said writ.

VII. The record shows that the former hearing before the Commission was held in midsummer, under circumstances when
2767 no complete presentation of the case from the Company's point of view was made, and that at least four of the Commissioners voted in favor of the said order upon the assumption of an irrelevant fact which did not exist.

VIII. One controlling consideration was entirely overlooked, both by the Company and the Commission. It was shown that the only method by which gas could be supplied by your petitioner from its Flushing works was by the installation of a new high pressure main, the distance from the works to Douglaston being about six miles. In connection with the consideration by the present members of the Commission of the adoption of a heat unit standard, it has been

eloped both by the witnesses of the Commission and those of the Company that the effect of transmitting illuminating gas over a distance, under pressure, is to cause the liquefaction and deposit large portion of the luminants, a result which is greatly accelerd when the transmission is made during very cold weather or dursudden changes of temperature; and your petitioner is advised by engineers and experts that even if a high pressure main should aid to Douglaston, it would be physically impossible to supply gas hat community under the present 22 candle power standard. The l order of the Commission, therefore, requires your petitioner to end a large amount of money for the accommodation of a comatively few persons, in face of the certainty that after such exditure had been made, your petitioner would be unable to supply to the Douglaston community without violating the existing utory requirements.

IX. Your petitioner is advised that the City of New York contemplates changing the grade of Broadway, where it sses the marsh between Bayside and Douglaston, through which ur petitioner's main would have to be laid, by a fill of eight feet. that event, a main now laid will have to be relaid at great expense en such change is made.

X. Your petitioner is also advised that it has not yet been definitely ermined by the Commission whether Main Avenue, Douglaston, ll cross over or under the railroad; and, consequently, no definite ans can at present be made for carrying the main across the rail-ad to Douglas Manor.

XI. Since the said order of the Commission was made, the cost materials and labor has advanced to such an extent that the cost making the said proposed extension will now be at least fifty per nt greater than that estimated by the Commission's Engineer. The roposed extension is by no means a small undertaking for a Comany the size of your petitioner, and the enormity of the underking is emphasized when it is considered that your petitioner, after xty years of development, has only one hundred and ten miles f mains and, to carry out the order of this Commission, will require, ith one sweep, an extension equal to sixteen per cent of its present stem. Furthermore, to make the six miles of transit main, required w the order to be laid, available, it will be necessary to lay in addiion thereto eleven miles of distributing mains and four miles of ervice pipe, aggregating four hundred tons of pipe, requiring approximately fifteen cars to transport it from the mill; and, in view of the present congestion at the mills and of the railroads and 7769 the desire of the Federal Government to defer all work which might unnecessarily hamper it in the present emergency, t is extremely doubtful, even though an order were given for the ipe at this time, whether any deliveries could be made for months o come.

XII. In addition to the foregoing, the present scarcity of labor, particularly in the Third Ward, must be considered, also the cost

of operation, which has greatly increased, so that the actual cost of gas supplied by your petitioner to its present consumers, at the statutory rate of one dollar per thousand cubic feet, including therein interest at six per cent on its investment in property devoted to public service, is not less than $1.301 per thousand cubic feet of gas delivered. It will, therefore, be impossible for your petitioner to earn any return whatsoever on the cost of laying the pipe necessary to reach this new territory; and it would be unjust and unreasonable to require your petitioner to proceed with the construction of the said extension until such time when conditions shall warrant. Even though the prospective consumers laid the necessary pipe at their own expense, and your petitioner supplied such consumers with gas at the statutory rate, it would not receive a return sufficient to cover the actual cost of the gas supplied.

XIII. It is impossible to lay mains at this season of the year on account of the frost and snow, without adding very greatly to the cost of laying the same; and, when it is considered that all of the houses are supplied with electric current and that the gas will probably be used only for cooking purposes, that none of the
2770 houses are now piped for receiving such gas supply, and that at least twenty-five per cent of them are closed for the winter months, such additional expenditure seems entirely unwarranted. The traveling public alone would be much more seriously inconvenienced than the small Douglaston community would be benefited.

XIV. Your petitioner is informed that the title to many of the streets in Douglaston and all of the streets in Douglas Manor remains in private ownership, and that, before any mains can be laid in the said streets, it will be necessary to procure permanent easements and rights of way through the same from the owners; and your petitioner has no express power of condemning land for such purposes. Furthermore, the present grades of many of the streets have not been officially adopted by the Topographical Bureau and are, therefore, subject to change.

Wherefore, your petitioner, in consideration of the foregoing and of the avowed policy of the National Government to defer all new construction work that is not absolutely essential, respectfully asks for a rehearing herein, in order that it may submit proof in support of the foregoing allegations, to the end that the order heretofore and on the 19th day of March, 1915, made herein, be revoked and annulled, or that it be suspended while the present abnormal conditions continue.

NEW YORK AND QUEENS GAS COMPANY,
By LEWIS B. GAWTRY,
Vice-President.

2771 STATE OF NEW YORK,
County of New York, ss:

Lewis B. Gawtry, being duly sworn, deposes and says that he is Vice-President of the New York and Queens Gas Company, the peti-

tioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that, as to those matters, he believes it to be true.

LEWIS B. GAWTRY.

Sworn to before me, January 4, 1918.

[SEAL.]

L. A. COLEMAN,
Notary Public, No. 141, N. Y. County.

Cert. No. 9128 filed in Register's Office New York County.

Term expires March 30th, 1919.

2772 DEFENDANTS' EXHIBIT S.

Def't's Ex. S.

EXHIBIT C.

Order of Commission Denying Application of January 4, 1918, for Rehearing.

At an Adjourned Meeting of the Public Service Commission for the First District Duly Held at Its Office, No. 120 Broadway, in the Borough of Manhattan, City and State of New York, on the 1st Day of February, 1918.

Present:—

Oscar S. Straus,
Chairman;
Travis H. Whitney,
Charles S. Hervey,
F. J. H. Kracke,
Charles Bulkley Hubbell,
Commissioners.

Case No. 1856.

In the Matter of Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of NEW YORK AND QUEENS GAS COMPANY to Such Extent as May Be Necessary to Serve Residents of Douglaston and Little Neck, in the Borough of Queens, City of New York.

An order in the above-entitled proceeding having been duly made by this Commission on March 19, 1915, directing the New York and Queens Gas Company to make certain extensions of its gas mains and services in such a manner as may be required
2773 reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York

and known as Douglaston, including Douglas Manor, as more f
set forth in said order;

And the New York and Queens Gas Company having app
to the Commission, under date of April 10, 1915, for a rehearin
respect to such order, and an order having been duly made by
Commission on April 27, 1915, denying the Company's applica
for a rehearing;

And a writ of certiorari having, on April 30, 1915, been is
by the Supreme Court of the State of New York in and for
County of New York, upon the relation of the New York
Queens Gas Company to review the proceedings, actions and
cisions of this Commission in the premises, including the said
of March 19, 1915, and the said order of April 27, 1915, den
the company's application for a rehearing; and the Appellate
sion of the Supreme Court for the First Judicial Department,
ing, on March 3, 1916, made an order sustaining the said wr
certiorari and annulling the said determination of the Commis
and an appeal having been taken to the Court of Appeals of
State of New York from the said order of the Appellate Div
of the Supreme Court for the First Judicial Department; and
Court of Appeals of the State of New York having, on Octob
1916, rendered a decision reversing the order of the said App
Division and affirming and reinstating the said order and
mination of this Commission; and a judgment having been en
by the Supreme Court in and for the County of New York
October 17, 1915, making the order and judgment of the
of Appeals the judgment of that Court herein:

2774 And the New York and Queens Gas Company ha
thereafter and on January 31, 1917, secured a writ of
to review the last-mentioned judgment of the Supreme Cou
the State of New York, and the United States Supreme Court
ing rendered a decision on December 10, 1917, affirming the
ment of the State Court so reviewed; and the mandate of the U
States Supreme Court affirming said judgment having been re
to the Supreme Court of the State of New York and duly fil
the office of the Clerk of the County of New York, and an
having been entered by the Supreme Court in and for the Co
of New York on January 31, 1918, making the order and
ment of the United States Supreme Court the judgment o
Supreme Court of the State of New York;

And the Commission having heretofore and on February,
made an order in this case fixing the time for compliance b
New York and Queens Gas Company with the said order of
19, 1915, the times fixed by the said order, entered on Marc
1915, having meanwhile expired;

And the New York and Queens Gas Company having agai
plied to the Commission by a petition verified January 4, 191
a rehearing herein, to the end that the said order made
March 19, 1915, be revoked or annulled or that it be suspende

And the Commission being of opinion that sufficient reaso
a rehearing as prayed for by the New York and Queens Gas

Corporation within the First District, based upon the unit of heat per cubic feet of gas;

(2) Whether the gas so manufactured, distributed or sold at prescribed rates or charges should be required to equal the standards so fixed by the Commission;

(3) Whether there shall be prescribed minimum and maximum pressure at which gas shall be delivered by said corporations;

(4) Whether any reasonable improvements should be required in respect to the quality of the gas supplied and the methods employed in the manufacture, distribution and supply of gas, as will best promote the public interest, preserve the public health and protect those using such gas and those employed in the manufacture thereof; and

(5) Whether just and reasonable rates or charges shall be prescribed for the service to be furnished by said gas corporations proportioned with the quality and power of gas manufactured, distributed or sold under the standards so fixed by the Commission.

All to the end that the Commission may make such order or orders in the premises as may be just and reasonable and prescribe the details thereof and the time within which the same shall be complied with.

2751 Further Resolved that at least five days' notice of said hearing be given to each gas corporation subject to the jurisdiction of this Commission by service upon it, either personally or by mail of a certified copy of this resolution.

By the Commission,
[L. S.]

GEORGE F. DAGGETT,
Acting Secretary.

2752 DEFENDANTS' EXHIBIT P.

Def'ts' Ex. P.

Memorandum of Commission Adopted Upon Relator's Refusal to Accept Order Fixing New Dates for Commencement of Construction, Submitted in Support of Motion.

Public Service Commission of the State of New York for the First District.

"C."

Case No. 1856.

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of the NEW YORK AND QUEENS GAS COMPANY to Such Extent as May Be Necessary to Serve Residents of Douglaston, Douglas Manor, and Little Neck, in the Borough of Queens, City of New York.

Memorandum Concerning the Company's Statement of Claimed Reasons for Non-compliance with the Order of the Commission as Unanimously Affirmed by the Highest Courts.

HERVEY, *Commissioner:*

Following the unanimous action of this Commission on February 1, 1918, denying the New York and Queens Gas Company's second application for a rehearing as to the Commission's Order of March 19, 1915, unanimously upheld by the Court of Appeals of the State of New York and the Supreme Court of the United States,
2753 and following also the Commission's action in fixing new dates within which the order of March 19, 1915, shall be complied with by the Company and expressing the Commission's complete willingness to accord the Company any further extensions of time warranted by any facts, brought to the Commission's attention upon an application therefor, the New York and Queens Gas Company wrote the Commission as follows, under date of February 18, 1918:

"It is impossible for this Company to comply with the terms of the order of March 19, 1915, in the above case, without violating the statute law of the State.

"The effect of compression upon gas quality has been recognized by the Commission in the Second District, in their order taking effect January 1, 1917, establishing a 585 heat unit standard. In that order, it was provided that if gas should be delivered at a pressure above five pounds per square inch, it should be tested for heating quality before compression. It would seem to be a wasteful expenditure of capital to require the Company at this time to expend money for a purpose which will inevitably deprive it of an adequate return upon the reasonable value of all its property invested in the gas business, to require it to commence the work before the frost is out of the ground, and to compel it to lay mains at a grade which is certain to be changed in the near future, when it is absolutely certain that the service will be interrupted, because the mains will have to be removed when the City commences to fill the street to grade
2754 and will have to be relaid, at great expense, when that work is completed.

"We shall be glad to discuss this situation with the Commission, but, as the order of March 19, 1915, now stands, we are forced to give you formal notice that its terms are not accepted and will not be obeyed by the Company."

No doubt deliberately, the Company is very vague and indefinite in its purported statement of reasons for continuing its defiance of the reasonable orders of this Commission and the mandates of the highest Courts.

If the Company's pretended difficulty is as to the candle-power standard of gas, fixed by chapter 125 of the Laws of 1906, that can be no real objection, inasmuch as the Commission, on October 13, 1917, entered an Order in Case No. 2235, authorizing and enabling

this and every other gas company under its jurisdiction to change from a candle-power to a heat-unit standard and to reduce the heat-unit content or quality of its gas to 585 b. t. u.'s or whatever content the Company deems may be most efficiently and economically produced. The Company has not availed itself of that option, and has failed to do so only through its own choice. If the Company wishes different provisions as to candle-power standard, it may apply in Case No. 2235, and is not warranted in raising that issue in this proceeding (Case No. 1856). Moreover, there is no requirement of statute or order that this Company furnish 22-candle-power gas to consumers in Douglaston, Douglas Manor or Little Neck. The provision of law is only that the gas shall be of that candle-power, when "tested
at a distance of not less than one mile from the distributing
2755 holder." The Commission has not ordered the installation of
any particular system of gas transmission or distribution. The order of March 19, 1915, requires the Company to file with the Commission a general plan showing a proposed transmission and distribution system. At the time of the making of the order, the Company had a high pressure main in operation, extending a considerable distance from its works in Flushing, and therefore knew the effects of the compression of gas. The Company would thus experience no more difficulty in fulfilling this requirement as to gas destined for Douglaston than for gas for any other part of its franchise territory. If, however, the Company does not now wish, or think it most advisable to install a high-pressure system to Douglaston, there is no provision of the order preventing it from installing a low-pressure system, as it at first contemplated.

If the Company's pretended difficulty arises from the pressure requirements of the 1906 statute, the Company must be aware that these requirements were held unconstitutional by the Supreme Court of the United States in 1908 (Willcox v. Consolidated Gas Company, 212 U. S., 53) and cannot be regarded as bothersome now. In fact, the Commission has in force reasonable and valid orders in relation to gas pressure and the admeasurement thereof (see Order of January 24, 1913, in Case No. 1579, relative to gas pressure in Queens Borough); and if the Company desires any other or further provision on the subject of pressure as to this Douglaston extension, it may make due application therefor to the Commission. It is not warranted in interposing such an objection to complying with the
2756 order as to the making of the extension (Case No. 1856).

As to the suggestion that the Company should not be required "to commence the work before the frost is out of the ground," the Commission specifically said, in its opinion of February 1, 1918, that "of course no Commissioner would try to compel the laying of gas mains at a time when the ground is frozen" and that any needed extensions would be granted to that end.

The present action and attitude of the Company in view of the merited rebuke which its effort to "pick and choose" received at the hands of the Supreme Court of the United States, may reasonably be regarded as a deliberate effort to carry on corporate operations outside the law and to create disrespect for the law and the courts at a

1733

time when a higher standard of accountability would seem to b
manded. The Public Service Commissions Law was, as the C
have held, designed to afford to the public prompt relief and
quate protection from just the kind of a course this Company is
suing, and the Company's refusal to comply is a defiant chal
of the ability of public authority, through laws and courts, to a
plish legitimate public ends in a reasonable, ordered, and wel
sidered way.

I ask that Counsel to the Commission be authorized and di
to do all in his power to bring this Company and its officers to
pliance with their legal duties and charter and franchise obliga
and to secure their punishment if non-compliance is continue

2757 DEFENDANTS' EXHIBIT Q.

Defts.' Ex. Q.

*Affidavit of Maynard H. Spear, Submitted to Special Term, P
on Application for Writ of Certiorari.*

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. NEW YOR
QUEENS GAS COMPANY, Relator,

against

OSCAR S. STRAUS, TRAVIS H. WHITNEY, CHARLES S. HERVE
H. Kracke, and Charles Bulkley Hubbell, Commissioner
stituting the Public Service Commission of the State of Ne
for the First District, Respondents.

STATE OF NEW YORK,
County of New York, ss:

Maynard H. Spear, being duly sworn, deposes and says:

1. I am, and since 1908 have been, the Secretary, Gener
ager and Engineer of the New York and Queens Gas Comp
relator herein, and reside in Flushing, Borough of Queens.
been actively engaged in the manufacture and distributio
since 1896.

2. I was present at the original hearings had before the
sion in Public Service Commission Case No. 1856,
2758 able to state that the only plan under considerat
adopted by the Commission provided for the high
system described in Exhibits 3 and 9, copies of which a
annexed and made a part hereof; the cost of a low pressur
being admittedly much greater, and, therefore, entirely o
question.

3. The effect of transmitting illuminating gas over a
tance, under pressure, causes the liquefaction and deposit

portion of the luminants contained in the gas, a result which is greatly accelerated when the transmission is made during very cold weather, or even in warm weather during sudden changes of temperature; and gas transmitted through a high pressure main such as the Public Service Commission has directed the Company to lay from its works to Douglaston and Douglas Manor will, under an initial pressure of thirty to forty pounds, as contemplated, have its illuminating power reduced from thirty to fifty per cent, so that the illuminating power of the gas delivered to the consumers would never exceed eighteen candle power and, under varying conditions, might be much less. It will be physically impossible for the Company to supply twenty-two candle power gas to Douglaston and Douglas Manor (as required by Laws 1906, Chapter 125) through a high pressure system such as is contemplated by the order of March 19, 1915.

4. This question as to the effect of compression upon gas transmitted through high pressure mains, over a long distance, with relation to candle power, was entirely overlooked by the Commission's Engineers and myself, upon the original hearing herein, as well as by the Commission itself.

2759 5. I have examined the final map of the County of Queens, dated May 12, 1915, and adopted by the Board of Estimate and Apportionment of the City of New York January 28, 1916, and approved by the Mayor February 8, 1916, and filed in the Topographical Bureau of the City of New York, Borough of Queens, and find that the grade of Broadway (Jackson Avenue), through which the proposed main is to be laid from Cemetery Lane to the City boundary line, is to be changed, and that the present grade, between 225th Street Bayside, and Main Avenue, Douglaston, a distance of thirty-five hundred feet, is to be raised by a fill of from two to sixteen feet.

6. I have also been informed that the City contemplates instituting proceedings to widen and improve that portion of Broadway through which the proposed main would have to be extended.

MAYNARD H. SPEAR.

Sworn to before me, February 25, 1918.

M. A. CROSS,
Commissioner of Deeds.

N. Y. County Clerk's No. 255.
Commission expires Sept. 18, 1919.

2760 *Exhibit No. 3, Annexed to Affidavit of Maynard H. Spear.*

Douglaston, Douglas Manor, Douglaston Park, and Little Neck.

Aug. 1914.

	2".	3".	4".	6".	Houses.
Broadway	....	....	....	15600	....
"	....	....	14500	....	....
Main Ave.	....	....	3100	....	22
Hamilton	600	....	....	....	..
Pine	....	960	....	....	12
Orient	....	1050	....	....	8
Poplar	840	....	....	....	9
Willow	660	....	....	....	8
Prospect	450	....	....	....	2
Willow	350	....	....	....	4
Cherry	750	....	....	....	10
Prospect	300	....	....	....	6
Hillside	....	1300	....	....	5
West Drive	....	4270	....	....	13
Bay Ave.	1300	....	....	....	12
Cedar Lane	540	....	....	....	4
Forest	180	....	....	....	1
Ridge Rd.	2070	....	....	....	19
Park Lane	670	....	....	....	5
" "	150	....	....	....	1
" "	300	....	....	....	1
Arleigh Rd.	1700	....	....	....	10
Holly Wood	1170	....	....	....	6
Manor Rd.	340	....	....	....	3
" "	1170	....	....	....	4
Westmoreland	500	....	....	....	3
Beverly	950	....	....	....	5
"	480	....	....	....	1
Grosvenor	970	....	....	....	5
Richmond	780	....	....	....	3
Knoll Wood	330	....	....	....	2
Kenmore	450	....	....	....	2
Douglas	150	....	....	....	1
"	230	....	....	....	1
East Drive	540	....	....	....	3
" "	1080	....	....	....	5
Centre "	750	....	....	....	3
" "	970	....	....	....	5
2761					
Douglaston Ave.	....	1200	....	....	10
Dartmouth Rd.	635	....	....	....	3
Princeton Rd.	270	....	....	....	1

	2".	3".	4".	6".	Houses.
ginia Rd.	990	....	....	....	5
levard	....	550	....	....	1
dway	....	....	1303	....	2
dway	....	....	3000	....	21
le Neck Ldg. Rd.	....	2000	....	....	17
House Ldg. Rd.	....	2250	....	....	21
View Ave.	....	1950	....	....	9
nd View Ave.	....	900	....	....	2
Ave.	1200	....	....	....	6
ton Ave.	900	....	....	....	8
name. St.	600	....	....	....	3
t End Drive	700	....	....	....	3
athon Ave.	700	....	....	....	4
ens Pl.	600	....	....	....	2
tmoreland Ave.	800	....	....	....	1
wood Ave.	900	....	....	....	4
mit St.	300	....	....	....	1
st Pl.	400	....	....	....	1
House Ldg. Rd.	900	....	....	....	6
er Ave.	900	....	....	....	1
on Rd.	500	....	....	....	3
	33015	16430	21903	15600	332

5 Ft. 2" main laid @ 37c. per foot	$12215.55	
0 " 3" " " " 47c. " "	7722.10	
3 " 4" " " " 68c. " "	14894.04	
0 " 6" " " " 91c. " "	14196.00	
pressor installed	1500.00	
a for drawbridge at creek	1000.00	
ment to replace	7900.00	
Total cost of mains	$59427.69	$59427.69

ne maps submitted by Douglaston Civic Association
in Douglaston, Douglas Manor and Douglaston
219 houses, and Little Neck has by actual count
houses, so we will assume that every house is occu-
and will be a consumer.

ice 50' @ 23c. per foot	$11.50	
meter	5.35	
rnor	3.15	
rial & Labor	2.00	
	$22.00	
Services etc. @ $22.00 each		$7304.00
l cost of mains, services & meters		$66731.69

219 Consumers @	20,000 cu. ft. per year	4,380,000 cu. ft.
113 "	" 15,000 " " "	" 1,695,000 " "
Total estimated consumption.....		6,075,000 " "

Profit @ .0945 per M — $574.09 or 8.10% on total investme
Total length of mains 86948 feet.
262 ft. to a house, cost $201 per house.

The above figures do not include any amount for engineering, supervision, contingencies, overhead charges nor interest and taxes during construction.

EXHIBIT No. 9, ANNEXED TO AFFIDAVIT OF MAYNARD H. SPEAR

Public Service Commission, First District.

Estimate by W. F. Hine, Chief Gas Engineer, P. S. C., of Cost of Distribution System to Supply Douglaston, Little Neck, etc., Douglas Manor with Gas.

Case No. 1856.

33,015 ft. of 2 inch mains at 0.275.....	$9,079.13
16,430 ft. of 3 inch mains at 0.424.....	6,966.32
21,903 ft. of 4 inch mains at 0.545.....	11,938.14
15,600 ft. of 6 inch mains at 0.847.....	13,213.20
2763	
Pavement (Company's estimate).....	7,900.00
New Compressor.....	2,000.00
Line under creek.....	2,000.00
332 services comp. with meters at 22.00 (Company's estimate).....	7,304.00
Total Cost of Installation including all engineering, supervision, contingencies, etc.....	$60,400.7
Interest during construction—(Assuming 4 mo. for construction and interest at 6%).....	604.0
Total.....	$61,004.8

764 DEFENDANTS' EXHIBIT R.

EXHIBIT B.

Application to Commission for Rehearing After Affirmance in United States Supreme Court.

Public Service Commission of the State of New York for the First District.

Case No. 1856.

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of the NEW YORK AND QUEENS GAS COMPANY to Such Extent as May Be Necessary to Serve Residents of Douglaston and Little Neck, in the Borough of Queens, City of New York.

Application for Rehearing.

To the Public Service Commission of the State of New York, for the First District:

The petition of the New York and Queens Gas Company respectfully shows, on information and belief:

I. On the 19th day of March, 1915, your Honorable Commission made an order herein, directing that the petitioner extend its gas mains and services in such a manner as may be required reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York, known as Douglaston,
765 including Douglas Manor; that construction of said proposed extension be begun not later than April 30, 1915, and be completed, as far as Alley Road or Main Avenue, Douglaston, by September 1, 1915; and that on or before April 30, 1915, your petitioner file with your Honorable Commission a general plan or layout, showing the proposed transmission and distribution system, to be installed pursuant to the terms of the said order, that shall be suitable and adequate to furnish reasonable service to the community known as Douglaston, including Douglas Manor, and that this extension be completed and in service not later than September 10, 1915; and that the said order take effect forthwith and that within ten days after service thereof, your petitioner notify the Commission, in writing, whether the terms of the said order would be accepted and obeyed.

II. Thereafter and on or about April 10, 1915, your petitioner made application to your Honorable Commission for a rehearing in this proceeding, upon the grounds in said petition particularly set forth, which said application was thereafter and on the 27th day of April, 1915, denied.

III. Proceedings were thereafter instituted by your petitioner in the New York Supreme Court and, on the 30th day of April, 1915, an order was obtained, directing that a writ of certiorari issue out of and under the seal of said Court, to your Honorable Commission, as then constituted, which said writ was duly allowed and issued on the same day, and directed that within twenty days after due service of the said writ upon your Honorable Commission, you certify and return to the office of the Clerk of the County of New York all and
singular the record before you on the proceeding had by
2766 and before you in and upon this proceeding, with your decisions and orders thereupon, together with all and singular the evidence, oral and documentary, submitted to you as such Public Service Commission, upon all the hearings in connection with the aforesaid proceedings, with all your determinations, to the end that your proceedings, actions and decisions in the premises might be reviewed and corrected.

IV. The return having been duly made by your Honorable Commission, as in and by said writ directed, the said proceedings were thereafter duly heard in the New York Supreme Court, Appellate Division, First Department, and an order entered by the said Appellate Division on the 3d day of March, 1916, sustaining the writ aforesaid and directing that the order and determination of your Honorable Commission, made March 19, 1915, reviewed under said writ, be, and the same was thereby, annulled.

V. Thereafter an appeal was duly taken by your Honorable Commission to the Court of Appeals, which said Court thereafter and on the 3d day of October, 1916, reversed the aforesaid order of the Appellate Division and reinstated the order of your Honorable Commission.

VI. A writ of error was thereafter and on the 31st day of January, 1917, allowed by the Chief Judge of the said Court of Appeals to review the judgment of that Court in the United States Supreme Court, which said Court thereafter and on or about the 10th day of December, 1917, affirmed the said judgment and dismissed the said writ.

VII. The record shows that the former hearing before the Commission was held in midsummer, under circumstances when
2767 no complete presentation of the case from the Company's point of view was made, and that at least four of the Commissioners voted in favor of the said order upon the assumption of an irrelevant fact which did not exist.

VIII. One controlling consideration was entirely overlooked, both by the Company and the Commission. It was shown that the only method by which gas could be supplied by your petitioner from its Flushing works was by the installation of a new high pressure main, the distance from the works to Douglaston being about six miles. In connection with the consideration by the present members of the Commission of the adoption of a heat unit standard, it has been

developed both by the witnesses of the Commission and those of the Gas Company that the effect of transmitting illuminating gas over a long distance, under pressure, is to cause the liquefaction and deposit of a large portion of the luminants, a result which is greatly accelerated when the transmission is made during very cold weather or during sudden changes of temperature; and your petitioner is advised by its engineers and experts that even if a high pressure main should be laid to Douglaston, it would be physically impossible to supply gas to that community under the present 22 candle power standard. The said order of the Commission, therefore, requires your petitioner to expend a large amount of money for the accommodation of a comparatively few persons, in face of the certainty that after such expenditure had been made, your petitioner would be unable to supply gas to the Douglaston community without violating the existing statutory requirements.

768 IX. Your petitioner is advised that the City of New York contemplates changing the grade of Broadway, where it crosses the marsh between Bayside and Douglaston, through which your petitioner's main would have to be laid, by a fill of eight feet. In that event, a main now laid will have to be relaid at great expense when such change is made.

X. Your petitioner is also advised that it has not yet been definitely determined by the Commission whether Main Avenue, Douglaston, will cross over or under the railroad; and, consequently, no definite plans can at present be made for carrying the main across the railroad to Douglas Manor.

XI. Since the said order of the Commission was made, the cost of materials and labor has advanced to such an extent that the cost of making the said proposed extension will now be at least fifty per cent greater than that estimated by the Commission's Engineer. The proposed extension is by no means a small undertaking for a Company the size of your petitioner, and the enormity of the undertaking is emphasized when it is considered that your petitioner, after sixty years of development, has only one hundred and ten miles of mains and, to carry out the order of this Commission, will require, with one sweep, an extension equal to sixteen per cent of its present system. Furthermore, to make the six miles of transit main, required by the order to be laid, available, it will be necessary to lay in addition thereto eleven miles of distributing mains and four miles of service pipe, aggregating four hundred tons of pipe, requiring approximately fifteen cars to transport it from the mill; and, in view of the present congestion at the mills and of the railroads and
769 the desire of the Federal Government to defer all work which might unnecessarily hamper it in the present emergency, is extremely doubtful, even though an order were given for the pipe at this time, whether any deliveries could be made for months to come.

XII. In addition to the foregoing, the present scarcity of labor, particularly in the Third Ward, must be considered, also the cost

of operation, which has greatly increased, so that the actual c
gas supplied by your petitioner to its present consumers, a
statutory rate of one dollar per thousand cubic feet, including th
interest at six per cent on its investment in property devoted to
lic service, is not less than $1.301 per thousand cubic feet o
delivered. It will, therefore, be impossible for your petitioner to
any return whatsoever on the cost of laying the pipe necessa
reach this new territory; and it would be unjust and unreaso
to require your petitioner to proceed with the construction of th
extension until such time when conditions shall warrant.
though the prospective consumers laid the necessary pipe at
own expense, and your petitioner supplied such consumers wit
at the statutory rate, it would not receive a return sufficient to
the actual cost of the gas supplied.

XIII. It is impossible to lay mains at this season of the
on account of the frost and snow, without adding very greatly
cost of laying the same; and, when it is considered that all
houses are supplied with electric current and that the gas will
ably be used only for cooking purposes, that none o
2770 houses are now piped for receiving such gas supply, and
at least twenty-five per cent of them are closed for the w
months, such additional expenditure seems entirely unwarra
The traveling public alone would be much more seriously i
venienced than the small Douglaston community would be bene

XIV. Your petitioner is informed that the title to many
streets in Douglaston and all of the streets in Douglas Manc
mains in private ownership, and that, before any mains can b
in the said streets, it will be necessary to procure permanent
ments and rights of way through the same from the owners
your petitioner has no express power of condemning land for
purposes. Furthermore, the present grades of many of the s
have not been officially adopted by the Topographical Bureau
are, therefore, subject to change.

Wherefore, your petitioner, in consideration of the foregoing
of the avowed policy of the National Government to defer all
construction work that is not absolutely essential, respectfully
for a rehearing herein, in order that it may submit proof in
port of the foregoing allegations, to the end that the order h
fore and on the 19th day of March, 1915, made herein, be re
and annulled, or that it be suspended while the present abnorma
ditions continue.

NEW YORK AND QUEENS G
COMPANY.
By LEWIS B. GAWTRY,
Vice-President

2771 STATE OF NEW YORK,
County of New York, ss:

Lewis B. Gawtry, being duly sworn, deposes and says that
Vice-President of the New York and Queens Gas Company, the

tioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that, as to those matters, he believes it to be true.

LEWIS B. GAWTRY.

Sworn to before me, January 4, 1918.

[SEAL.]

L. A. COLEMAN,
Notary Public, No. 141, N. Y. County.

Cert. No. 9128 filed in Register's Office New York County.

Term expires March 30th, 1919.

2772 DEFENDANTS' EXHIBIT S.

Def't's Ex. S.

EXHIBIT C.

Order of Commission Denying Application of January 4, 1918, for Rehearing.

At an Adjourned Meeting of the Public Service Commission for the First District Duly Held at Its Office, No. 120 Broadway, in the Borough of Manhattan, City and State of New York, on the 1st Day of February, 1918.

Present:—

Oscar S. Straus,
Chairman;
Travis H. Whitney,
Charles S. Hervey,
F. J. H. Kracke,
Charles Bulkley Hubbell,
Commissioners.

Case No. 1856.

In the Matter of Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of NEW YORK AND QUEENS GAS COMPANY to Such Extent as May Be Necessary to Serve Residents of Douglaston and Little Neck, in the Borough of Queens, City of New York.

An order in the above-entitled proceeding having been duly made by this Commission on March 19, 1915, directing the New York and Queens Gas Company to make certain extensions of its
2773 gas mains and services in such a manner as may be required reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York

and known as Douglaston, including Douglas Manor, as more fully set forth in said order;

And the New York and Queens Gas Company having applied to the Commission, under date of April 10, 1915, for a rehearing in respect to such order, and an order having been duly made by this Commission on April 27, 1915, denying the Company's application for a rehearing;

And a writ of certiorari having, on April 30, 1915, been issued by the Supreme Court of the State of New York in and for the County of New York, upon the relation of the New York and Queens Gas Company to review the proceedings, actions and decisions of this Commission in the premises, including the said order of March 19, 1915, and the said order of April 27, 1915, denying the company's application for a rehearing; and the Appellate Division of the Supreme Court for the First Judicial Department, having, on March 3, 1916, made an order sustaining the said writ of certiorari and annulling the said determination of the Commission, and an appeal having been taken to the Court of Appeals of the State of New York from the said order of the Appellate Division of the Supreme Court for the First Judicial Department; and the Court of Appeals of the State of New York having, on October 3, 1916, rendered a decision reversing the order of the said Appellate Division and affirming and reinstating the said order and determination of this Commission; and a judgment having been entered by the Supreme Court in and for the County of New York, on October 17, 1915, making the order and judgment of the Court of Appeals the judgment of that Court herein;

2774 And the New York and Queens Gas Company having thereafter and on January 31, 1917, secured a writ of error to review the last-mentioned judgment of the Supreme Court, of the State of New York, and the United States Supreme Court having rendered a decision on December 10, 1917, affirming the judgment of the State Court so reviewed; and the mandate of the United States Supreme Court affirming said judgment having been remitted to the Supreme Court of the State of New York and duly filed in the office of the Clerk of the County of New York, and an order having been entered by the Supreme Court in and for the County of New York on January 31, 1918, making the order and judgment of the United States Supreme Court the judgment of the Supreme Court of the State of New York;

And the Commission having heretofore and on February, 191[illegible] made an order in this case fixing the time for compliance by the New York and Queens Gas Company with the said order of March 19, 1915, the times fixed by the said order, entered on March 1[illegible] 1915, having meanwhile expired;

And the New York and Queens Gas Company having again applied to the Commission by a petition verified January 4, 1918, for a rehearing herein, to the end that the said order made herein March 19, 1915, be revoked or annulled or that it be suspended;

And the Commission being of opinion that sufficient reason for a rehearing as prayed for by the New York and Queens Gas Com-

pany in the said second petition, dated January 4, 1918, has not been made to appear and that the allegations of the said second petition for a rehearing are insufficient in form and substance to warrant the granting thereof; it is therefore hereby

2775 Ordered that the second application of the said company, dated January 4, 1918, for a rehearing herein, be and the same hereby is denied; without prejudice, however, to a suitable request by the company for an extension of the time now fixed for its compliance with the directions of the said order of March 19, 1915, should facts and conditions affecting the time of its compliance be deemed to have arisen since the making of said order of March 19, 1915, all as more particularly set out in the opinion of the Commission adopted concerning the said application of January 4, 1918, for rehearing.

By the Commission.

[L. S.] JAMES B. WALKER,
Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, James B. Walker, Secretary of the Public Service Commission for the First District, do hereby certify, that I have compared the above with the original adopted by said Commission on February 1, 1918, and that it is a correct transcript therefrom and of the whole of the original.

In Testimony Whereof, I have hereunto subscribed my hand and affixed the seal of the Commission, this 1st day of February, 1918.

(Signed)
JAMES B. WALKER,
Secretary.

2776 DEFENDANTS' EXHIBIT T.

Exhibit D.

Order of Commission Fixing Time for Compliance with Final Order.

At an Adjourned Meeting of the Public Service Commission for the First District Duly Held at Its Office, No. 120 Broadway, in the Borough of Manhattan, City and State of New York, on the 1st Day of February, 1918.

Present:

Oscar S. Straus,
Chairman;
Travis H. Whitney,
Charles S. Hervey,
F. J. H. Kracke,
Charles Bulkley Hubbell,
Commissioners.

Case No. 1856.

In the Matter of Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of NEW YORK AND QUEENS GAS COMPANY to Such Extent as May Be Necessary to Serve Residents of Douglaston and Little Neck, in the Borough of Queens, City of New York.

An order in the above-entitled proceeding having been duly made by this Commission on March 19, 1915, providing and directing as follows:

"Ordered that the New York and Queens Gas Company, be and hereby is directed to extend its gas mains and services in such
2777 a manner as may be required reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York and known as Douglaston, including Douglas Manor.

"Further ordered that construction on the said proposed extension be begun not later than April 30, 1915, and be completed as far as Alley Pond Road or Main Avenue, Douglaston, by September 1, 1915.

"Further Ordered that on or before April 30th, 1915, New York and Queens Gas Company file with this Commission a general plan or layout showing a proposed transmission and distribution system to be installed pursuant to the terms of this order, that it shall be suitable and adequate to furnish reasonable service to the Community known as Douglaston, including Douglas Manor, and that this extension be completed and in service not later than September 10, 1915.

"Further Ordered that this Order shall take effect forthwith and that within ten days after service thereof said New York and Queens Gas Company notify the Commission in writing whether the terms of this Order are accepted and will be obeyed."

And the New York and Queens Gas Company having applied to the Commission, under date of April 10, 1915, for a rehearing in respect to such order, and an order having been duly made by this Commission on April 27, 1915, denying the Company's application for a rehearing:

And a writ of certiorari having, on April 30th, 1915, been issued by the Supreme Court of the State of New York in and for the
2778 County of New York, upon the relation of the New York and Queens Gas Company to review the proceedings, actions and decisions of this Commission in the premises, including the said order of March 19, 1915, and the said order of April 27, 1915, denying the Company's application for a rehearing and the Appellate Division of the Supreme Court for the First Judicial Department having, on March 3, 1916, made an order sustaining the said writ of certiorari and annulling the said determination of the Commission, and an appeal having been taken to the Court of Appeals of the State of New York from the said order of the Appellate Division of

he Supreme Court for the First Judicial Department; and the Court f Appeals of the State of New York having, on October 3, 1916, endered a decision on revising the order of the said Appellate Di- ision and affirming and reinstating the said order and determina- ion of this Commission; and a judgment having been entered by he Supreme Court in and for the County of New York, on October 7, 1915, making the order and judgment of the Court of Appeals he judgment of that Court herein:

And the New York and Queens Gas Company having thereafter nd on January 31, 1917, procured a writ of error to review the last nentioned judgment of the Supreme Court of the State of New York, nd the United States Supreme Court having rendered a decision on December 10, 1917, affirming the judgment of the State Court so re- iewed; and the mandate of the United States Supreme Court affirm- ing said judgment having been remitted to the Supreme Court of the State of New York and duly filed in the office of the Clerk of the County of New York, and an order having been entered by
2779 the Supreme Court in and for the County of New York on January 31, 1918, making the order and judgment of the United States Supreme Court the judgment of the Supreme Court of the State of New York.

And it appearing that meanwhile the times fixed by the said order of March 19, 1915, for beginning and completing the construction and filing with the Commission the plan and layout of the proposed transmission and distribution system have expired and elapsed it is, therefore,

Ordered that the time within which the construction of the said proposed extension of gas mains and services shall be begun by the New York and Queens Gas Company, pursuant to the said order of this Commission made herein on March 19, 1915, be and is hereby fixed at not later than March 1, 1916 and the time within which the construction of the said proposed extension as far as Alley Pond or Main Avenue, Douglaston, shall be completed by the said Company, be and is hereby fixed at July 1, 1918, and it is

Further ordered that the time on or before which the New York and Queens Gas Company shall file with this Commission a general plan or layout showing a proposed transmission and distribution sys- tem to be installed by it, which shall be suitable and adequate to furnish reasonable service to the community known as Douglaston, including Douglas Manor, pursuant to the term of the said order of this Commission made on March 19, 1915, be and is hereby fixed at, on, or before March 1, 1918, and that the time not later than which the extension shall be completed by the said company and in service be fixed at not later than July 1, 1918, and it is

2780 Further ordered that this order shall take effect forthwith, and that within ten days after the service thereof said New York and Queens Gas Company shall notify the Commission in writ- ing whether the terms of the order of March 19, 1915, are accepted and will be obeyed within the times specified in this order.

By the Commission.

[L. S.] JAMES B. WALKER,
Secretary.

STATE OF NEW YORK,
County of New York, ss:

I, James B. Walker, secretary of the Public Service Commission for the First District, Do Hereby Certify that I have compared the above with the original adopted by the said Commission on February 1, 1918, and that it is a correct transcript therefrom and of the whole of the original.

In Testimony Whereof, I have hereunto subscribed my hand and affixed the seal of the Commission, this 1st day of February, 1918.

(Signed) JAMES B. WALKER.
Secretary.

2781 DEFTS.' EX. U.

Opinion Denying the Second Application of the Company for a Rehearing.

EXHIBIT E.

Public Service Commission of the State of New York for the First District.

Case No. 1856.

In the Matter of the Hearing on the Motion of the Commission on the Question of the Extension of the Gas Mains of the NEW YORK AND QUEENS GAS COMPANY to Such Extent as May Be Necessary to Serve Residents of Douglaston, Douglas Manor, and Little Neck, in the Borough of Queens, City of New York.

HERVEY, *Commissioner:*

Following the unanimous affirmance of this Commission's order by the New York Court of Appeals and the Supreme Court of the United States, the New York and Queens Gas Company comes for a second time to this Commission to ask for a re-hearing as to the order so affirmed. The Commission's denial of the first application for rehearing was a part of the record passed upon by the Courts, and the refusal of that application has been sustained by the highest Court of the State and the Nation.

2782 I am of the opinion that this second effort to obtain a reconsideration of the propriety of requiring this company to live up to its franchise obligations should be denied, and steps taken to bring about early compliance with the Commission's order to punish non-compliance. The early extension of gas mains and service, within the petitioner's franchise area, as called for by the Commission's Order of March 19, 1915, is greatly needed by the residents of the communities affected, and the Commission should not countenance the company's unconscionable effort to obtain further delay without recognition of its legal obligations. When this matter was

acted upon by the Commission in the fall of 1915, the Opinion adopted by the Commission said, in part:

"If the people in this section of the Borough of Queens are to be benefited by the transfer of control to the Consolidated Company, it would seem that this is an opportune moment. It is surprising that so soon after the decision permitting the Consolidated Company to acquire control of the New York & Queens Gas Company, that Company should refuse to make extensions to Douglaston unless it is assisted financially by the consumers themselves, for the company states that it is willing to build the new main, provided the consumers or some one will advance the money and will accept repayment month by month to the extent of 25 per cent. of the gas bills.

"When the company accepted franchises for the whole of the Third Ward, it assumed certain obligations. The company may not have obligated itself to lay mains throughout the entire area
2783 regardless of the density of population, but it certainly can not go to the other extreme, select the most profitable parts and leave the less profitable areas to look out for themselves. At present, however, it assumes very much such an attitude towards the Douglaston area. The company is supplying gas to other areas which are populous and easily supplied. Even Bayside, a suburban development immediately to the west of Douglaston, receives gas. It will always be expensive to lay mains to serve the Douglaston area, for Alley Creek and the Bay intervene, and the gas works have been located by the company far from this section. The existing distribution system is not adequate to supply Douglaston in addition to the other areas now being supplied, and long mains must be built not merely from the ends of the mains to the west of Douglaston, but far back to the gas works.

"Apparently, these conditions will continue. The topographical situation can not be changed, and the distribution system is not likely soon to be re-built. If the company's position is sound, the residents of the Douglaston area can not obtain gas until their district becomes so populous that the new business will earn 6 per cent. on the cost not only of the mains in their own territory but of the mains clear back to the works. If the works are located far enough away, this day will be very far distant; and yet the company in the meantime holds franchises in reserve, building upon them as it wishes. Is it fair for a company to select the most profitable areas and then contend before this Commission that it should not be required
2784 to build elsewhere unless the new business will earn 6 per cent. on the cost of construction? This principle has been rejected by the Commission in the case of street railways, and the Commission's decision has been approved by the courts."

The Commission's action in the matter was unanimously upheld by a clearly reasoned opinion in the New York Court of Appeals, in the course of which it was said:

"The public service commissions are authorized by law to order reasonable improvements and extensions of the works, wires, poles,

lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations and municipalities." (Pub. Serv. Com. Law [Cons. Laws, Ch. 48], Sec. 66.)

"Under the authority of this statute the Public Service Commission for the first district made the order requiring the relator to extend its gas mains and services to meet the reasonable requirements of Douglaston and Douglas Manor.

* * * * * * *

"The public service commissions were created by the legislature to perform very important functions in the community, namely, to regulate the great public service corporations of the state in the conduct of their business and compel those corporations adequately to discharge their duties to the public and not to exact therefor excessive charges. It was assumed perhaps by the legislature
2785 that the members of the public service commissions would acquire special knowledge of the matters intrusted to them by experience and study, and that when the plan of their creation was fully developed they would prove efficient instrumentalities for dealing with the complex problems presented by the activities of these great corporations.

* * * * * * *

"The question now is whether or not there was any evidence to show that the order of the public service commission was an unlawful and arbitrary exercise of power.

"There was no dispute as to the basic facts of the case. There was some variation in the estimates of the witnesses as to the cost of iron pipe and the expense of engineering supervision and like matters, but there was no real disagreement as to the cost of the extension of the relator's system of gas distribution, and the increase in revenue that the relator would probably receive therefrom.

"The court at the Appellate Division in its opinion summed up the proof on the subject. The court said that the cost of the extension would be between $60,000 and $70,000 and that the increased return to the relator from the consumption of gas would be about $1,950 per year, which is only one-half of the interest at five per cent upon the extension.

"This is very far from showing that the order of the Public Service Commission was simply an arbitrary and capricious exercise of power. * * * "

2786 The Supreme Court of the United States likewise sustained with a unanimous voice the action of the State tribunal. The notable opinion read by Mr. Justice Clarke expressed views which apply with great force to many of the allegations of the company's second petition for a re-hearing:

"* * * The case is now in this court for review of the judgment entered upon the decision of the Court of Appeals and it is presented upon a single assignment of error, viz: 'That the order of

the Public Service Commission * * * was illegal and void in that it deprived the Gas Company of its property without due process of law and denied to it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, in requiring the company to extend its distributing system under great physical difficulties and at enormous expense to an independent and remote community which the company was under no present duty to supply with gas when it appeared that the Gas Company would not obtain an adequate return from the expenditure required to make such extension.'

"More compactly stated, this assignment of error is, that the order deprived the gas company of its property without due process of law, because obedience to it would require an expenditure of money upon which the prospective earnings would not provide an adequate return.

"The Court of Appeals of New York decided that the Public Service Commission was created to perform the important function
2787 of supervising and regulating the business of public service corporations; that the state law assumes that the experience of the members of the Commission especially fits them for dealing with the problems presented by the duties and activities of such corporations; that the courts in reviewing the action of the Commission have no authority to substitute their judgment as to what is reasonable in a given case for that of the Commission, but are limited to determining whether the action complained of was capricious or arbitrary and for this reason unlawful; and that it was clearly within the power of the Commission to make the order which is here assailed.

"This interpretation of the statutes of New York is conclusive, and the definition, thus announced, of the power of the courts of that State to review the decision of the Public Service Commission, based as it is in part on the decision in Interstate Commerce Commission v. Illinois Central R. R. Co., 215 U. S. 452, 470, differs but slightly, if at all, from the definition of this court of its own power to review the decisions of similar administrative bodies, arrived at in many cases in which such decisions have been under examination. Typical cases are: Baltimore & Ohio R. R. Co. v. Pitcairn Coal Co., 215 U. S. 481-494; Kansas City Southern Co. v. United States, 231 U. S. 423, 443-4; Louisiana R. R. Co. v. Cumberland Tel. & Tel. Co., 212 U. S. 414, 420-2; Interstate Commerce Commission v. Union Pac. Railroad Co. 222 U. S. 541-547, and Cedar Rapids Gas Co v. Cedar Rapids, 223 U. S. 655, 668.

"It is the result of these and similar decisions, that while in such cases as we have here this court is confined to the federal ques-
2788 tion involved and therefore has not the authority to substitute its judgment for that of an administration commission as to wisdom or policy of an order complained of, and will not analyze or balance the evidence which was before the Commission for the purpose of determining whether it preponderates for or against the conclusion arrived at, yet it will, nevertheless, enter upon such an examination of the record as may be necessary to determine whether the federal constitutional right claimed has been denied, as, in this

case, whether there was such a want of hearing or such arbitrary or capricious action on the part of the Commission as to violate the due process clause of the Constitution.

"The result of the application of this rule to the record before us cannot be doubtful. The Gas Company appeared at the hearing before the Commission, cross examined witnesses, introduced testimony and argued the case. On writ of certiorari the case was re-examined by the Appellate Division of the Supreme Court, and it was again reviewed on appeal by the Court of Appeals. In the matter of procedure plainly the company cannot complain of want of due process of law.

"The record shows that the company at the time of the hearing had franchises authorizing it to manufacture and sell gas throughout the Third Ward of the Borough of Queens, in the City of New York, and that, it being the only company which had franchises for any part of that area, the community to which it was ordered to
extend its distributing system must continue without gas if
279 the order does not become effective.

"The community of Douglaston, including Douglas Manor, was a rapidly growing settlement of three hundred and thirty houses, of an average cost of $7,500, thus giving assurance that the occupiers of them would be probably users of gas, and which, with very few exceptions, were occupied by families the entire year. While the community is described in the assignment of error as 'independent and remote' the record shows that it was served at the time by franchise holding companies, which supplied water, electric light and telephone to its inhabitants, and that the number of houses has doubled within a few years.

"The length of the extension ordered was about one and one-half miles but the mains of the company, which extended to the point nearest to Douglaston, were being used to almost their full capacity and for this reason the estimated cost of making the improvement included new mains of some eight miles in length. The engineer of the Gas Company testified that the cost of the ordered extension would be approximately $86,000, while the engineer for the Commission estimated the cost at $61,000. The Commission found that only $45,000 of the new investment required would be properly chargeable against the extension ordered, since the newer and larger mains would be available in part for other business.

"On the basis of the company's estimate of the cost of the extension the income would be about 2¼% per annum, and, on the
basis of the estimate by the Commission of the part of the
279 cost properly chargeable to the Douglaston community the income would be 4%. There is no showing in the record as to the fair value of the entire property of the Gas Company used in the public service, nor of the rate of return which it was earning thereon, and therefore even if the return on the cost of complying with the order be conceded to be inadequate, this would not suffice to render the order legally unreasonable. Atlantic Coast Line R. Co. v. North Carolina Corporation Commission, 206 U. S. 1, 24-

Mis. Pac. Ry. Co. v. Kansas, 216 U. S. 262; Puget Sound Traction Co. v. Reynolds, 244 U. S. 574, 580.

"It is significant also that within a year preceding the hearing by the Commission the Gas Company proposed in writing to the residents of Douglaston that it would extend its mains to the settlement if they would advance $10,000, to be returned in semi-annual credits upon the amount of gas consumed.

"These references to the evidence will suffice. They show this Public Service Commission ordering a public service corporation to render an important public service, under conditions such that in the aspect least favorable to the Gas Company the initial return upon the investment involved would be low but with every prospect of its soon becoming ample, and also that no claim was made by the Company that the comparatively small loss which the company claims would result would render its business as a whole unprofitable.

"Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory
2791 covered by their franchises which it is presently profitable for them to serve and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render. To correct this disposition to serve where it is profitable and to neglect where it is not, is one of the important purposes for which these administrative commissions, with large powers, were called into existence, with an organization and with duties which peculiarly fit them for dealing with problems such as this case presents, and we agree with the Court of Appeals of New York in concluding that the action of the Commission complained of was not arbitrary or capricious, but was based on very substantial evidence * * *"

Most of the matters alleged in the present application for a re-hearing were considered, in identical or somewhat similar form, upon the original hearing or in connection with the company's first application for a re-hearing. For the most part, the allegations of the present petition are vague and insufficient—much more indefinite and inadequate, in fact, than those of the petition already passed on adversely by the Commission. With the sole exception of conditions claimed to have arisen by reason of the European War, during the time the company was unsuccessfully litigating instead of building the needed extensions, the present petition avers nothing in the nature of definitely stated facts which the Commission has not fully considered at the time the original order was made and the first application for re-hearing denied. In fact, as to any matters not in the nature of facts arising since the making of the order,
2792 the Commission would not be disposed to grant a re-hearing at this time, in view of the great need for these extensions, the Company's persistent and successful policy of delay, and the obvious impropriety of this Company's effort "to pick and choose"—to use the Supreme Court's felicitous phrase—"Serving only the portions of the territory covered by their franchise which it is presently profitable for them to serve and restricting the development of the re-

maining portions by leaving their inhabitants in discomfort without
the service which they alone can render." Except as to matters
which have arisen after the time when the company might in good
conscience have complied with its lawful obligations, the companies
had full opportunity to present before the Commission any avail-
able proof in support of the allegations which they now so per-
functorily re-state. As the Supreme Court pointedly said, "to cor-
rect this disposition to serve where it is profitable and to neglect
where it is not, is one of the important purposes for which these ad-
ministrative commissions, with large powers, were called into exis-
ence, with an organization and with duties which peculiarly fit them
for dealing with problems such as this case presents," and I am of the
opinion that the Commission should give no aid to an effort based s
palpably on a desire for further delay.

The lapse of more than three years and a half from the inceptio
of this proceeding finds no step taken by the company to fulfi
what the highest Courts have held to be its franchise obligation
None of that delay has been attributable to the Commission; th
matter has been energetically and successfully prosecuted b
2793 the Commission's representatives through the various Court

But if we assume that the adequate protection of the com
pany's right of resort to the Courts made necessary the lapse of a
the time consumed by the company's effort to litigate where th
highest Courts of the State and Nation unanimously held the
was nothing to litigate, the fact remains that the matter has no
come again into the control of the Commission, after the expiratio
of nearly three years, and the Commission ought now to see to
that the "important purpose" for which it was created is fulfille
as to these Douglaston consumers. As a sheer matter of bringi
about an end to litigation, as the Supreme Court ruled in Knoxv
v. Knoxville Water Co. (212 U. S., 1), there would be ample w
rant for bringing now to a close the company's effort to turn judic
processes into a hippodrome. How serious is this aspect of t
matter is revealed by the following "time-schedule" of this cas

1914—

Spring months:

Complaints by 300 or more residents of Douglaston, Dou
Manor, Little Neck, etc., that the company was doing nothin
fulfill its undoubted franchise obligations to supply them with

June 24:

Company offered in writing to build the extension if resi
would advance $10,000, to be returned on the gas consumed, 2
cent of the gas bills to be returned semi-annually—a proposit
which the acceptance would have brought the completion o
extension and the repayment of the deposit before the
2794 in 1918 when the Commission can possibly secure gas
to these consumers, despite the Commission's success
Courts, and even if the present application for a rehearing is d

July 23:

The Commission directs a public hearing.

July 29:

First hearing is held and Commission indicates its purpose to obain an early outcome.

October 6:

Hearings before the Commission closed.

1915—

February 11:

Opinion of Commissioner Maltbie for the granting of the applitation approved by the Commission.

March 19:

Order adopted, directing the company to begin the extension not ater than April 30, 1915, and complete it not later than September , 1915.

April 10:

Company presents a petition for a re-hearing, on grounds covering early all of those indicated in the present petition for a rehearing

April 27:

Application for a re-hearing denied by the Commission.

April 30:

Company obtains a writ of certiorari from Justice Peter A. Henrick in the New York County Supreme Court.

795 October 19:

Return to the writ of certiorari filed.

1916—

February 16:

Certiorari writ argued in the Appellate Division for the First Dertment.

March 3:

Decision of the Appellate Division, sustaining the writ and anulling the Commission's order of March 19, 1915.

March 16:

Appeal by the Commission to the Court of Appeals.

May 23:

Appeal argued in the Court of Appeals.

October 3:

Decision of the Court of Appeals, reversing the determination o
the Appellate Division and reinstating and affirming the order
the Commission.

1917—

January 30:

Company obtains writ of error, to carry the case to the Supre
Court of the United States.

April 21:

Commission moves to dismiss writ of error for lack of jurisdicti

June 4:

Supreme Court retains motion and orders motion and case
hearing on summary docket.

2796 November 6:

Case argued in Supreme Court of the United States.

December 10:

Unanimous decision of the Supreme Court, affirming the act
of the New York Court of Appeals and affirming in all respects
order of the Commission.

1918—

January 1:

No gas yet supplied or gas mains yet laid, to furnish service to
sumers whom the highest courts of the State and Nation h
unanimously held were entitled to receive it, as a matter of the
pany's contract obligations, in 1914, before, and ever since.

January 4:

Company again applies for a re-hearing by the Commission
start the treadmill of delay and litigation all over again, even a
the courts have held the Commission was right in denying the
application for a rehearing.

In point of fact, however, the denial of this re-application for a rehearing may be placed squarely on the inadequacy of the petition to warrant reconsideration of matters already over-litigated. As to the more or less nebulous claims as conditions which the company says have arisen during the period it has failed to utilize its opportunity of compliance with the Commission's order, a petition more comprehensively prepared than that now before the Commission might be conceived to present some very serious questions of
797 law and policy as to the powers and duties of this body. May a company delay for years to do a thing required of it by its franchises and a specific order of the Commission, and gamble on the hazard that during such period of delay the cost of such compliance will become less or that conditions will arise which will still further delay compliance? If the company persistently and flagrantly seeks delay, is it to be excused from compliance altogether because meanwhile costs have risen and compliance now would cost more than at the time of the making of the order? If it be now a real hardship to the gas company to comply with the order of the Commission, in consequence of general conditions affecting the whole nation which would not have been visited upon the company if it had performed in due season the public duty which this Commission and the courts have declared the company has been ignoring for a considerable period of time, shall on one side the company be absolved from the consequences of its own delay and indulged a continued failure to perform its adjudicated obligation, while, on the other side, the public continues to suffer the hardship which the Supreme Court points out the company has long inflicted through withholding a service to which these home-owners have been, and are, indisputably entitled? Upon whom, even under the present trying circumstances, shall be visited the consequences of the company's delay, indifference and violation of duty? These interrogations I do not find it necessary to decide in disposing of this application for a rehearing. There is nothing of substance set out in this petition which calls for further taking of testimony concerning the propriety of the original order. The Company has made no showing of facts in behalf of a reconsideration of
798 the order of March 19, 1915. Certain matters are indicated in the petition which, if sustained by facts, might lead the Commission to the view that a company which had accepted the order and evinced an intent to comply with it in good faith might be entitled thereupon to an extension of time. Even the company's unconscionable delay and its flagrant defiance of its adjudicated obligations will not lead this Commission to seek to compel its compliance now under conditions which might add eventually to the expense-burdens of its consumers. And of course no Commissioner would try to compel the laying of gas mains at a time when the ground is frozen.

I accordingly recommend that an order, in the form submitted herewith, be adopted, denying the company's present application for a re-hearing. In so doing, I feel that the Commission should make clear its willingness and purpose, on suitable applica-

tion by the company, to consider any facts deemed by to warrant any needed extensions of time to begin or com plete an intended compliance with the company's franchi obligations as directed by the Commission's Order. If the Com pany now makes known its desire and purpose, seasonably and i good faith, to do what it should in conscience have done long ag and presents to the Commission any facts by virtue of which it b lieves its time should reasonably be extended, the Commission wi consider such a request for extension, in the light of whatever fac regarding material-supply, labor shortage, war-time financing, an the like, as are brought to its attention upon such application. D spite the long delay which has already taken place, and despite th fact that the Company has only itself to blame for what
2799 says is its present plight regarding prospective cost of com pliance, I am sure that there is no disposition on the pa of the Commission to fail to realize that current conditions call f less than usual rigidity as to dates within which construction wo will be done, and any requests for time reasonably required will considered on their merits.

I recommend the adoption of an order denying the applicati for a re-hearing and also an order fixing new dates for the beginni and completion of performance, the dates fixed by the order March 19, 1915, having expired while the matter was in the Cour The fixation of new rates is of course without prejudice to such application by the Company as I have indicated, if it deems t facts to warrant an extension beyond the dates now fixed.

Dated, New York, February 1, 1918.

CHARLES S. HERVEY,
Commissioner.

2800 DEFENDANTS' EXHIBIT V.

V.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. NEW YORK A QUEENS GAS COMPANY, Relator,

v.

OSCAR S. STRAUS and Others, Commissioners, Constituting the P lic Service Commission of the State of New York for the F District, Respondents.

First Department, April 5, 1918.

Public Service Commission—discretionary power to grant reh ing—when certiorari will not lie to compel rehearing den by Commission.

Section 22 of the Public Service Commissions Law, which provides that the Commission may grant and hold a rehearing if in its judgment sufficient reason therefor be made to appear, places the matter of a rehearing wholly within the discretion of the Commission, and its order denying an application for a rehearing cannot be reviewed by writ of certiorari if it does not appear that the Commission has abused its discretion.

Motion by the respondents, Oscar S. Straus and others, constituting the Public Service Commission of the State of New York for the First District, to quash a writ of certiorari brought to review an order of the Commission denying relator's application for a rehearing.

John A. Garver of counsel (Shearman & Sterling, attorneys), for the relator.

William L. Ransom of counsel (Godfrey Goldmark with him on the brief), for the respondents.

PAGE, *J.*:

An order was made March 19, 1915, requiring the relator to extend its mains and services to Douglaston. An application was made for a rehearing on April 10, 1915, and denied April 27, 1915. The relator has by writ of certiorari reviewed the order of the Commission, dated the 19th day of March, 1915, and the order of the Commission was affirmed by the Court of Appeals (People ex rel. New York & Queens Gas Co. vs. McCall, 219 N. Y. 84) and the United States Supreme Court (245 U. S. 345). The relator by a petition verified on the 4th day of January, 1918, applied for a rehearing of the said proceeding, which application was denied and the relator has caused to be issued a writ of certiorari for the purpose of reviewing the order denying said application. Section 22 of the Public Service Commissions Law (Consol. Laws chap. 48; Laws of 1910, chap. 480) provides that on such an application "the Commission shall grant and hold such a rehearing if in its judgment sufficient reason therefor be made to appear."

It is clear that the granting or refusing of the application for a rehearing rests in the discretion of the Commission. (City of Buffalo v. Buffalo Gas Co., 82 Misc. Rep. 304, 310; affd., 160 App. Div. 914, on opinion below.) Clearly, this writ could not bring before us the original determination of the Commission embodied in the order of March 19, 1915, as that order has been exhaustively reviewed by the courts. The sole question before us, therefore, is the disposition of the motion for a rehearing. That matter resting in its discretion, and as it does not appear that the Commission has abused its discretion, the motion to quash the writ should be granted, with fifty dollars costs and disbursements.

Clarke, P. J., Smith, Davis and Shearn, JJ., concurred.

2801 Motion to quash writ granted, with fifty dollars costs and disbursements. Order to be settled on notice.

2802 DEFENDANTS' EXHIBIT "W."

Ledger #1 of the Newtown and Flushing Gas Company.
Not printed.

2803 DEFENDANTS' EXHIBIT "X."

Journal #1 of the Newtown and Flushing Gas Company.
Not printed.

(Here follows reproduction of Defendants' Exhibit Y, marked page 2804.)

G16/44

BALANCE SHEETS OF NEWTOWN & FLUSHIN

(Commenced business July 1, 1900, per

U.S. DISTRICT COURT
FILED
NOV 23 1920
S.D. OF N.Y.

ASSETS SIDE	July 1 1900
Real Estate	$25,000.00
Franchise Good Will Etc.	303,460.20
Mains	25,000.00
Meters	7,425.00
Meter Connections	1,747.53
Services	8,500.00
Tools & Implements	500.00
Gas Stoves	850.15
Construction Spl 1903	
Construction New Holder	
Construction	
Horse & Wagon	
Office Fixtures	
Pipe & Special	945.28
Wrought Iron pipe (and meter materials)	375.03
Coal	863.74
Gas Oil	1,328.18
Sundry supplies	4.89
Stationery	
Petty Cash	
Cash	9,000.00
Bills Receivable (a)	21,000.00
Interest	
Sundry Consumers	
Sundry Debtors	
Total	$406,000.00

LIABILITIES SIDE	
Stock, Common	$300,000.00
Less held in treasury	(d) 97,000.00
Net outstanding	$203,000.00
Stock Preferred	
Less held in treasury	
Net outstanding	
Bonds	$300,000.00
Less held in treasury	(d) 97,000.00
Net outstanding	$203,000.00
College Point Special	
Water	
Payrolls	

Defendant's Exhibit Y

N. Y. & Queens Gas Co.
v. Newton, et al (1919)
Schedule No. 1

GAS CO, 1900 - 1904

ournal No. 1 - page 1)

	AUGUST 1		
1901	1902	1903	1904
$25,621.00	$26,145.52	$53,870.29	$53,870.29
485,994.52	472,794.57	469,435.61	469,435.61
38,842.74	54,872.73	68,972.44	82,580.71
11,365.62	15,552.05	18,005.92	21,409.99
2,052.55	2,584.97	3,128.88	3,575.92
13,865.88	20,794.58	26,087.28	30,549.33
578.60	594.73	1,142.61	1,511.83
481.58	134.52	923.63	2,302.80
		(b) 4,232.52	
5,099.00	(c) 27,719.54	23,001.89	25,373.29
2,671.39	8,922.69	553.05	578.05
65.00	558.05	110.20	505.63
	43.45	2,569.43	1,684.20
1,810.49	8,110.95	3,017.78	3,603.15
1,405.10	2,991.82	3,443.56	4,197.33
576.35	1,103.48	959.09	910.50
209.52	511.58	391.93	417.22
67.76	141.54	119.75	144.89
		200.00	Cr 115.93
23.42	Cr 9.37	2,532.37	1,601.37
1,695.51	7,839.43		
21,000.00			
1,025.00		7,564.31	12,614.58
5,854.37	7,635.66	1,526.83	3,657.96
2,464.69	1,503.98	$691,789.37	$720,608.72
$622,870.09	$660,546.47		

$300,000.00	$300,000.00	$300,000.00	$300,000.00
.....	.....	.....	.....
$300,000.00	$300,000.00	$300,000.00	$300,000.00
	$100,000.00	$100,000.00	$100,000.00
	50,000.00	49,942.85	49,942.85
	$50,000.00	$50,057.15	$ 50,057.15
$300,000.00	$300,000.00	$300,000.00	$300,000.00
.....	.....	.....	.....
$300,000.00	$300,000.00	$300,000.00	$300,000.00
	$2,932.90		
		$18.16	

Defendants Exhibit A8

New York & Queens Gas Co.
V. Newton et al (1919)
Schedule No. 2-a

BALANCE SHEETS, AUGUST 1, 1904 TO AUGUST 1, 1908, AND DECEMBER 31, 1908 TO DECEMBER 31, 1913

(From Ledgers of the Company)

ASSETS SIDE	August 1, 1904	August 1, 1905	August 1, 1906	August 1, 1907	August 1, 1908
anchises, Good will, etc.	$1,073,036.37	$1,073,036.37	$1,062,539.35	$1,050,098.57	$1,037,822.67
her fixed capital (a)	201,017.04	224,565.61	290,174.78	338,949.67	(b) 365,676.62
terials and supplies	13,260.09	10,154.32	23,413.69	19,694.77	9,576.61
sh	1,601.37	2,473.24	5,456.00	2,376.51	3,740.83
tty cash	Cr 115.93	Cr 152.88	200.00	300.00	300.00
ncoln Trust Co. (special cash deposit)	.....	.....	100.00	.....	.....
ndry consumers	12,814.58	19,203.40	22,714.52	26,712.15	19,752.40
ndry debtors	3,657.96	2,420.25	7,680.96	10,347.57	3,017.19
Total assets	$1,305,271.48	$1,331,700.31	$1,412,279.29	$1,448,479.44	$1,439,886.32

LIABILITIES SIDE					
tock	$600,000.00	$600,000.00	$600,000.00	$600,000.00	$600,000.00
onds outstanding (c)	650,000.00	700,000.00	750,000.00	750,000.00	750,000.00
ater	.....	.48	.74	54.21	40.93
ay roll	179.01	236.28	320.67	429.86	130.47
undry creditors	8,835.23	8,819.43	14,823.02	20,162.68	12,072.19
onsumers' deposits	8,012.74	8,270.41	9,526.60	11,459.86	12,804.50
ills payable	31,000.00	13,000.00	35,000.00	70,000.00	60,000.00
uspense	7,244.50	1,304.69	1,549.59	1,748.57	1,168.52
rofit and loss	.....	69.02	1,068.67 Dr	5,375.74	3,669.71
Total liabilities	$1,305,271.48	$1,331,700.31	$1,412,279.29	$1,448,479.44	$1,439,886.32

ASSETS SIDE	December 31, 1908	December 31, 1909	December 31, 1910	December 31, 1911	December 31, 1912	December 31, 1913
Fixed Capital, December 31, 1908:						
Franchises, good will, etc.	$1,032,407.52	$1,032,407.52	$1,032,407.52	$1,022,407.52	$1,022,407.52	$1,022,407.52
Other fixed capital	386,305.38	383,937.05	383,312.05	381,471.32	380,198.47	379,906.67
Total Fixed Capital,Dec.31,1908	$1,418,712.90	$1,416,344.57	$1,415,719.57	$1,403,878.84	$1,402,605.99	$1,402,314.19
Fixed capital since Dec. 31, 1908	.....	37,598.97	77,973.48	152,527.54	163,504.17	214,329.65
Materials and supplies	12,922.88	11,928.61	17,707.89	10,631.59	16,008.43	17,628.91
Cash	13,921.80	7,260.97	10,824.89	9,800.11	6,325.67	18,493.85
Petty cash	300.00	300.00	269.59	162.53	197.93	300.00
Accounts receivable(sundry consumers)	17,296.89	17,415.20	15,022.49	15,791.61	17,307.38	14,779.35
Accounts receivable(sundry debtors)	2,901.35	3,607.43	4,906.23	4,318.50	5,575.57	5,632.93
Coupon special deposits	15,690.71	12,583.19	15,486.19	8,465.20	10,400.00	.....
Prepaid insurance	827.45	787.51	219.89	1,323.96	1,914.09	277.26
Suspense	235.83	Cr 164.27	Cr 224.23	Cr 87.09	Cr 216.57	Cr 31.67
Taxes accrued (d)	1,133.26	.....	.....	.....	.....	.....
Total assets	$1,483,943.07	$1,507,842.18	$1,557,907.99	$1,606,812.79	$1,643,622.66	$1,673,724.47

LIABILITIES SIDE						
Capital stock	$600,000.00	$600,000.00	$600,000.00	$600,000.00	$600,000.00	$600,000.00
Bonds outstanding (e)	750,000.00	750,000.00	816,000.00	816,000.00	816,000.00	816,000.00
Payrolls	68.45	176.24	267.17	367.23	633.97	849.85
Bills payable	60,000.00	60,000.00	.....	20,000.00	25,000.00	25,000.00
Consumers' deposits	13,117.05	14,831.92	16,245.85	17,403.93	18,409.86	19,906.06
Main contract deposits	2,933.53	8,834.32	12,824.61	17,333.97	13,404.35	13,643.87
Accounts payable	28,196.79	16,441.07	21,985.94	24,593.33	22,772.28	25,059.86
Interest accrued on funded debt	15,625.00	15,625.00	17,000.00	17,000.00	17,000.00	17,000.00
Accrued amortization of capital	.....	10,910.97	24,028.00	35,528.94	44,522.59	50,665.49
Other required reserves	.....	399.97	886.14	1,200.36	1,589.84	2,225.18
Corporate surplus or deficit	14,002.25	30,622.69	48,670.28	57,385.03	84,289.77	103,374.16
Total liabilities	$1,483,943.07	$1,507,842.18	$1,557,907.99	$1,606,812.79	$1,643,622.66	$1,673,724.47

(a) The company carried an account called "Construction", which in July, 1905, July, 1906 and December, 1908 was closed into Real Estate and Building account. All of the Construction account was transferred to Real Estate and Building.

(b) The total of Gas Arc account at December 31, 1908 of $4,111.65 has been split into $3,191.75 Fixed Capital and $919. Materials and Spplies to conform to opening entries of Ledger No. 2.

(c) The book liability of $1,000,000 less "Treasury Bonds".

(d) Apparently prepaid taxes.

(e) Book liability of $1,000,000 less "Treasury Bonds".

Defendants Exhibit A 9

N. Y. & Queens Gas Co.
V. Newton et al (1919)
Schedule 2-B

BALANCE SHEETS DECEMBER 31, 1914 TO DECEMBER 31, 1919

ASSETS SIDE	December 31, 1914	December 31, 1915	December 31, 1916	December 31, 1917	December 31, 1918	December 31, 1919
Fixed Capital, December 31, 1908:						
Franchises, Good Will, etc.	$1,022,407.52	$1,022,407.52	$1,022,407.52	$1,022,407.52	$1,022,407.52	$1,022,407.52
Other fixed capital	379,906.67	379,091.59	373,991.09	372,512.87	359,545.85	354,298.85
Total fixed capital, Dec. 31, 1908	$1,402,314.19	$1,401,499.11	$1,396,398.61	$1,394,920.39	$1,381,953.37	$1,376,706.37
Fixed capital since Dec. 31, 1908	264,869.09	390,838.66	460,963.07	491,704.67	505,661.06	676,198.41
Materials and supplies	11,591.35	12,694.10	16,216.34	25,139.83	42,465.25	39,375.13
Other current assets:						
N.Y.City corporate stock	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
Deposit with City	30.00	30.00	30.00	30.00	30.00	30.00
Mortgage	.....	500.00	400.00	350.00	300.00	200.00
Liberty bonds	.....	.....	.....	.....	(a)650.00	(b) 2,200.00
Sucurities - Fire insurance participation certificates	84.85	347.85	674.18	1,043.55	1,453.75	1,919.22
Liberty bonds for a/c of employees	.....	.....	.....	3,400.00	3,900.00	1,400.00
Cash	17,313.36	30,678.95	16,918.21	14,106.54	13,300.37	41,637.88
Cashiers' fund	266.70	381.79	500.00	500.00	500.00	500.00
Accounts receivable (sundry consumers)	13,739.45	11,261.63	12,202.05	14,382.81	17,400.06	17,033.72
Accounts receivable (sundry debtors)	5,280.49	5,232.43	12,430.02	13,025.74	13,899.52	13,839.38
Prepaid insurance	174.80	141.00	97.72	151.04	45.62	63.58
Suspense	Cr 652.09	2,256.24	1,292.79	2,793.86	5,892.21	5,513.39
Total assets	$1,717,012.19	$1,857,863.76	$1,920,112.99	$1,963,548.43	$1,989,451.23	$2,178,617.08

LIABILITIES SIDE						
Capital stock	$600,000.00	$600,000.00	$600,000.00	$600,000.00	$600,000.00	$600,000.00
Bonds outstanding (c)	816,000.00	816,000.00	816,000.00	816,000.00	816,000.00	816,000.00
Accrued taxes	1,219.68	1,245.48	1,325.29	2,683.01	2,868.81	1,749.10
Accrued water	89.55	116.65	45.35	49.85	121.15	55.85
Payrolls	144.50	421.39	619.83	955.40	1,052.77	49.38
Bills payable	55,000.00	150,000.00	175,000.00	205,000.00	235,000.00	490,000.00
Consumers' deposits	20,354.03	20,853.56	23,070.99	25,137.04	26,259.01	27,810.85
Main contract deposits	11,645.69	14,339.93	14,932.65	12,096.33	9,647.60	8,675.91
Accounts payable	8,958.41	13,785.38	17,378.03	19,235.54	39,459.31	60,270.64
Accrued bond interest	17,000.00	17,000.00	17,000.00	17,000.00	17,000.00	17,000.00
Accrued general interest	.....	655.89	889.34	1,044.66	1,197.53	2,315.16
Employees liberty bond payments	.....	.....	.....	1,474.00	1,902.00	744.50
Reserve - Renewals and Replacements Plant withdrawn from service (d)	.....	5,529.53	6,901.45	11,519.84	8,266.39	8,267.21
Reserve - Accrued amortization	(e) 62,254.82	.....	.....	.....	.....	.....
Contingency	.....	74,225.34	86,840.85	101,149.66	101,149.66	101,149.66
Reserve - Fire insurance participation	84.85	347.85	674.18	1,043.55	1,453.75	1,919.22
Other required reserves	2,825.22	3,245.99	3,846.59	4,668.43	5,369.60	6,135.08
General profit and loss	121,435.44	140,096.77	155,586.44	144,491.12	127,703.65	36,474.52
Total liabilities	$1,717,012.19	$1,857,863.76	$1,920,112.99	$1,963,548.43	$1,989,451.23	$2,178,617.08

(a) First loan $250; 2nd, $400.

(b) First loan, $250; 2nd, $400; 3rd, $600; 4th, $950.

(c) Book liability $1,000,000 less $184,000, "Treasury Bonds".

(d) Original heading on ledger page 220 read "Renewals and Contingency". The word "Contingency" was crossed out and "Replacements - Plant withdrawn from service" written in.

(e) Transferred to "Contingency" Nov. 30, 1915.

Defendant's Exhibit A 10

New York & Queens Gas Co.
v. Newton, et al (1919)
Schedule No. 8

MATERIALS AND SUPPLIES, 1904 TO 1919

On August 1st, -	1904	1905	1906	1907	1908
Service Dept. materials					$279.72
Meter materials	$3,603.15	$3,782.13	$5,390.21	$8,268.55	925.30
Pipes and Specials	1,694.20	1,226.62	8,035.28	5,251.29	2,374.26
Gas stoves & Welsbachs	2,302.80	2,010.18	3,662.87	2,850.53	2,730.56
Coal	4,197.33	1,134.11	5,036.69	1,496.28	1,930.96
Gas oil	910.50	1,506.72	608.15	681.75	750.64
Sundry supplies	417.22	328.23	314.83	547.73	175.17
Stationery	144.89	156.33	343.66	598.64	410.00
Total	$13,260.09	$10,154.32	$23,413.69	$19,694.77	$9,576.61

On December 31st, -	1908	1909	1910	1911	1912	1913
Service materials	$367.73	$234.66	$374.30	$47.28	$400.44	$239.20
Meter materials	566.50	381.41	295.67	289.08	243.33	727.90
Pipes & Specials	2,111.67	972.96	2,979.44	1,730.52	2,682.92	2,282.91
Gas arcs	919.90	910.76	672.66	812.63	1,072.22	452.05
Stoves, mantles, etc.	2,395.43	1,786.41	1,753.62	2,174.89	2,302.98	3,907.52
Coal	5,036.04	2,737.30	6,477.86	2,140.43	5,969.94	4,623.88
Oil	1,015.56	4,190.70	4,921.66	3,148.44	3,306.55	4,745.82
Sundry supplies	168.52	369.65	191.60	166.43	128.05	708.54
Stationery	341.48	351.76	151.08	72.19	.....	341.09
Total	$12,922.86	$11,928.61	$17,797.89	$10,631.59	$16,008.43	$17,628.91

On December 31st, -	1914	1915	1916	1917	1918	1919
Service materials	$146.23	$151.81	$171.92	$697.89	$445.27	$963.06
Meter materials	530.11	650.70	553.37	738.50	643.71	1,278.52
Pipes & Specials	1,142.20	1,207.93	617.87	2,839.92	2,903.74	7,084.67
Gas arcs	339.99	342.34	923.99	1,250.82	1,320.46	1,470.10
Stoves, welsbachs, mantles, etc.	2,006.74	2,304.15	3,235.67	3,148.53	2,299.68	4,694.49
Coal	4,081.49	3,213.36	4,857.68	9,935.13	27,203.90	13,447.21
Oil	2,665.59	4,048.05	3,830.95	2,716.08	4,588.77	7,803.72
Sundry supplies	309.00	161.00	1,229.16	2,841.46	2,074.93	1,200.12
Stationery	370.00	594.76	795.73	971.50	984.79	1,463.24
Total	$11,591.36	$12,694.10	$16,216.34	$25,139.63	$42,465.25	$39,375.13

Defendants' Exhibit All

New York & Queens Gas Co.
V. Newton et al
Schedule No.4-A

REVENUES AND EXPENSES OF THE GAS BUSINESS AUGUST 1, 1904 - DEC. 31, 1908.

	Year Ended July 31st -				Five Months Ending
	1905	1906	1907	1908	Dec.31,1908
SALES - M cu. ft.	61,866.3	90,477.5	103,943.5	124,949.0	61,402.7
REVENUES:					
Gas sales	$105,205.61	$112,762.00	$124,244.81	$144,813.37	$69,552.91
Stoves P & L	918.72	1,964.76	887.37	491.34	3.69
Total	$106,124.33	$114,726.76	$125,132.18	$145,304.71	$69,555.70
EXPENSES:					
Manufacture	$32,025.17	$34,261.60	$45,387.76	$51,768.03	$21,661.34
Distribution	2,557.22	2,603.84	4,530.07	4,195.91	1,961.91
Rent	1,147.11	1,183.13	1,411.70	1,608.46	682.49
Repairs - Buildings	35.67	179.02	112.16	52.06	243.32
Apparatus	1,464.97	1,587.76	2,008.14	1,512.11	1,100.13
Tools and Implements	75.39	353.70	202.87	181.36	38.44
Mains	71.42	538.12	352.53	877.48	124.99
Meters	502.43	719.44	703.91	906.60	602.44
Services	2.90	8.89	31.96	48.23	30.92
Street lamps	3,311.43	3,715.01	Cr 384.20	218.59	Cr 49.20
Stable	429.61	1,029.91	1,784.28	1,750.23	709.17
Expense	12,302.56	14,953.46	16,563.18	12,794.73	6,200.97
Insurance	875.00	750.00	900.00	756.41	325.00
Legal	1,492.07	1,530.65	1,824.50	1,345.51	590.00
Deductions	100.67	185.84	251.55	661.61	170.17
Depreciation	15.00	10,544.80	12,440.78	12,275.90	5,723.07
Bad and doubtful debts (a)	181.45	135.29	155.52	332.34	172.12
Taxes	2,400.00	2,035.17	3,150.00	3,567.90	1,900.00
Discount for cash, Cr	.....	.....	.....	Cr 12.98	Cr 94.23
Maintenance of arcs Cr	.....	.....	Cr 27.98	.....	.....
Total	$58,990.07	$76,315.63	$91,398.73	$94,840.68	$42,093.05
INCOME: - Excess of revenues over expenses above (exclusive of P & L adjustments)	$47,134.26	$38,411.13	$33,733.45	$50,464.03	$27,462.65

(a) Apparently includes uncollectible gas bills.

Accidents and Damages - ambivision	798.82	869.17	918.65	805.53	279.68
General Stationery and Printing	1,673.32	3,031.66	3,701.03	2,530.27	823.58
Stable Expense	.....	.....	.....	975.86	1,957.29
Repairs Automobiles	.....	.....	.....	.....	1,398.86
Undistributed Adjustments	.....	.....	.....	.....	Cr 7.33
Total General and Miscellaneous Expenses	$15,190.00	$17,203.18	$17,844.79	$19,097.85	$20,498.36

Defendants' Exhibit A 12

N. Y. & Queens Gas Co.
v. Newton et al
Schedule 4-B

GAS OPERATING REVENUES AND REVENUE DEDUCTIONS, 1909-1913

Year ended December 31 -	1909	1910	1911	1912	1913
GAS SALES (M CU.FT.):					
Municipal street lighting	7,533.7	7,948.6	9,327.0	9,924.8	11,197.0
Municipal buildings	2,018.3	1,961.7	1,976.2	2,051.8	1,926.0
Prepaid gas	34,373.6	41,107.5	47,574.4	56,265.7	61,359.0
Commercial meters	102,571.3	117,647.0	125,843.3	141,137.8	146,197.3
Total	146,496.9	168,664.8	184,720.9	209,380.1	220,679.3
OPERATING REVENUES:					
Sales of gas:					
Municipal street lighting	$5,605.99	$5,893.98	$6,902.04	$7,368.94	$8,333.66
Municipal buildings	1,514.32	1,473.98	1,482.45	1,538.85	1,444.50
Prepaid gas	37,804.39	43,179.33	47,600.71	56,256.46	61,346.32
Commercial meters	112,790.94	123,631.32	125,890.48	140,874.00	145,600.53
Total sales of gas	$157,715.64	$174,178.61	$181,875.68	$206,038.25	$216,725.01
Rent of gas appliances	2,705.27	3,007.81	3,621.19	4,158.13	4,499.80
Merchandise and jobbing revenue	3,048.12	4,988.14	4,260.24	4,589.69	3,588.76
Residuals and by-products	38.20	107.55	79.95	77.00	37.50
Deficiency contracts	1,068.54	506.16	61.71	.....	.....
Total	$164,575.77	$182,788.27	$189,898.77	$214,863.07	$224,851.07
OPERATING REVENUE DEDUCTIONS:					
Operating expenses:					
Production	$51,319.78	$55,954.57	$61,182.16	$68,848.23	$79,998.55
Transmission and distribution	11,126.23	12,876.72	14,980.30	23,390.56	25,420.80
Commercial administration	7,625.06	8,352.96	9,576.58	10,095.73	12,331.63
Promotion of business	2,459.62	2,398.41	2,246.24	2,080.51	2,110.01
General and miscellaneous	15,190.00	17,203.18	17,844.79	19,097.85	(a) 20,498.36
General amortization	12,807.50	13,517.03	13,838.94	9,407.57	7,736.53
Taxes	4,692.51	5,774.85	9,783.61	11,410.33	11,832.81
Uncollectible bills	284.19	173.51	284.01	344.69	536.76
Total expenses, taxes, etc.	$105,204.89	$116,251.23	$129,736.63	$144,675.47	$160,465.45
OPERATING INCOME:					
Excess of revenues over expenses	$59,370.88	$66,537.04	$60,162.14	$70,187.60	$64,385.62

Fire Insurance
(a)/participation certificates amounting to $84.85 have not been deducted from gross premiums paid.

GAS OPERATING REVENUES AND REVENUE DEDUCTIONS, 1914-1919

Year ended December 31 -	1914	1915	1916	1917	1918	1919
GAS SALES (M CU.FT.):						

Defendants Exhibit A13

GAS OPERATING REVENUES AND REVENUE DEDUCTIONS (COMPANY'S BOOKS) PER 1,000 CU.FT. OF GAS SOLD 1909 - 1919.

N. Y. & Queens Gas Co. v. Newton, et al.
Schedule No.

	1909	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919
OPERATING REVENUE	107.66	103.27	98.46	98.40	98.21	98.42	99.08	99.65	99.67	99.48	99.52
Sales of gas	4.68	5.10	4.34	4.22	3.68	4.92	5.06	7.19	6.37	5.60	6.63
Miscellaneous	112.34	108.37	102.80	102.62	101.89	103.34	104.14	106.84	106.04	105.08	106.15
Total											
REVENUE DEDUCTIONS	3.70	3.39	3.18	2.86	3.07	3.09	3.10	4.09	4.01	4.67	6.31
Gas making labor	2.23	.89	1.58	1.76	1.88	2.19	2.73	3.10	3.31	8.42	9.57
Boiler fuel	8.80	7.37	7.34	7.19	7.87	8.10	8.31	9.51	10.52(b)	12.39(b)	14.49
Generator fuel	12.20	12.21	12.34	11.52	13.37	15.74	13.09	13.72	22.20	26.89	28.20
Water-gas oil	.90	.95	.44	1.10	1.02	.85	1.02	1.23	1.18	1.22	1.74
Miscell. supplies and expenses	1.53	1.75	2.21	2.20	2.25	2.26	2.18	2.50	2.65	3.52	7.35
Repairs (works and holders)	29.36	26.56	27.09	26.63	29.46	32.23	30.43	34.15	43.87	59.11	67.66
Total	.....	.....	.....	.....	.....	.....	.....	.....	.02(b)	3.73 (b)	4.20
Less allowance for residuals (a)	29.36	26.56	27.09	26.63	29.46	32.23	30.43	34.15	43.85	55.38	63.46
Cost in holder per M cu.ft. ma (c)	5.67	6.62	6.03	6.25	6.79	5.97	6.32	4.40	4.11	5.27	8.27
Gas unaccounted for	35.03	33.18	33.12	32.88	36.25	38.20	36.75	38.55	47.96	60.65	71.73
Total production expense (c)	7.59	7.64	8.11	11.17	11.52	12.00	10.77	10.85	9.47	7.70	10.09
Transmission and distribution	5.21	4.95	5.18	4.82	5.59	5.47	5.51	5.37	5.02	5.18	6.66
Commercial administration	1.68	1.41	1.22	1.00	.96	2.34	1.98	2.20	1.60	1.18	.77
Promotion of business	10.37	10.20	9.66	9.12	9.29	9.19	8.57	9.36	10.39	9.10	13.62
General	8.54	8.01	7.49	4.49	3.50	4.87	....	....	....	....	....
General amortization	....	....	.....	....	....	....	3.00	3.00	3.00	3.00	3.00
Renewals and replacements	68.42	65.40	64.78	63.48	67.11	71.97	66.58	69.33	77.44	86.81	105.87
Total operating expenses	3.20	3.42	5.30	5.45	5.36	4.83	5.24	5.29	8.62	7.73	7.14
Taxes	.19	.10	.15	.17	.24	.42	.38	.16	.15	.36	.47
Uncollectible bills	71.81	68.92	70.23	69.10	72.71	77.22	72.20	74.78	86.21	94.90	113.48
Total revenue deductions											
OPERATING INCOME	40.53	39.45	32.57	33.52	29.18	26.12	31.94	32.06	19.83	10.18	D 7.33
Excess of revenue over foregoing deductions											

(a) Water gas tar (residual) used as boiler fuel was not charged into cost of fuel until 1918.
(b) See note A.
(c) Ratios entering into Holder Cost are based on M cu.ft. manufactured. The addition of gas unaccounted for gives production expense per M cu.ft. sold.

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Accidents and Damages	.....	.....	.....	.....	.....	.....	40.00	125.00	.....	.....	225.00
Accidents and Damages - subdivision	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	279.68
General Stationery and Printing	.....	.....	.....	.....	796.82	869.17	918.65	805.53	823.58		
Stable Expense	.....	.....	.....	.....	1,673.32	3,051.66	3,701.03	2,550.27	1,957.29		
Repairs Automobiles	.....	.....	.....	.....	.....	.....	.....	575.86	1,398.86		
Undistributed Adjustments	.....	.....	.....	.....	.....	.....	.....	.....	Cr 7.33		
Total General and Miscellaneous Expenses	$15,190.00	$17,203.18	$17,844.79	$19,097.85	$20,498.36						

Defendants' Exhibit A 14

New York & Queens Gas Co.
v. Newton et al
Schedule No.6-A

DETAIL OF OPERATING EXPENSES 1909-1913

	Year Ended December 31st -				
	1909	1910	1911	1912	1913
PRODUCTION EXPENSES:					
Superintendence	$1,100.00	$1,132.42	$1,204.50	$1,207.80	$1,303.57
Boiler Labor	1,855.65	2,041.50	2,062.25	2,093.90	2,153.50
Generator "	2,072.14	2,150.41	1,915.15	2,006.90	2,354.95
Purifier "	626.02	481.17	519.60	584.55	1,365.50
Miscellaneous	815.88	1,331.28	1,480.70	1,491.40	1,156.60
Boiler Fuel	3,934.91	1,976.66	3,525.16	4,544.58	5,118.27
Water	526.18	611.06	562.40	739.20	782.58
Generator Fuel	15,364.64	15,490.64	16,564.00	18,581.36	21,370.39
Gas Oil	21,301.20	25,664.91	27,689.71	29,793.25	36,294.42
Purification Supplies	333.43	465.41	33.28	1,556.15	1,334.66
Misc. Works Expense	714.31	926.43	439.07	560.72	659.49
Repairs, Works and Station Structures	575.85	1,025.72	1,988.36	2,282.71	2,209.96
Repairs, Power Plant	400.13	646.57	515.85	478.47	659.68
Repairs Gas Apparatus (Sets, Holders, etc.)	1,673.89	1,976.33	2,406.49	2,843.75	3,128.64
Repairs Works Tools	25.55	34.06	72.58	81.49	106.34
Total Production Expense	$51,319.78	$55,954.57	$61,182.16	$68,843.23	$79,998.55
TRANSMISSION AND DISTRIBUTION EXPENSE:					
Transmission Pumping	$1.00	$7.96	$8.91	$45.57	$46.70
Distribution Superintendence	1,669.82	1,727.41	1,932.00	1,941.33	2,151.62
Distribution Supplies and Expense	166.27	Cr 24.97	147.16	170.91	88.26
Gas Meter and Installation Work	1,231.62	1,229.73	1,502.49	1,745.69	2,247.68
Work on Consumers Premises	5,178.40	5,793.71	7,234.58	9,296.03	9,369.79
Repairs Gas Mains	165.44	1,141.53	1,280.88	5,259.34	7,110.36
Repairs Gas Services	116.07	104.91	348.30	214.47	320.97
Repairs Meters	1,786.96	1,827.50	1,892.92	3,094.29	2,402.41
Repairs Distribution Tools	237.12	138.37	112.17	253.63	364.52
Repairs Appliances	82.71	27.75	40.01	234.04	1,076.23
Street Lamp Expense	490.82	1,102.82	800.88	1,135.26	242.26
Total Transmission and Distribution Expense	$11,126.23	$12,876.72	$14,980.30	$23,390.56	$25,420.80
COMMERCIAL EXPENSES:					
Commercial Department General Labor	$2,397.42	$2,609.54	$2,828.55	$2,645.18	$3,441.29
Commercial Department Accounting	1,543.40	1,546.33	1,802.67	2,014.67	2,435.16
Commercial Department Contracts	479.83	521.67	599.33	523.83	626.00
Commercial Department Collecting	1,482.22	1,687.12	1,921.54	2,098.76	2,684.29
Commercial Department Meter Reading	942.83	986.40	1,165.98	1,332.62	1,633.63
Commercial Department Supplies and Expense	779.36	999.90	1,258.51	1,481.17	1,511.26
Total	$7,625.06	$8,352.96	$9,576.58	$10,095.73	$12,331.63
Advertising	463.94	352.12	412.02	374.94	451.42
Canvassing and Soliciting	1,995.68	2,046.29	1,834.22	1,705.57	1,658.59
Total Commercial Expenses	$10,084.68	$10,751.37	$11,822.82	$12,176.24	$14,441.64
GENERAL AND MISCELLANEOUS EXPENSES:					
Salaries and Expenses of General Officers	$6,258.20	$7,137.99	$7,357.70	$7,549.95	$7,121.58
General Office Expense	2,336.58	1,876.95	1,445.37	1,699.66	2,505.46
Rent	1,726.00	1,566.00	1,720.00	1,678.00	1,706.00
General Law Expense	1,452.55	1,485.83	1,262.04	1,333.58	1,263.00
Insurance	944.53	1,235.58	1,400.00	2,400.00	2,802.69
Insurance - subdivision	.....	.....	40.00	125.00	422.55
Accidents and Damages					225.00
Accidents and Damages - subdivision					279.68
General Stationery and Printing	798.82	869.17	918.65	805.53	823.58
Stable Expense	1,673.32	3,031.66	3,701.03	2,530.27	1,957.29
Repairs Automobiles	.....	.....	.....	$75.86	1,398.86
Undistributed Adjustments	.....	.....	.....	.....	Cr 7.33
Total General and Miscellaneous Expenses	$15,190.00	$17,203.18	$17,844.79	$19,097.85	$20,498.36

Defendant's Exhibit 9

New York & Queens Gas Co.
v. Newton et al (1919)
Schedule No. 6-B

DETAIL OF OPERATING EXPENSES 1914-1919

For the year ended December 31, -	1914	1915	1916	1917	1918	1919
PRODUCTION EXPENSES:						
Superintendence	$1,303.57	$1,303.57	$1,641.39	$2,340.87	$2,626.32	$3,086.88
Boiler labor	2,448.26	3,004.36	4,286.68	3,713.74	4,597.53	7,089.28
Generator labor	2,834.64	2,792.95	3,953.67	5,638.94	7,662.26	10,760.08
Purifier labor	726.99	408.50	536.64	519.04	944.50	1,801.48
Miscellaneous(labor)	1,457.68	1,453.02	1,220.98	345.28	720.17	1,233.20
Boiler fuel	6,198.51	7,883.28	8,816.80	10,375.65	19,547.52	20,410.96
Water	647.70	663.90	675.60	114.40	254.70	356.50
Generator fuel	22,965.43	24,029.40	27,092.46	32,914.39	44,462.47	55,061.40
Gas oil	44,620.62	37,843.98	39,061.14	69,473.50	103,642.57	107,192.15
Purification supplies	1,059.48	1,580.01	1,656.82	1,364.50	2,752.16	4,749.82
Miscellaneous works expense	700.55	698.76	1,176.41	2,213.16	1,348.11	1,503.59
Repairs of works and station structures-Labor	1,120.74	1,359.91	574.77	499.74	200.36	636.32
Repairs of works and station structures-Materials	1,418.08	1,117.66	409.42	708.41	1,054.33	2,037.86
Repairs power plant - Labor	295.51	296.24	877.43	1,343.71	2,369.86	3,137.86
Repairs power plant - Materials	1,129.92	251.68	713.33	682.06	983.02	2,529.83
Repairs gas apparatus - Labor (sets, holders, etc.)	1,265.79	1,707.64	1,369.33	2,110.54	3,528.06	6,327.79
Repairs gas apparatus - Materials	1,082.21	1,392.08	2,959.53	2,713.37	4,020.81	12,891.89
Repairs works Tools	95.44	193.62	229.53	241.84	469.75	383.97
Boiler fuel - Tar (used)	.....	.....	.....	.....	10,669.20	15,960.36
Residuals produced (used)	.....	.....	.....	.....	Cr 10,669.20(c)	Cr 15,960.36
Residuals produced (sold)	.....	.....	.....	Cr 59.49	Cr 2,698.76	Cr 13.95
Total production expenses	$91,371.12	$87,982.56	$97,251.93	$137,253.65	$198,685.74	$241,176.84
TRANSMISSION AND DISTRIBUTION EXPENSES:						
Transmission pumping	$175.22	$200.54	$773.91	$111.34	$159.88	$449.63
Distribution superintendence	2,143.29	2,247.62	2,596.31	2,488.31	2,706.28	2,513.02
Distribution supplies and expenses	541.93	656.68	816.33	848.93	1,149.97	1,195.93
Gas meter and distribution	3,099.03	3,196.73	3,286.15	3,121.91	5,510.32	4,724.28
Work on consumers' premises (a/c 16, complaints, inspection, gas arc, instl. & M.)	14,149.48	12,747.62	13,478.24	5,751.31	5,144.97	5,478.70
Work on consumers' premises (Rep.appliances,16A)	.....	.....	.....	2,814.46 (a)	1,484.89 (d)	2,880.81
Work on consumers' premises(P.S.C.test data records)(16½)	.....	.....	149.07	276.62	.....	.....
Work consumers' premises(16B-Conn.& disconn.appliances - B.I. appl.)	.....	.....	.....	4,227.97 (b)	1,833.85	3,637.15
Repairs gas mains	3,744.97	1,548.42	1,053.28	1,860.49	1,699.65	5,697.02
Repairs services	340.71	167.89	175.95	480.44	952.88	809.38
Repairs meters	2,862.46	3,536.82	4,435.32	3,763.91	3,952.42	4,571.28
Repairs distribution tools	292.85	120.06	76.66	74.86	18.55	34.50
Repairs appliances	869.72	1,280.66	1,028.73	1,206.28	619.10	1,918.74
Street lamp expense	480.88	90.96	59.03	70.86	.....	.....
Total transmission and distribution expenses	$26,700.54	$25,794.00	$27,378.98	$27,097.71	$25,232.76	$33,910.41
COMMERCIAL EXPENSES:						
Commercial department general labor	$2,933.63	$3,556.30	$3,485.78	$3,083.15	$2,480.00	$3,576.50
" " accounting	3,415.42	2,973.50	2,960.77	2,948.86	4,364.90	5,591.48
" " contracts (applications)	250.00	208.64	208.66	274.50	338.62	355.48
" " collecting (regular)	2,572.70	2,120.96	2,297.84	2,505.76	2,809.94	4,069.67
" " " (P. P.)	.....	729.84	1,033.98	1,263.99	1,601.00	1,866.93
" " meter reading	1,461.34	890.42	855.45	1,359.31	2,247.40	2,813.04
" " supplies and expenses	1,522.17	1,711.21	1,634.38	1,701.54	1,869.48	2,769.60
Cashier	665.50	782.50	871.82	946.80	919.90	982.67
Stove department	247.33	208.70	208.67	274.54	338.63	355.40
Total	$13,068.09	$13,182.07	$13,557.35	$14,358.45	$16,969.87	$22,380.78
Advertising	649.47	636.62	580.05	529.92	429.69	429.47
Promotion office expense	.....	.....	.....	4.50	.....	.....
Canvassing and soliciting	4,713.80	4,113.94	4,959.19	4,057.79	3,441.13	2,172.47
Total commercial expense	$18,431.36	$17,932.63	$19,096.59	$18,950.66	$20,840.69	$24,982.66
GENERAL AND MISCELLANEOUS EXPENSES:						
Salaries and expenses of general officers	$4,651.61	$4,750.05	$5,002.08	$4,997.84	$4,964.92	$5,760.78
General office expense	2,720.36	2,832.18	2,596.02	5,434.97	4,062.64	3,553.04
General miscellaneous expense-defensive emergency	.....	.....	.....	1,282.58	1,065.35	747.45
" office " -special	.....	.....	.....	32.55	.....	.....
Rate case	.....	.....	.....	.....	.....	15,518.78
Rent	1,706.00	1,827.25	2,007.00	2,250.64	2,124.21	2,075.96
Legal expense	1,279.59	2,547.60	3,167.19	3,039.64	3,270.00	2,997.15
Law expenses connected with claims and arrears	.....	.....	.....	.....	.....	157.22
Law expenses connected with damages	159.85	.....	.....	.....	.....	.....
Insurance	3,591.50	3,030.57	3,027.04	3,156.54	3,204.84	3,703.01
Insurance (Life)	521.24	565.58	.....	.....	.....	.....
Accidents and damages	767.00	297.75	13.00	312.50	.....	133.00
Stationery and printing	1,011.68	1,146.86	997.64	1,684.71	1,949.24	2,045.44
Stable expense	1,767.69	1,911.88	2,419.00	2,506.96	2,228.69	2,991.43
Repairs automobiles	2,520.62	2,718.62	2,980.85	3,254.22	4,128.03	4,441.31
Undistributed adjustments	1,088.89	Cr 1,225.87	224.03	1,091.55	2,109.16	1,106.25
Relief department and pensions	191.35	108.61	1,189.35	698.54	695.59	581.15
Total general and miscellaneous expense	$21,977.38	$20,511.08	$23,623.20	$29,722.24	$29,802.67	$45,812.05

(a) Pencil note on ledger reads $606.99 material used to connect appliances should be in 16-B.
(b) " " " " " $606.99 " " " " " out in 16-A in error.
(c) Account called "Residuals produced, Cr."
(d) Pencil note reads "$820.41 for material used should be in 16-B Materials used to connect appliances."

Defendants' Exhibit 916

MAINTENANCE AND CONTINGENCY ACCOUNTS, 1909 - 1919

N. Y. & Queens Gas Co. v. Newton, et al
Schedule No. 7

Year	M cu.ft. gas sold	Amount at 12¢ per M	Cost of Repairs Amount	Cost of Repairs Per M	Credits to reserve	Charges to reserve	Balance in reserve Dec. 31
					A. ACCRUED AMORTIZATION OF CAPITAL		
1909	146,496.9	$17,579.63	$5,072.13	3.46	$12,507.50	$1,596.53	$10,910.97
1910	168,664.8	20,239.77	6,722.74	3.99	13,517.03	400.00	24,028.00
1911	184,720.9	22,166.50	8,327.56	4.51	(c) 13,838.94	2,338.00	35,528.94
1912	209,380.1	25,125.62	15,718.05	7.51	9,407.57	413.92	44,522.59
1913	220,679.3	26,481.52	18,744.99	8.49	7,736.53	1,593.63	50,665.49
1914	239,176.8	28,718.09	17,072.00	7.14	11,646.09	56.76	(b) 62,254.82
1915		(a)	(a)	—	(a)	(a)	(a)
	1,169,118.8	$140,311.13	$71,657.47	6.13	$68,653.66	$6,398.84	
					B. RENEWALS AND REPLACEMENTS - PLANT WITHDRAWN FROM SERVICE (At 3¢ per M)		
1915	239,410.3		$15,693.30	6.55	(d)$7,182.30	$1,652.77	$5,529.53
1916	252,310.3		16,884.13	6.69	7,569.29	6,197.37	6,901.45
1917	286,175.9		18,919.87	6.61	8,585.27	3,966.88	11,519.84
1918	327,585.6		23,996.82	7.33	9,827.57	13,081.02	8,266.39
1919	336,241.4		45,417.75	13.51	10,087.23	10,086.41	8,267.21
	1,441,723.5		$120,911.87	8.39	$43,251.66	$34,984.45	

C. CONTINGENCY

	Credits to reserve: Transferred from Accrued amortization of capital	Credits to reserve: 5¢ per M cu.ft. sold	Charges to reserve	Balance in reserve Dec. 31
1915	$62,254.82	$11,970.52	...	$74,225.34
1916	...	12,615.51	...	86,840.85
1917	...	14,308.81	...	101,149.66
1918	...	...	...	101,149.66
1919	...	...	...	101,149.66
	$62,254.82	$38,894.84	...	

(a) There was also credited to this reserve monthly for the first 10 months of 1915 a total of $10,054.66 ($23,618.54 at 12¢ per M sold, less $13,563.88 for repairs). In November 1915, a reversing entry was made for this credit and a credit set up in its stead of $5,904.64 to Renewals and Replacements - plant withdrawn from service.(3¢ per M) and $9,841.07 to Contingency (5¢ per M). (b) Transferred to "Contingency" in Nov. 1915. (c) Exclusive of $941.64 retirements charged to the reserve in January and transferred to P & L by a credit to the reserve in Oct. (d)See note (a)

2815

2805 DEFENDANTS' EXHIBIT "Z."

Ledger #1 of the New York and Queens Gas Company.
Not printed.

2806 DEFENDANTS' EXHIBIT A-1.

General Ledger #2 of the New York and Queens Gas Company.
Not printed.

DEFENDANTS' EXHIBIT A-2.

General Ledger #3 of the New York and Queens Gas Company.
Not printed.

DEFENDANTS' EXHIBIT A-3.

Operating Expense Ledger #1. New York and Queens Gas Company.
Not printed.

DEFENDANTS' EXHIBIT A-4.

Journal #1 of New York and Queens Gas Company.
Not printed.

DEFENDANTS' EXHIBIT A-5.

Journal #2 of the New York and Queens Gas Company.
Not printed.

DEFENDANTS' EXHIBIT A-6.

Journal #3 of the New York and Queens Gas Company.
Not printed.

DEFENDANTS' EXHIBIT A-7.

Journal #4 of the New York and Queens Gas Company.
Not printed.

(Here follow reproductions of Defendants' Exhibits A^9, A^{9}, A^{10}, A^{11}, A^{12}, A^{13}, A^{14}, A^{15}, A^{16}, marked pages 2807 to 2815, inclusive.)

2816 DEFENDANTS' EXHIBIT A-17.

Def'ts' Ex. A-17. (Ident.)

130 East 15th Street.

New York.

May 18th, 1920.

Mr. B. Cohen,
Accountant Public Service Commission,
Building.

DEAR SIR:

Relative to your request that you and other accounting representatives of the Public Service Commission for the First District, be accorded the use of a copy of the monthly statistical statements of the New York & Queens Gas Company for the period from 1909 to 1919, I think that in furnishing such copy to you, I ought to call to your attention the fact, well known to your predecessor, Mr. Frank, that these monthly statements are in nowise a record of the transactions of the New York & Queens Gas Company, but are merely statistical studies made for the Company's own convenience and information, from certain of its records, and that the grouping of items and the character of information compiled follow certain lines of study for purposes of particular information desired by the officers of this Company and others interested in such information. If Dr. Weber and you think it may shorten and lessen your labors for you to have the benefit of the use of these studies, the Company has no objection to your examining them, but these calculations are, therefore, not represented to be, and of course, should not be accepted or used by you, as a financial or operating statement of this Company, or as a basis for analysis or deductions in this case.

Very truly yours,

H. C. DAVIDSON.

H. C. D./N. B.

2817 DEFENDANT'S EXHIBIT A-18.

Office reports of the New York and Queens Gas Company, underlying journal entries for the years 1904 to 1908, inclusive. The following is the first of these reports for the month of August, 1904, which is printed as a sample, the remainder not being printed.

2818 DEFT.s' EX. A 18, June 7-19-20. H. P.

August, 1904.

Report of the New York & Queens Gas Company.

August, 1904.

2819 #1.

Gas.

On hand Aug. 1st, 1904	198,500	cu. ft.
Made during Aug., 1904	8,781,600	" "
Total to account for	8,980,100	" "
On hand Sept. 1st, 1904	142,500	" "
Sent out during Aug., 1904	8,837,600	" "

#2.

Send out.

Sold to consumers for light and heat	6,557,400	cu. ft.
Sold to City for street lamps (estimated)	151,00	" "
Total Sales	6,708,400	" "
Used at Gas Works as per Meter	35,300	" "
Used at Office as per meter	13,900	" "
Used at Co.'s street lamps (estimated)	4,000	" "
Total Gas accounted for	6,761,600	" "
Unaccounted for (23-49/00 0/0	2,076,000	" "
Total gas sent out from gas works as per #1	8,837,600	" "

#3.

Corrected Send Out.

Average date of Indexing July, 1904, 27th.
Average date of Indexing Aug., 1904, 27th.

Gas accounted for as per #2	6,761,600	cu. ft.
Unaccounted for (23-03/00 0 0	2,023,600	" "
Total sent out between July 27th & Aug. 27th	8,785,200	" "

#4.

Generator Coal.

Aug.	1	Stock on hand, 600.54 tons at 4.9595	$2,978.37	
"	1/31	Used in Manufacture, 142.99 tons at 4.9595	709.16	
Sept.	1	Balance to account for, 457.55 tons at 4.9595	2,269.21	
		Carried forward		$709.16
2819½		Brought forward		$709.16

#5.

Boiler Fuel.

Aug.	1	Stock on hand, 377.55 tons at 3.2286	$1,218.96	
"	1/31	Used, 55.76 tons at 3.2286	180.03	$180.03
Sept.	1	Index of meter, 1071470. tons at 3.2286	1,038.93	

#6.

Gas Oil.

Aug.	1	Stock on hand, 21,014 gals. at .04332	910.50	
"	31	B't. of S. O. Co., 36,138 gals. at .04250	1,535.88	
"	31	To account for, 57,152 gals. at .9428	2,446.38	
"	1/31	Used in manufacture, 30,186 gals. at .0428	1,292.23	$1,292.23
Sept.	1	Stock on hand, 26,966 gals. at .428	1,154.15	

#7.

Water.

Sept. 1, Index of meter, 1071470.
Aug. 1 Index of meter, 1049230.

Aug.	1/31	Used in manufacture, 22,240 cu. ft. at $1.00 per M	$22.24

#3.

#10.

Sundry Debtors.

Aug. 1, 1904.	Balance Outstanding	$	$3657.96
Aug. 1/31 Sales—	Gas Stoves & Welsbachs...	719.29	
	Meter Dept. Material.....	10.82	
	Bogert's Siding Account...	6.00	
	Services	46.32	
	Gas Works Residuals.....	3.50	
	Incidentals	4.73	
	Repairs to Meters.....	1.50	
	Suspense Account	51.35	843.51
			$4501.47
	Cash as per Daily Report.....		1373.48
Sept. 1, 1904.	Balance Outstanding		$3127.99

#11.

Mains.

	1½".	2".	3".	4".	6".	8".	10".	12".	Total.
Mileage Aug. 1,.....	.0866	.2153	12.0158	18.4933	6.1159	3.1140	2.2134	.4856	42.7399
Laid during Aug....	.0000	.0000	.0000	.0000	.0000	.0000	.0000	.0000	.0000
Taken up during Aug.	.0000	.0000	.0000	.0000	.0000	.0000	.0000	.0000	.0000
Mileage Sept. 1st....	.0866	.2153	12.0158	18.4933	6.1159	3.1140	2.2134	.4856	42.7399

#12.

Services.

	¾".		1".		1¼".							
	Reg.	Branch.	Reg.	Branch.	Reg.	Branch.	1½".	2".	C. P. prior to 4, 1, '01.	Reg.	Totals, branch.	Total.
Last Report	258	2	1829	52	73	1	17	12	224	2413	55	2468
Laid during month..	0	0	14	4	0	0	0	0	0	14	4	18
Taken up of replaced	0	0	1	0	0	0	0	0	0	1	0	1
Total this date.....	258	2	1842	56	73	1	17	12	224	2426	59	2485

#3.

Meters.

		3 P. P.	5 P. P.	10 P. P.	20 P. P.	3.	5.	10.	20.	30.	45.	60.	80.	100.	400.	Total.
Aug. 1	Owned	448	144	6	1	1061	1039	120	37	13	15	4	2	2	1	2893
" 1/31	Purchased	0	0	0	0	40	6	0	0	0	0	0	0	0	0	46
" 1/31	Converted to P. P.	25	6	0	0	25	6	0	0	0	0	0	0	0	0	0
Aug. 1/31	Condemned	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
'04 Sept. 1	Owned	473	150	6	1	1076	1039	120	37	13	15	4	2	2	1	2939
Aug. 1	On District	444	138	5	0	1050	1025	114	35	12	14	4	2	2	1	2846
Aug. 1/31	Set	38	11	1	0	43	20	3	0	1	0	0	0	0	0	117
" 1/31	Brought in	13	8	1	0	32	20	2	0	1	0	0	0	0	0	77
" 1/31	On District	469	141	5	0	1061	1025	115	35	12	14	4	2	2	1	2886
" 1	In Stock	4	9	1	1	15	12	5	2	0	1	0	0	0	0	50
" 1	Undergoing Rep.	0	0	0	0	0	2	0	0	1	0	0	0	0	0	3
Sept. 1	Accounted for	473	150	6	1	1076	1039	120	37	13	15	4	2	2	1	2939

Street Lamps.

		City (gas).	City (naphtha).	Company.	Total.
Aug. 1	In use	151	20	4	175
" 1/31	Added during month.	0	0	0	0
" 1/31	Discontinued	0	0	0	0
Sept. 1	In use	151	20	4	175

Cast Iron Pipe & Specials.

Aug. 1	Stock on hand	$1684.20	
" 1/31	Used	0.00	
Sept. 1	Stock on hand		$1684.20

Wrought Iron Pipe.

#8.

Sundry Supplies.

Aug.	1	Stock on hand.....	$417.22		
"	1/31	Sundry Purchases..	63.28		
"	31	To be accounted for.....		$480.50	
"	1/31	Used in Repairs to:			
"	1/31	" Apparatus	18.00		
"	1/31	" in gas manufacture	6.50		$6.50
"	1/31	Used purification...	10.00		10.00
"	1/31	Total used		34.50	
Sept.	1	Stock on hand as per inventory		446.00	
		Total cost of material used in man.			$2,220.16

Cost per M, .2528.
Less Residuals sold, .0026.
Net cost per M, .2502.

(Here follow paster tables marked pages 2820 and 2821.)

2822

#17.

Charge to Bad & Doubtful.

Led.	Folio.	Name.	Month.	Amount.
4	832	Reisenberger	Nov. 1903.....	$5.38
4	833	"	" "	13.38
				$18.76

#18.

Monthly Cash Report.

Received from Sundry Consumers.....		$8353.29
" " Bad & Doubtful		2.00
" " Consumers' Deposits		200.00
" " Sundry Debtors		1373.48
Sold for cash, Gas Stoves & Welsbachs.....		47.99
" " " Residuals		19.60
Received from Sundries, Cr. Expense.....		.25
" " " " Meter Setting & Jobbing..		4.00
		$10,000.61

(Transcript of Deposits; Statement of balance and cancelled vou-hers, herewith.)

2823

#6.

#19.

Special Suspense Account.

Taken from July, 1904, Report.

Aug.	1	Amount transferred from #24 July, 1904 Report		$361.95
Jul.	28	The Elliott Co.	$97.48	
Aug.	2	" " "	4.67	
"	20	" " "	3.88	
"	22	" " "	3.11	
"	22	" " "	3.25	
"	23	" " "	5.49	
"	25	" " "	7.21	
"	27	" " "	2.43	
"	29	" " "	3.23	
"	30	" " "	4.15	
Jul.	30	Abraham & Straus	47.00	
Aug.	8	Sullivan Bros.	14.95	
"	1/31	Total used during month.....		196.85
Sept.	1	Balance Available		$165.10

#20.

Stationery.

Aug.	1/04	Stock on hand as per inventory.....		$144.89
		Sundry Purchases:		
Aug.	9	Raynor & Perkins.....	$3.00	
"	23	Tower Mfg. & Novelty Co....	20.00	
"	25	" " "	7.25	
"	19–31	Petty Cash Vouchers.....	2.50	
				32.75
"	31	To account for		$177.64
"	1/31	Used		21.00
Sept.	1/04	Stock on hand		$156.64

2824

Gas Stoves & Welsbachs.

Aug.	1	In Stock	$2302.80	
"	15	Consolidated Chandelier Co. ..	8.00	
"	8	Shapiro & Aronson	3.75	
"	3	Gleason-Tiebout Glass Co. ...	4.73	
"	3	Municipal Lighting Co.	4.80	
"	10	Shapiro & Aronson	10.06	
"	1/17	Petty Cash Voucher	8.75	
		" " "	.74	
"	26	Welsbach Gas & Lamp Co. ..	.54	
"	26	" " "	14.44	
"	30	Municipal Lighting Co.	7.37	
"	31	Gleason-Tiebout Co.	.75	
"	16	Municipal Lighting Co.	12.90	
"	17	Wm. M. Crane	4.80	
"	16	Shapiro & Aronson	8.60	
"	1/31	N. Y. & N. J. Tel. Co.	5.27	
"	1/31	Pay Roll	12.93	
"	"	" "	76.33	
"	18/31	Petty Cash Voucher	.55	
"	18/31	Petty Cash Voucher	2.00	
"	1/31	Sold for Cash	.....	$47.99
"	1/31	" through S. D. Ledger ..	.....	719.29
"	31	In stock	.....	1692.40
"	"	" " consignment	.....	88.00
"	"	Due Consignors	88.00	
"	1/31	Charged to Special Suspense G. S. & W.	.....	130.00
"	1/31	Profit	99.57	
			$2677.68	$2677.68

2825

#22.

Results of Material Used in Manufacturing.

Coal used in generators	142.99	Tons
Coal used in Boilers	55.76	"
Gas Oil used	30.186	Gals.
Water Used	22.240	Cu. ft.

Generator Coal 61,414 6/F. of gas per ton of coal in generators.
All coal used 44,184 C. F. of gas per ton of coal in generators and boilers.
Coal used in generators 36.47 lbs. per M. C. F. of gas made.
Coal used in boilers 14.22 per M. C. F. of gas made.
Water used in manufacture 2.53 C. F. per M. C. F. of gas made.
Oil used in manufacture 3.43 gals. per M. C. F. of gas made.

#23.

Depreciation.

#24.

Remarks.

#25.

Special Suspense Account G. S. & W.

Taken from Jul., 1904, Report.

Aug.	1	Amount transferred from #25, Jul. /04, Report		$1000.00
"	2	Wm. M. Crane Co. sad iron heaters	$10.00	
"	12	Standard Gas Light Co.	.84	
"	5	Wm. M. Crane Co.	.80	
"	17	Flushing Stables	22.00	
"	1 17	Petty Cash Voucher	77.44	
"	10	John Simmons Co.	4.92	
Jul	30	J. H. Cont & Son	5.90	
Aug.	24	" " "	.50	
"	8	Wm. M. Crane Co.	34.50	
"	17	John Simmons Co.	7.95	
"	1 31	Pay Roll	80.08	
"	1 31	N. Y. & N. J. Tel. Co.	2.25	
"	18 31	Petty Cash Voucher	63.26	
"	1 31	Amount used in G. S. & W. A C	130.00	
"	1 31	Total used during the month		440.43
Sept.	1	Balance Available		$559.56

"This account now closed. Thomas, V. P."

Original copy marked as above.

2826

Harlem Branch.

Balance Sheet.

Ledger, Month of August, 1904.

Year.	Month.	Outstanding accounts. Cost covered by deposit.	Doubtful.	Total.	Cash. Collected.	Deduction.	Addition.
	Clgd. to P. & D. Nov. '03.	1876	..	.....	..	...	.....
1902	December	1910	0	1910	0	...	1910
1903	January	11621	0	11621	0	...	11621
	February	12257	0	12257	0	...	12257
	March	11861	0	11861	0	...	11861
	April	10468	0	10468	0	...	10468
	May	9370	0	9370	0	...	9370
	June	9556	0	9556	0	...	9556
	July	9632	0	9632	0	...	9632
	August	9158	0	9158	0	...	9158
	September	10989	0	10989	0	500	11489
	October	14120	0	14120	0	...	14120
	November	50210	1527	51737	0	...	53613
	December	51470	6605	58075	0	...	58075
1904	January	54135	1752	55887	0	...	55887
	February	53564	739	54303	0	...	54303
	March	54022	188	54210	13	...	54223
	April	52555	613	53168	2826	...	55994
	May	51131	288	51419	7380	...	58799
	June	56739	576	57315	63767	...	121082

Harlem Branch—*Continued.*

Year.	Month.	Outstanding accounts. Good covered by deposit.	Doubtful.	Total.	Cash. Collected.	Deduction.	Addition.
	July	121151	0	121151	536889	...	658040
	August	641142	0	641142	224454	...	.....
	Total	1297061	12288	1309349	835329	500	1281458

Gas registered.

					Amount receivable.	
6.530.200	Cubic Feet	$	@	1.25		8168.07
151.000	"	"	"	Contract		448.88
31.200	"	"		to Public Buildings		39.01
35.300	"	"		used at Gas Works		.....
13.900	"	"	"	" Office		.....
4.000	"	"	"	" Co. St. Lamps		.....
						8655.96
6.765.600						5.00
4.000						
						8650.96
6.761.600				Net Registry		(9)

Cubic Feet:

Month Deduction [Addition]†

Sept. 4000 cf. $5.00

†[Word enclosed in brackets erased in copy.]

(Here follow proof sheet and reproductions of Defendants' Exhibits A 19, A 20, A 21, A 22, A 23, and A 24, marked pages 2827 to 2834, inclusive.)

2827

Sizes.	Meters. Out.	Not indexed. [Locked.]* No consumption.	In use.
3 Lights,			
5 "			
10 "			
20 "			
30 "			
45 "			
60 "	2850	205	2645
80 "			
100 "			
150 "			
200 "			
250 "			
300 "			
500 "			
Station			
Total,	2850	205	2645

[*Word enclosed in brackets erased in copy.]

Amount outstan
Amount Receiv

Total .

Cash Collected
Deduction Sep
Amount charge

Total .

Outstanding G
" D

Total Outstand

2828 *Amounts of Cit*

1902 December .....
1903 January .....
February .....
March .....
April .....
May .....
June .....
July .....
August .....
September .....
October .....

(Here follow proof sheet and reproduction of marked pages 2827 to 2841, inclusive.)

Proof Sheet.

Outstandings.

utstanding Last Balance			$12814.58
Receivable for Month			$ 8655.96
otal			$21470.54
ected during Month		$8353.29	
Sep. '03	5.00		
harged to P. & L. Nov. '03	18.76	$ 23.76	
otal			$8377.05
ng Good Accounts		$12970.61	
Doubtful Accounts		$ 122.88	
standing Present Balance		$13093.49	$13093.49

Meter Statement.

Number on Last Balance		2846
Increase on Ledger for Month	117	
Decrease " " " "	77	
Net Increase Meters		40
Transfers On Ledger	28.50	
Ledgers Gave / Received		
Reptd. by former management but not on the books	.36	
	28.86	
Net Number of Meter- on Ledger August 31, 1904		2886

____ ____,
Book-keeper.

f City Bills Included in Outstanding.

	$19.10
	116.21
	122.57
	118.61
	104.68
	93.70
	95.56
	96.32
	91.58
	93.80
	141.20
	502.10

Defendants' Exhibit A 20

Schedule No. 10

NEW YORK & QUEENS GAS CO. V. NEWTON, ET AL.

GAS OPERATING REVENUES AND EXPENSES FOR FIRST THREE MONTHS 1919 and 1920

	Three Months Ending March 31st - 1919	1920	Increase or (D)decrease
GAS SALES (M CU.FT.)			
Municipal buildings	546.8	476.6	D 70.2
Prepayment	19,391.0	23,444.0	4,053.0
Commercial metered lighting	63,103.4	85,076.4	21,973.0
Total gas sales	83,041.2	108,997.0	25,955.8
OPERATING REVENUES			
Gas Sales:			
Municipal buildings at $.75	$410.10	$357.45	D $52.65
Prepaid gas at $1.00	19,391.85	23,443.40	4,051.55
Commercial metered lighting at $1.00	62,598.56	84,875.48	22,276.92
Total gas sales	$82,400.51	$108,676.33	$26,275.82
Rent of gas appliances	2,886.91	3,791.90	904.99
Gas merchandise and jobbing revenue	564.26	2,775.02	2,210.76
Total operating revenue	$85,851.68	$115,243.25	$29,391.57
Per M sold	$1.03	$1.06	—
OPERATING REVENUE DEDUCTIONS			
Production expenses	$63,309.47	$75,870.84	$12,561.37
Transmission and distribution expenses	5,910.84	9,610.90	3,700.06
Commercial administration	4,493.45	7,400.00	2,906.55
Promotion of business	645.30	745.70	100.40
General and miscellaneous expenses	6,493.74	7,866.81	1,373.07
Renewals and replacements	2,491.14	3,269.90	778.76
Total operating expenses	$83,343.94	$104,764.15	$21,420.21
Tax accruals	6,600.00	6,600.00	...
Uncollectible bills	289.84	262.99	D 26.85
Total revenue deductions	$90,233.78	$111,627.14	$21,393.36
Per M sold	$1.08	$1.02	—
OPERATING INCOME			
Excess of revenues over expenses	Def. $4,382.10	$3,616.11	$7,998.21

Per M Cu.Ft. Sold

OPERATING REVENUE	$1.03	$1.06
REVENUE DEDUCTIONS:		
Production	.76	.69
Transmission and distribution	.07	.09
Commercial administration	.05	.07
Promotion	.01	.01
General and miscellaneous	.08	.07
Renewals and replacements	.03	.03
Total	$1.00	$0.96
Taxes	.08	.06
Uncollectible bills	.00+	.00+
Total	$1.08	$1.02
OPERATING INCOME	D $0.05	$0.04

2830

Defendants' Exhibit A 21

Schedule No. 11

NEW YORK & QUEENS GAS CO. V. NEWTON ET AL.

ANALYSIS OF THE ACCOUNT FRANCHISES, GOODWILL, ETC., JULY 1, 1900 TO DEC. 31, 1919

SUMMARY

July 1, 1900 - Opening J. E. Newtown & Flushing Gas Co.			$303,460.20
March, 1901 - College Point Merger		$183,254.67	
June, 1901-Mch. 1903 - Adjustments due to College Point Merger - Credits	$17,974.66		
Debit	695.40		
Net deduction		17,279.26	
Net from College Point Merger			165,975.41
Total-Newtown & Flushing books			$469,435.61
August 1, 1904 Increased in opening N.Y. & Queens books			603,600.76
Total			$1,073,036.37
Aug., 1905-Dec. 1908 - "Depreciation" written off		$40,628.85	
December, 1911 Purifier boxes scrapped		10,000.00	50,628.85
Balance December 31, 1919			$1,022,407.52

ENTRY ON NEWTOWN & FLUSHING GAS CO. JOURNAL NO. 1, PAGE 45, INDICATING A MERGER OF THE COLLEGE POINT COMPANY, APPARENTLY IN MARCH, 1901

College Point Merger

	Debit	Credit
Mains	$5,000.00	
Construction	503.34	
Meters	1,800.00	
Services	1,700.00	
Cash	1,230.17	
Sundry Consumers	1,482.29	
Suspense Insurance	274.26	
Franchises, Goodwill, etc.	183,254.67	
Consumers' Deposits		$1,244.73
Treasury Stock		97,000.00
Treasury Bonds		97,000.00
Total	$195,244.73	$195,244.73

ACCOUNT FRANCHISES, GOODWILL, ETC., AUG. 1, 1904 - DEC. 31, 1919, ON BOOKS OF NEW YORK & QUEENS GAS CO.

			Debit	Credit
August 1, 1904 - Opening Journal entry - P.48 -			$1,073,036.37	
Aug. 1905-July. 1906	"Depreciation"	(10¢ per M made)		$10,497.02
Aug. 1906-July. 1907	"	(10¢ per M made)		12,440.78
Aug. 1907-Dec. 1907	"	(10¢ per M made)		6,315.89
Jan. 1908-July. 1908	"	(7.5¢ per M made)		5,960.01
Aug. 1908-Dec. 1908	"	(7.5¢ per M made)		5,415.15
Dec. 1911 Purifying boxes scrapped (a)				
Charged to P & L		$7,662.00		
" " Accrued Amortization		2,338.00		10,000.00
Balance Dec. 31, 1919				1,022,407.52
			$1,073,036.37	$1,073,036.37

(a) Entry on folio 397 of Journal #2, reads as follows:

Cr Fixed Capital - purifying boxes scrapped			
Purchased 1905 - 50% to P & L	$2,338.00		
50% to Acc'd. Amtz.	2,338.00		10,000.00
Old original boxes-estimated cost	5,324.00		
	7,662.00		
Dr P & L	2,338.00	10,000.00	
Accrued Amortization			

No charge of $4,676 appears in account "Franchises, Goodwill, etc." for the cost of the purifying boxes purchased in 1905.

2831

Defendants' Exhibit A 22

Schedule No. 12

NEW YORK & QUEENS GAS CO. V. NEWTON ET AL.

BALANCE SHEET AS OF AUGUST 1, 1904, AND OF THE PREDECESSOR, NEWTOWN & FLUSHING GAS CO.

	AS OF JULY 31, 1904 Newtown & Flushing Gas Co. July 31,1904	New York & Queens Gas Co. Aug. 1. 1904	Increase or (D)ecrease
Assets Side			
Real estate	$53,870.29	(a) $60,305.58	$6,435.29
Franchises, Good will, etc.	469,435.61	1,073,036.37	603,600.76
Mains	82,580.71	82,580.71	...
Meters	21,409.99	21,409.99	...
Meter connections	3,575.92	3,575.92	...
Services	30,549.33	30,549.33	...
Tools and implements	1,511.83	1,511.83	...
Gas stoves	2,302.80	2,302.80	...
Construction	25,373.29	...	D 25,373.29
Horse and wagon	578.05	578.05	...
Office fixtures	505.63	505.63	...
Pipe and special	1,684.20	1,684.20	...
Wrought iron pipe(and meter materials)	3,603.15	3,603.15	...
Coal	4,197.33	4,197.33	...
Gas oil	910.50	910.50	...
Sundry supplies	417.22	417.22	...
Stationery	144.89	144.89	...
Petty cash	Cr 115.93	Cr 115.93	...
Cash	1,601.37	1,601.37	...
Sundry consumers	12,814.58	12,814.58	...
Sundry debtors	3,657.96	3,657.96	...
Suspense	1,007.89	1,007.89	...
Total	$721,616.61	$1,306,279.37	$584,662.76

Liabilities Side				
Stock, common	$300,000.00			
Stock, preferred	100,000.00			
Total	$400,000.00			
Less held in treasury (p'f'd)	49,942.85			
Net outstanding		$350,057.15	$600,000.00	$249,942.85
Bonds(excl.$350,000 in treasury,Aug.1/04)		300,000.00	650,000.00	350,000.00
Payrolls		179.01	179.01	...
Bills payable		31,000.00	31,000.00	...
Consumers' deposits		8,012.74	8,012.74	...
Sundry creditors		8,835.23	8,835.23	...
Suspense		4,594.48	8,252.39	(b) 3,657.91
Profit and loss		18,938.00	...	D 18,938.00
Total		$721,616.61	$1,306,279.37	$584,662.76

ANALYSIS OF CHANGES

Franchises, Good will, etc.: Increase		$603,600.76
Made up of increases:		
Stock	$249,942.85	
Bonds	350,000.00	
Suspense	3,657.91	603,600.76
Construction: Decrease		$25,373.29
Real estate: Increase		6,435.29
Net decrease		$18,938.00
Made up of decrease:		
Profit and loss		18,938.00

(a) Name of account is Real Estate and Buildings.

(b) Consists of increases as follows: Taxes, $405.52; old appropriation, $361.35; stove account, $440.44; bond and stock certificates, $2.450.

Defendants' Exhibit A 23

#A23

PAGE 30 OF ANNUAL REPORT OF NEW YORK AND QUEENS GAS COMPANY TO THE PUBLIC SERVICE COMMISSION, FIRST DISTRICT, STATE OF NEW YORK, FOR THE YEAR ENDED DECEMBER 31, 1909

Line No.	Class and Name of Liability	Date: Nominal Issue	Date: Maturity	Interest: Rate % per annum	Interest: Dates due	Par value of authorized issue	Par value of amount nominally, but not actually issued	Par value of actual issue	Cash actually realized on actual issue
1	First mortgage bonds	8-1-1904	8-1-1934	5	F & A	$1,000,000	$250,000	$750,000	$95,000 & property
3	Demand notes			6		60,000		60,000	60,000
11				Totals		$1,060,000	$250,000	$810,000	$155,000

Line No.	Par value of amount actually issued and later re-acquired by or on behalf of respondent and treated as nominally outstanding: Par value of amount redeemed, retired, cancelled or otherwise nullified	Total amount outstanding at close of year, including nominally outstanding	Amount held unencumbered at close of year	Pledged or otherwise encumbered at close of year: Amount	Name of pledgee or lienor	Par value of amount actually outstanding at close of year	Interest at close of year: Matured, and unpaid	Interest at close of year: Accrued but not yet due	Interest during year: Amount accrued during year	Interest during year: Amount actually paid during year
1	$1,000,000	$165,000	$85,000		Lincoln Trust Co	$750,000		$15,625	$37,500	$37,500
3						60,000	$920		3,766.23	2,846.23
11					Totals	$810,000	$920	$15,625	$41,266.23	$40,346.23

N. Y. & Queens Gas Co. - 1909 Rep

Replying to your letter of the 7th instant, would say that on page 30, line 3, column (c), should be "Variable". The loans were made as follows:

Jan. 22,1906 $17,000

N.Y. & Queens Gas Co.--1909 Rep

The difference of $166.23 in interest is made up as follows: $50 was paid on the loan owing to the fact that demand loan interest is figured by the day and not by the month; the balance of $116.23 was paid on account of "Materials Purchased", which were allowed to run several months with the understanding that we would pay interest.

Letter of H.L. Snyder, Treasurer,

2022

Defendants Exhibit A 24

PAGE 30 OF ANNUAL REPORT OF NEW YORK AND QUEENS GAS COMPANY TO THE PUBLIC SERVICE COMMISSION, FIRST DISTRICT, STATE OF NEW YORK, FOR THE YEAR ENDED DECEMBER 31, 1910

Line No.	Class and Name of Liability	Date: Nominal Issue	Date: Maturity	Interest: Rate % per annum	Interest: Dates due	Par value of authorized issue	Par value of amount nominally, but not actually issued	Par value of actual issue	Cash actually realized on actual issue
1	First mortgage bonds	8/1-1904	8/1-1934	5	F & A	$1,000,000	$184,000	$816,000	$156,380 & property
2									
11			Totals						

Line No.	Par value of amount redeemed, retired, cancelled or otherwise nullified	Total amount outstanding at close of year, including nominally outstanding	Par value of amount actually issued and later re-acquired by or on behalf of respondent and treated as nominally outstanding: Amount held unencumbered at close of year	Pledged or otherwise encumbered at close of year: Amount	Pledged or otherwise encumbered at close of year: Name of pledgee or lienor	Par value of amount actually outstanding at close of year	Interest at close of year: Matured and unpaid	Interest at close of year: Accrued but not yet due	Interest during year: Amount accrued during year	Interest during year: Amount actually paid during year
1	$1,000,000	$184,000	0			$816,000		$17,000	$40,745	$40,745
2										
11				Totals						

2835 DEFENDANTS' EXHIBIT A-25.

Def'ts' Ex. A-25.

Public Service Commission Law, State of New York.

Sec. 69. Approval of issues of stock, bonds and other forms of indebtedness. A gas corporation or electrical corporation organized or existing, or hereafter incorporated, under or by virtue of the laws of the state of New York, may issue stocks, bonds, notes or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its plant or distributing system, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the corporation not secured or obtained from the issue of stocks, bonds, notes or other evidence of indebtedness of such corporation, within five years next prior to the filing of an application with the proper commission for the required authorization, for any of the aforesaid purposes except maintenance of service and except replacements in cases where the applicant shall have kept its accounts and vouchers of such expenditure in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made; provided and not otherwise that there shall have been secured from the proper commission an order authorizing such issue, and the amount thereof, and stating the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes and other evidence of indebtedness, such purposes are not in whole or in part reasonably chargeable to operating expenses or to income. Nothing herein contained shall prohibit the commission from giving its consent to the issue of bonds, notes or other evidence of indebtedness for the reimbursement of moneys heretofore actually expended from income for any of the aforesaid purposes, except maintainance of service and replacements, prior to five years next preceding the filing of an application therefor, if in the judgment of the commission such consent should be granted; provided application for such consent shall be made prior to January first, nineteen hundred and twelve. For the purpose of enabling it to determine whether it should issue such an order, the commission shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. Such corporation shall not without the consent of

the commission apply said issue or any proceeds thereof to any
pose not specified in such order. Such gas corporation or elect
corporation may issue notes, for proper corporate purposes and
in violation of any provision of this or of any other act, payab
periods of not more than twelve months without such consent;
no such notes shall, in whole or in part, directly or indirectl
refunded by any issue of stock or bonds or by any evidence o
debtedness running for more than twelve months without the
sent of the proper commission. Provided, however, that
commission shall have no power to authorize the capitalizatio
any franchise to be a corporation or to authorize the capitaliza
of any franchise or the right to own, operate or enjoy any franc
whatsoever in excess of the amount (exclusive of any tax or an
charge) actually paid to the state or to any political subdivi
thereof as the consideration for the grant of such franchise or ri
Nor shall the capital stock of a corporation formed by the me
or consolidation of two or more other corporations, exceed the
of the capital stock of the corporations, so consolidated, at the
value thereof, or such sum and any additional sum actually
in cash; nor shall any contract for consolidation or lease be capi
ized in the stock of any corporation whatever; nor shall any
poration hereafter issue any bonds against or as a lien upon
contract for consolidation or merger.

2836 DEFENDANTS' EXHIBIT A-26.

Def'ts' Ex. A-26.

Deputy Tax Commissioners; Duties of, in Assessing Taxable Property.

SEC. 889. It shall be the duty of the deputy tax commissio
under the direction of the board of taxes and assessments, to as
all the taxable property in the several districts that may be assig
to them for that purpose by said board, and they shall furnish
the said board, under oath, a detailed statement of all such prope
showing that said deputies have personally examined each
every house, building, lot, pier, or other assessable property, giv
the street, lot, ward, town and map number of such real estate
braced within said districts, together with the name of the ow
or occupant, if known; also the sum for which, in their judgm
each separately assessed parcel of real estate under ordinary
cumstances would sell if it were wholly unimproved; and separa
stated, the sum for which under ordinary circumstances, the s
parcel of real estate would sell with the improvements, if a
thereon; with such other information in detail relative to pers
property or otherwise, as the said board may, from time to ti
require. Such deputies shall commence to assess real and pers
estate on the first day in April in each and every year not a Sun
or a legal holiday. (As amended by L. 1911, Ch. 455.)

DEFENDANTS' EXHIBIT A27.

Def'ts' Ex. A27. 6/7/20. G. C. S.

New York and Queens Gas Company.

Comparative Balance Sheet.

Assets.

	December 31, 1919.	December 31, 1918.	Variation.
Fixed Capital December 31st, 1908	137670637	138195337	.....
Fixed Capital Installed since December 31st, 1908	67619841	50566106	.....
Total Fixed Capital	205290478	188761443	16529035
Cash	4213785	1380037	2833751
New York City Bonds	2030	2030	.....
Bond and Mortgage Owned	200	300	100
Liberty Bonds owned by Co.	2200	650	1550
" " for Employees	1400	3900	2500
Accounts Receivable	3645007	3723743	78736
Fire Insurance Participation Certificates	191922	145375	46547
Material and Supplies	3937513	4246525	309012
Total	217861708	198945123	18916585

DEFENDANTS' EXHIBIT A27—*Continued.*

Liabilities.

	December [November],† 1919.	December 31, 1918.	Variation.
Capital Stock—Common (Authorized $600,000.)	600000	600000	.....
Funded Debt (Authorized $1,000,000.)	816000	816000	.....
Bills Payable—Consolidated Gas Co.	490000	23500	255000
			2050812
Accounts Payable	8351095	6300283	[2435262]†
Taxes Accrued	174410	286881	111971
Consumers' Deposits	2781085	2625901	155184
Consumers' Main Contracts	867591	964760	97169
Interest Payable—Affiliated Cos.	231516	119753	111763
Employees' Liberty Bond Payments	74450	1902	115750
Fire Insurance Participation Reserve	191922	145375	46547
	8207221		82
Renewals and Replacements	[855143]†	826639	[28514]†
Contingency	10114966	10114966	.....
	3647452		8622913
General Profit and Loss	[3619030]†	12270365	[8651335]†
Total	217861708	198945123	18916585

†[Figures in brackets erased in copy.]

DEFENDANTS' EXHIBIT A28.

Def'ts' Ex. A28. 6/7/20. G. C. S.

New York and Queens Gas Company.

Investment in Land, Plant and Equipment.

12 Months 1919.

		Credits—(Original cost).		
	Gross investment.	Withdrawals to be charged against reserve.	Charged to other accounts.	Net investment.
Real Estate	.....	.....	.....	.....
General Structures	.....	.....	.....	.....
				44
Plant .....Less 28.00 Stable Equip.....	1157779	500517	.....	65[72]†62
Works and Station Structures.....	322420	2000	.....	122420
Street Mains	13753660	7126	.....	13746534
Services	476005	.....	.....	470005
Meters ..... Less 10.00 Lab. Eq.....	694581	13425	.....	680156
Meter Installations	280744	.....	.....	280744
Gas Appliances Rented	147310	97800	.....	49510
Tools and Implements	5780	14877	.....	9097
				28225
General Stable Equipment .....+28.00..	28625	32	.....	[25425]†
				97376
Automobiles and Accessories	122624	2200	.....	[122624]†

†[Figures in brackets erased in copy.]

DEFENDANTS' EXHIBIT A28—*Continued.*

	Credits—(Original cost).			
	Gross investment.	Withdrawals to be charged against reserve.	Charged to other accounts.	Net investment.
Furniture and Fixtures	17334	14597	.....	2737
General Store Equipment	.....	5477	.....	5477
Laboratory Equipment +10.00	.....	10	.....	10
Engineering and Superintendence	275744	.....	.....	275744
Interest During Construction	115232	.....	.....	115232
Douglaston Development	209216	.....	.....	209216
Total	17607054	1078019 (a)	.....	16529035
Withdrawals to be charged against Reserve as above	.....	1078019	.....	.....
Add Material and Supplies withdrawn	.....	.....	.....	.....
Add Cost of Dismantling—Labor and Material	.....	.....	.....	.....
Total	.....	1078019	.....	.....
Less Salvage Recovered	..... (b)	69378	.....	.....
Net Amount to be charged against Reserve	..... (b)	1008641	.....	.....

(a) For Analysis see page No. 17.
(b) For Analysis see page No. 18.

(Here follows Defendants' Exhibit A29, marked page 2839.)

DEFENDANTS' EXHIBIT A29.

Defts.' Ex. A29. 6/7/20. G. C. S.

New York and Queens Gas Company.

Station Cost of Material and Labor in Gas Made (Excl. General Expenses, Taxes, Insurance, Renewals, Etc.).

12 Mos., Dec., 1919.

(Water Gas.)

			Quantity.	Quantity per M c. f. made.	Unit price.	Amount.	Cost per M cu. ft. made.
Coal in Generators	13,147.400	Tons	5869374	34.5906	8.27955	4859580	1279
Coke " "		Lbs.	.....	.....	.....	.....	....
Coal Under Boilers	6,082.180	Tons	2715261	16.0021	6.47226	1757389	0462
Coke under Boilers		Lbs.	.....	.....	.....	.....	....
Water Gas Tar under Boilers		Gals.	266006	.6999	.06	1596036	0420
Handling Coal—Generators			.....	.....	.....	646560	170
" Coke "			.....	.....	.....	.....	....
" Coal—Boilers			.....	.....	.....	283709	75.
" Coke "			.....	.....	.....	.....	....
Total Water Gas Fuel			.....	.....	.....	9143274	2406.
Gas Oil		Gals.	1590785	4.1853	.066670	10639216	2799
" " Pipe Line			.....	.....	.....	80000	21
Iron Mass		bus.	15573	.0410	.3011	469021	123
Water		cu. ft.	356500	.9379	1.00	35650	9
Sundry Supplies			.....	.....	.....	5961	2.
Cartage—Spent Material			.....	.....	.....	.....	....
Labor " "			.....	.....	.....	.....	....
Total Material			.....	.....	.....	**20373122**	**5360**

Total Material						20373122	5360
Residuals—Water Gas Tar Sold	Gals.	40				1395	....
" " " " Used	"	266006				1596036	0420
" " " " Variation in on hand	"						....
" Drip Oil Sold	"						....
" " " Variation in on hand	"						....
Total Residuals						1597431	0420
Less Residual Expense (Labor and Cartage)							....
Net Credit from Residuals						1597431	0420
Net Material						18775691	4940
Gas Making Labor—Superintendence						308685	0081.
" " " Boiler House						708928	187.
" " " Generator House						1076002	283.
" " " Purifier House						180145	47
" " " Misc.						123320	32.
Total Gas Making Labor						2397080	0630.
Total Material and Labor						21172771	5570.
Repairs of Works and Station Structures	Labor					63632	17.
" " " " " "	Material					203786	53.
Repairs of Furnaces, Boilers and Accessories	Labor						
" " " " " "	Material	L				313788	83.
Repairs of Steam Engines	Labor	M				252983	67.
" " " "	Material						
Repairs of Water Gas Sets and Accessories	Labor						
" " " " " "	Material						
Repairs of Purification Apparatus	Labor						
" " " "	Material	L				632779	0166
Repair of Holders	Labor	M				1289189	0339
" " "	Material						
Repairs of Miscellaneous Equipment	Labor						
" " " "	Material						
Repairs of Works Tools	Labor						....
" " " "	Material					38397	10
Distributing Station Repairs	Labor						....
" " "	Material						....
Total Repairs	Labor					1010199	0266
	Material					1784355	0469
Expense at Works						150359	40.
Gas Storage at Works							....
" " " Distributing Stations							....
Total						24117684	6345

Gas Made (Corrected) ..... 380,086 M. cu. ft.

Candle Power (Works Test) 23.74.

[Figures in brackets erased in copy.]

DEFENDANTS' EXHIBIT A30.

Def'ts' Ex. A30. 6/7/20. G. C. S.

New York and Queens Gas Company.

Comparative Balance Sheet.

Assets.

	Dec. 31st, 1918.	December 31, 1917.	Variation.
Fixed Capital December 31st, 1908	138195337	139492039	[1296702]†
Fixed Capital Installed since December 31st, 1908	50566106	49170467	[1395639]†
Total Fixed Capital	188761443	188662506	98937
Cash	1380037	1460654	80617
New York City Bonds	2030	2030	.....
Liberty Bonds owned by Co.	650	.....	650
Bond and Mortgage Owned	300	350	50
Liberty Bonds for Employees	3900	3400	500
Accounts Receivable	3723743	3035345	688398
Fire Insurance Participation Certificates	145375	104355	41020
Material and Supplies	4246525	2513983	1732542
Total	198945123	196354843	2590280

†[Figures in brackets erased in copy.]

DEFENDANTS' EXHIBIT A30—*Continued.*

Liabilities.

	Dec. 31st, 1918.	December 31, 1917.	Variation.
Capital Stock—Common (Authorized $600,000.)	600000	600000	.....
Funded Debt (Authorized $1,000,000.)	816000	816000	.....
Bills Payable—Consolidated Gas Co.	235000	205000	30000
Accounts Payable	6300283	4190922	2109361
Taxes Accrued	286881	268301	18580
Consumers' Deposits	2625901	2513704	112197
Consumers' Main Contracts	964760	1209633	244873
Interest Payable—Affiliated Cos.	119753	104466	15287
Employees' Liberty Bond Payments	1902	1474	428
Fire Insurance Participation Reserve	145375	104355	41020
Renewals and Replacements	826639	1151984	325345
Contingency	10114966	10114966	.....
General Profit and Loss	12270365	14449112	2178747
Total	198945123	196354843	2590280

Def'ts' Ex. A31. 6/7/20. G. C. S.

New York and Queens Gas Company.

Investment in Land, Plant and Equipment.

12 Months 1918.

	Credits—(Original cost).			
	Gross investment.	Withdrawals to be charged against reserve.	Charged to other accounts.	Net investment.
Real Estate	.....	.....	.....	.....
General Structures	.....	.....	.....	.....
Plant	335668	12500	.....	914332
Works and Station Structures	.....	.....	.....	.....
Street Mains	498406	.....	.....	498406
Services	352034	.....	104651	247383
Meters	113047	452	.....	112595
Meter Installations	102814	.....	.....	102814
Gas Appliances Rented	8655	57400	.....	48745
Tools and Implements	.....	.....	.....	.....
General Stable Equipment	.....	.....	.....	.....
Automobiles and Accessories	.....	.....	.....	.....
Furniture and Fixtures	2717	.....	.....	2717
General Store Equipment	.....	.....	.....	.....
Laboratory Equipment	7767	.....	.....	7767

DEFENDANTS' EXHIBIT A31—*Continued.*

	Credits—(Original cost).			
	Gross investment.	Withdrawals to be charged against reserve.	Charged to other accounts.	Net investment.
Arc lamps	.....	46250	.....	46250
Engineering and Superintendence	136582	.....	.....	136582
Total	1557690	1354102 (a)	104651	98937
Withdrawals to be charged against Reserve as above	.....	.....	.....	.....
Add Material and Supplies withdrawn	.....	.....	.....	.....
Add Cost of Dismantling—Labor and Material	.....	.....	.....	.....
Total	.....	.....	.....	.....
Less Salvage Recovered	..... (a)	460	.....	.....
Net Amount to be charged against Reserve	..... (b)	1308102	.....	.....

(a) For Analysis see page 17.
(b) For Analysis see page 18.

(Here follows Defendants' Exhibit A-32, marked page 2842.)

Def'ts' Ex. A32. 6/7/20. G. C. S.

New York and Queens Gas Company.

Station Cost of Material and Labor in Gas Made (Excl. General Expenses, Taxes, Insurance, Renewals, etc.).

12 Months December, 1918.

(Water Gas.)

		Quantity.	Quantity per M c. f. made.	Unit price.	Amount.	Cost per M cu. ft. made.
Coal in Generators ..... 12,447,005 lbs.	Tons	5556.699	34.6948	7.08102	3934709	.1097
Coke " "	Lbs.	.....	.....	.....	.....	....
Coal Under Boilers 5,985,943	Tons	2672.296	16.6852	6.4319	1718796	.0479
Coke under Boilers	Lbs.	.....	.....	.....	.....	....
Water Gas Tar under Boilers.....	Gals.	177820	.4957	.06	1066420	0297
Handling Coal—Generators		.....	.....	.....	511538	0143
" Coke "		.....	.....	.....	.....	....
" Coal—Boilers		.....	.....	.....	235956	0066
" Coke "		.....	.....	.....	.....	....
Total Water Gas Fuel.....		.....	.....	.....	7467919	2082
Gas Oil	Gals.	1527777	4.2585	.067315	10284257	2867
" " Pipe Line		.....	.....	.....	80000	0022
Iron Mass	bus.	14100	.0393	.19455	274316	0076
Water	cu. ft.	254700	.7099	1.00	25470	0007
Sundry Supplies		.....	.....	.....	900	....
Cartage—Spent Material		.....	.....	.....	.....	....
Labor " "		.....	.....	.....	.....	....
Total Material		.....	.....	.....	18132862	5054

Total Material						18132862	5054
Residuals—Water Gas Tar Sold	Gals.	304		.082	2495	0001	
" " " " Used	"	177820		.06	1066920	0297	
" " " " Variation in on hand	"						
" Drip Oil Sold	"	23968		.11	267381	75	
" " " Variation in on hand	"						
Total Residuals					1336796	0373	
Less Residual Expense (Labor and Cartage)					1336796	0373	
Net Credit from Residuals					16796066	4681	
Net Material					282632	0079	
Gas Making Labor—Superintendence					459753	0128	
" " " Boiler House					766226	0214	
" " " Generator House					94450	0026	
" " " Purifier House					72017	0020	
" " " Miscellaneous					1675078	0467	
Total Gas Making Labor					18471144	5148	
Total Material and Labor					20036	0006	
Repairs of Works and Station Structures	Labor				105433	0029	
" " " " " "	Material						
Repairs of Furnaces, Boilers and Accessories	Labor						
" " " " " "	Material	Labor			236986	0066	
Repairs of Steam Engines	Labor	M't'l			98302	0027	
" " " "	Material						
Repairs of Water Gas Sets and Accessories	Labor						
" " " " " "	Material						
Repairs of Purification Apparatus	Labor						
" " " "	Material	Labor			352806	0098	
Repairs of Holders	Labor	M't'l			402081	0113	
" " "	Material						
Repairs of Miscellaneous Equipment	Labor						
" " " "	Material						
Repairs of Work Tools	Labor				46975	0013	
" " " "	Material						
Distributing Station Repairs	Labor						
" " "	Material						
Total Repairs	Labor				609828	0170	
	Material				652791	0182	
					134811	0038	
Expense at Works							
Gas Storage at Works							
" " " " Distributing Stations							
Total					19868574	5538	

Gas Made (Corrected) ..... 358,757 M. cu. ft.

Candle Power (Works Test) 23.87.

DEFENDANTS' EXHIBIT A33.

Def'ts' Ex. A33. 6/7/20. G. C. S.

New York and Queens Gas Company.

Comparative Balance Sheet.

Assets.

	Dec. 31, 1917.	December 31, 1916.	Variation.
Fixed Capital December 31st, 1908	139492039	139639861	147822
Fixed Capital Installed since December 31st, 1908	49170467	46095307	3075160
Total Fixed Capital	188662506	185735168	2927338
Cash	1460654	1741821	281167
New York City Bonds	2030	2030	.....
Bond and Mortgage Owned	350	400	50
Liberty Bonds for Employees	3401	.....	3400
Accounts Receivable	3035345	2602258	433387
Fire Insurance Participation Certificates	104355	67418	36937
Material and Supplies	2513983	1621634	892349
Total	196354843	192011299	4343544

DEFENDANTS' EXHIBIT A33—*Continued.*

Liabilities.

	Dec. 31, 1917.	December 31, 1916.	Variation.
Capital Stock—Common (Authorized $600,000.)	600000	600000	.....
Funded Debt (Authorized $1,000,000.)	816000	816000	.....
Bills Payable—Consolidated Gas Co.	205000	175000	30000
Accounts Payable	4190922	4021507	169413
Taxes Accrued	268301	.....	268301
Consumers' Deposits	2513704	2307099	206605
Consumers' Main Contracts	1209633	1493265	283632
Interest Payable—Affiliated Cos.	154466	88934	15532
Employees' Liberty Bond Payments	1474	.....	1474
Fire Insurance Participation Reserve	104355	67418	36937
Renewals and Replacements	1151984	690145	461839
Contingency	10114966	8684085	1430881
General Profit and Loss	14449112	15637529	1188717
Appropriation to Employees	.....	78985	78985
Total	196354843	192011299	4343544

DEFENDANTS' EXHIBIT A34.

Def'ts' Ex. A34. 6/7/20. G. C. S.

New York and Queens Gas Company.

Investment in Land, Plant and Equipment.

12 Months 1917.

	Credits—(Original cost).			
	Gross investment.	Withdrawals to be charged against reserve.	Charged to other accounts.	Net investment.
Fixed Capital Dec. 31, 1908	.....	147822	.....	147822
Real Estate	.....	.....	.....	.....
General Structures	.....	.....	.....	.....
432.94 Fin. Boil., &c.				
238.97 Steam Engineer				
385.09 W. Gas Sets, &c.				
18.08 Purif. App.				
367.34 Accessy. Eq.				
1,442.42				
Plant	144242	47591	.....	96651
Works and Station Structures	77834	.....	.....	77834
Holder	114153	.....	.....	114153
Street Mains	721951	.....	.....	721951
Services	301545	.....	.....	301545
Meters	407759	77849	.....	329910

DEFENDANTS' EXHIBIT A34—*Continued.*

	Gross investment.	Credits—(Original cost). Withdrawals to be charged against reserve.	Charged to other accounts.	Net investment
Meter Installations	143486	.....	.....	143486
Gas Appliances Rented	579266	99	.....	570266
Tools and Implements	19612	.....	.....	19612
General Stable Equipment	.....	.....	.....	.....
Automobiles and Accessories	21602	84671	.....	63072
Furniture and Fixtures	27187	8002	.....	19185
General Store Equipment	2251	26750	.....	24499
Laboratory Equipment	23870	.....	.....	23870
Engineering and Superintendence	744268	.....	.....	744268
Total	3329026	401688 (a)	.....	2927338
Withdrawals to be charged against Reserve as above	.....	401688	.....	.....
Add Material and Supplies withdrawn	.....	.....	.....	.....
Add Cost of Dismantling—Labor and Material	.....	.....	.....	.....
Total	.....	401688	.....	.....
Less Salvage Recovered	..... (a)	50	.....	.....
Net Amount to be charged against Reserve	..... (a)	396688	.....	.....

DEFENDANTS' EXHIBIT A35.

Defts.' Ex. A35. 6/7/20. G. C. S.

Comparative Condensed Balance Sheet.

Assets.

	Dec. 31, 1916.	December 31, 1915.	Variation.
Fixed Capital as of Dec. 31, 1908	139639861	140149911	.....
Fixed Capital Subsequently to Dec. 31, 1908	46095307	39083866	.....
Total	185735168	179233777	6501391
Mortgage	400	500	100
Stock and Bonds of other Companies	.....	.....	.....
N. Y. City Bonds	2030	2030	.....
Cash	1741828	3106074	1364253
Bills Receivable	.....	.....	.....
Accounts Receivable	2602258	1889330	712928
Insurance Participation Certificates	67418	34785	32633
Material and Supplies	1621634	1269410	352224
	192011299	185786376	6224923

DEFENDANTS' EXHIBIT A35—*Continued.*

Liabilities.

	Dec. 31, 1916	December 31, 1915	Variation.
Capital Stock—Common	600000	600000	.....
Funded Debt	816000	816000	.....
Bonds and Mortgages	.....	.....	.....
Bills Payable	175000	150000	25000
Accounts Payable	4021509	3581489	440020
" " to Affiliated Co.'s	88934	65589	23345
Consumers Deposits	2307099	2085356	221743
" Main Contracts	1493265	1433993	59272
Insurance Participation Reserve	67418	34785	32633
Employees' Insurance Reserve	.....	.....	.....
Renewals and Replacements	690145	552953	137192
Accrued Amortization	.....	.....	.....
Contingency	8684085	7422534	1261551
Profit and Loss	15637829	14009677	1628152
Appropriation to Employees	78985	.....	78985
	192011299	185786376	6224923

DEFENDANTS' EXHIBIT A36.

Def'ts' Ex. A36. 6/7/20. E. C. S.

Invested in Plant and Property.

12 Months Ended Dec. 31, 1916.

		Total investment.	Withdrawals charged against reserve.	Other credits.	Net increase.
Real Estate		1326	.....	.....	1326
	8216.31				
	173.09				
Plant	60	846865	30000—	.....	546865
Holder	19.25	1592448	.....	.....	1592448
Structure	24,293.13	1432102	210050	.....	1222052
W. & Gt.		.....	.....	.....	.....
Street Mains		1182944	.....	.....	1182944
Services		513858	.....	.....	513858
Meters		376854	6257	.....	370597
" Installation		121596	.....	.....	121596
Gas Stoves Rented		773248	17175	.....	756073
Tools and Implements		15750	.....	.....	15750
Other Tangibles Gas Cup		.....	63475	.....	63475
Engineering & Super		140848	.....	.....	140848
Horses, Wagons and Harness		.....	.....	.....	.....
Automobiles and Accessories		190—	.....	.....	190—
Office Furniture and Fixtures		38796	.....	.....	38796

DEFENDANTS' EXHIBIT A36—*Continued.*

	Total investment.	Withdrawals charged against reserve.	Other credits.	Net increase.
General Store Equipment	1120			1120
Laboratory	41593			41593
		5		
		5		5
		8		
		7		7
		6		6
	7098348	596937	0	6501391
Withdrawals—Plant and Property			59657	
—Material and Supplies			64780	
			661737	
Other Credits Reserved in Cash for one Stock Charged to Rens. & Replacements			42000	
				619737

DEFENDANTS' EXHIBIT A37.

Def'ts' Ex. A37. 6/7/20. G. C. S.

—— Gas Company.

12 Months Dec., 1916.

Cost of Material and Labor in Gas Made.

		Quantity.	Quantity per M.	Price.	Amount.	Cost per M.	
Coal used in Generators	Tons	4848.370	38.14	4.9604	2404995	35123	396
Coke used in Generators	Lbs.	.....	.....	.....	.....	0845	0
Coal used under Boilers	Tons	2552.798	20.08	2.8854	736609	....	.
Coke " " "	Lbs.	.....	.....	.....	.....	0259	0
Oil Tar used under Boilers	Gals.	.....	.....	.....	.....	....	.
Fuel Oil used under Boilers	"	.....	.....	.....	.....	....	.
Coal Labor		.....	.....	.....	.....	....	.
" Cartage		.....	.....	.....	.....	....	.
" Demurrage		.....	.....	.....	.....	....	.
" Discharging		.....	.....	.....	5631	0002	0
Coke Labor		.....	.....	.....	.....	....	.
" Cartage		.....	.....	.....	.....	....	.
" Demurrage		.....	.....	.....	.....	....	.
" Discharging		.....	.....	.....	.....	....	.
Handling		.....	.....	.....	.....	....	.
Total Cost of Fuel		.....	.....	.....	443691	0155	0
Gas Oil	Gals.	1238225	4.34	.0309	3590926	1261	1
Oxide	Bush.	9600	.0337	.1716	3826115	1344	1
Water	c. f.	675600	2.37	1.00	164773	0058	0
Sundry Supplies		.....	.....	.....	67560	0024	0
Cartage		.....	.....	.....	909	....	.
		.....	.....	.....	.....	....	.
					70000	0008	0

Gas Oil Pipe Line					49999	0028	00
Total Cost of Materials					7730282	2715	30
Less Oil Tar Used	Gals.						
Oil Tar Sold	"				2		
Variation in on Hand	"						
Total Credit from Oil Tar	"				2		
Drip Oil Sold	"				34	0001	00
Total Credit from Residuals	"				36	0001	00
Deduct Residual Expense—Tar							
" " " —Drip Oil							
Total Deductions							
Net Credit from Residuals					36	0001	00
Net Cost of Materials					7726682	2714	30
Labor—Superintendence					164139	0058	00
Boiler House					428668	0150	01
Generator House					395367	0139	01
Purifier House					53664	0019	00
Miscellaneous					122098	0043	00
Total Labor					1163936	0409	04
Total Material and Labor					8890618	3123	32
Repairs of Works and Station Structures	—Labor				57477	0020	00
" " " "	—Material				40942	0014	00
Furnaces, Boilers and Accessories	—Labor						
" " " "	—Material						
Steam Engines	—Labor	Labor			87743	0031	00
" "	—Material	M'f'l			71333	0025	00
Misel. Power Plant Equipment	—Labor						
" " " "	—Material						
Water Gas Sets and Accessories	—Labor						
" " " " "	—Material						
Purification Apparatus	—Labor						
" "	—Material	Labor			136933	0048	00
Holders	—Labor	M'f'l			295953	0104	01
"	—Material						
Miscellaneous Equipment	—Labor						
" "	—Material						
Works Tools	—Labor						
" "	—Material				22953	0008	00
Total Repairs	—Labor				282153	0099	03
" "	—Material				431181	0151	05
Expense at Works					117641	0041	01
Gas Storage Works							
" " Distributing Stations							
Total Station Cost					9721593	3414	34

Gas Made....284.713 M. cu. ft.
Candle Power....23.67 Works Test.

DEFENDANTS' EXHIBIT A38.

Comparative Condensed Balance Sheet.

Assets.

	December, 1915.	December 31, 1914.	Variation.
Fixed Capital as of Dec. 31, 1908	140149911	140231419	.....
Fixed Capital Subsequently to Dec. 31, 1908	39083866	26486909	.....
Total	179233777	166718328	12515449
Mortgage	500	.....	500
Stocks and Bonds of other Companies	.....	.....	.....
N. Y. City Bonds	2030	2030	.....
Cash	3106074	1758006	1348068
Bills Receivable	.....	.....	.....
Accounts Receivable	1889330	1919474	30144
Insurance Participation Certificates	34785	8485	263
Material and Supplies	1269410	1159135	110275
	185786376		
	185786376	171766428	14019948

DEFENDANTS' EXHIBIT A38—*Continued.*

Liabilities.

	December, 1915	December 31, 1914.	Variation.
Capital Stock—Common	600000	600000	.....
Funded Debt	816000	816000	.....
Bonds and Mortgages	.....	.....	.....
Bills Payable	150000	55000	95000
Accounts Payable	3647078	3088945	558133
Consumers' Deposits	2085356	2035403	49953
" Main Contracts	1433993	1164569	269424
Insurance Participation Reserve	34785	8485	263
Employees' Insurance Reserve	.....	.....	.....
Renewals and Replacements	552953	6225482	1750005
Accrued Amortization	.....		
Contingency	7422534	12143544	1866133
Profit and Loss	14009677		
	185786376	171766428	14019948
		14019948	14019948

DEFENDANTS' EXHIBIT A39.

Def'ts' Ex. A39. 6/7/20. E.

Invested in Plant and Property.

12 Months Ended December 31, 1915.

		Total investment.	Withdrawals charged against reserve.	Other credits.	Net increase.
Real Estate		1238839	.....	.....	1238839
Plant		159671	.....	.....	159671
General Structures		7228675	.....	.....	7228675
Street Mains		1923848	.....	.....	1923848
Services		467693	.....	.....	467693
Meters		513768	54626	60	459082
" Inst.		152182	.....	.....	152182
Gas Stoves Rented		879057	186—	.....	860457
Tools and Implements		.....	7566	.....	7566
Show Int. during Con. separately.					
Holder in here:					
Accessory Exp.	1374.17				
Purification	222.54				
Int.	402.97				
Holden	68577.50				
Wks. & S. S.	3306.28				
Horses, Wagons and Harness		2000	5 52242	70	57742

DEFENDANTS' EXHIBIT A39—*Continued.*

	Total investment.	Withdrawals charged against reserve.	Other credits.	Net increase.
Automobiles and Accessories	63175	.....	.....	63175
		1403		
Office Furniture and Fixtures	31958	172	4500	8855
General Store Equipment	31420	13140	.....	18280
	12692286	165277	11560	12515449

Withdrawals—Plant and Property ..... Show totals of Columns
—Material and Supplies ..... 2 & 3 in column 2.

Other Credits ....

Taxes
Franchise Tax

(Here follows Defendants' Exhibit A-40, marked page 2850.)

DEFENDANTS' EXHIBIT A40.

Def'ts' Ex. A40. 6/7/20. G. C. S.

New York & Queens Gas Co.

For 12 Months 1915.

Cost of Material and Labor in Gas Made.

		Quantity.	Quantity per M.	Price.	Amount.	Cost per M.	
Materials						3458	41769
Coal used in Generators	Tons	4445.250	34.43	4.77	2121509	0734	0886
" " Boilers	"	2467.747	19.11	2.63	648770	0224	0271
Coke " Generators	Lbs.	.....	.....	.....	.....	....	....
" " Boilers	"	.....	.....	.....	.....	....	....
Oil Tar used under Boilers	Gals.	.....	.....	.....	.....	....	....
Fuel Oil	"	.....	.....	.....	.....	....	....
Coal Labor		.....	.....	.....	.....	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Cartage		.....	.....	.....	.....	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Demurrage		.....	.....	.....	.....	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Handling		.....	.....	.....	420989	0146	0176
Coke "		.....	.....	.....	.....	....	....
Total Cost of Fuel		.....	.....	.....	3191268	1104	1333
Gas Oil	Gals.	1198834	1.17	.0309	3704397	1280	1547
Oxide	Bush.	8900	.0307	.17	150450	0052	0063
Lime	"	.....	.....	.....	.....	....	....
...	Cu. ft.	663900	2.29	1.00	66390	0023	0028

Sundry Supplies					7551	0003	0003
Cartage					.....	....	....
Gas Oil Pipe Line					80001	0028	0033
Total Cost of Materials					7200057	2490	3007
Less Oil Tar Sold and Used	Gals.				.....	....	....
Deduct Labor (Residual Expense)					.....	....	....
Net Credit for Oil Tar Sold					18	0001	0001
Sold Ashes					1250	....	....
Total Residuals					3050	0001	000*
Net Cost of Materials					7197007	2489	300*
abor—Superintendence					130357	0045	0054
Boiler House					300436	0104	0125
Generator House					279295	0097	011*
Purifier House					40850	0014	001*
Miscel.					145302	0050	0061
Total Labor					896240	0310	0374
Total Labor and Material					8093247	2799	3380
epairs of Works and Station Structures	—Labor				135991	0047	0057
" " "	—Material				111766	0038	0047
Furnaces, Boilers and Accessories	—Labor						
" " " "	—Material						
Steam Engines	—Labor	Labor			29824	0010	0013
" "	—Material	M't'l			25168	0009	0010
Misel. Power Plant Equipment	—Labor						
" " " "	—Material						
Water Gas Sets and Accessories	—Labor						
" " " " "	—Material						
Purification Apparatus	—Labor						
" "	—Material	Labor			170764	0059	0071
Holders	—Labor	M't'l			139208	0048	0058
"	—Material						
Miscellaneous Equipment	—Labor						
" "	—Material						
Works Tools	—Labor				19362	0007	0008
" "	—Material						
Total Repairs	—Labor				336579	0116	0141
" "	—Material				295504	0102	0123
Expense at Works					69876	0024	0029
Gas Storage "Works"					.....	....	....
Gas Storage "Distributing Stations"					.....	....	....
Total Station Cost					8795206	3041	3673

Gas Made....M. cu. ft. 289.162.

*[Illegible in copy.]

DEFENDANTS' EXHIBIT A41.

Def'ts' Ex. A41. 6/7/20. G. C. S.

Comparative Condensed Balance Sheet.

Assets.

	December, 1914.	December 31, 1913.	Variation.
Fixed Capital as of Dec. 31, 1908	140231419	140231419	.....
Fixed Capital Subsequently to Dec. 31, 1908	26486909	21432965	.....
Total	166718328	161664384	5050944
Stocks and Bonds of other Companies	.....	.....	.....
N. Y. City Bonds	2030	.....	2030
Cash	1758006	1879385	121379
Bills Receivable	.....	.....	.....
Accounts Receivable	1919474	2068954	149480
Insurance Participation Certificates	8485	.....	8485
Material and Supplies	1159135	1762891	603756
	171766428	167375614	4390814

DEFENDANTS' EXHIBIT A41.—*Continued.*

Liabilities.

	December, 1914.	December 31, 19—.	Variation.
Capital Stock—Common	6000000	6000000	.....
Funded Debt	816000	816000	.....
Bonds and Mortgages	.....	.....	.....
Bills Payable	55000	25000	30000
Accounts Payable	3088945	4516656	1427711
Consumers' Deposits	2035403	1990606	44797
" Main Contracts	1164569	1364387	199811
Insurance Participation Reserve	8485	.....	8485
Employees' Insurance Reserve	.....	.....	.....
Renewal and Contingency Reserve	6225482	5066547	1158933
Accrued Amortization	[6221158]†	.....	[1164609]†
Profit and Loss	12143544	10337416	1806128
	171766428		
	171766428	167375614	4390814

† Figures in brackets erased in copy.]

—— Gas Company.

For 12 Months 1914.

Cost of Material and Labor in Gas Made.

		Quantity.	Quantity per M.	Price.	Amount.	Cost per M.	Cost per M sold.
Materials						35277	4181
Coal used in Generators	Tons	4275.832	33.78	4.75	2032887	0717	0850
" " Boilers	"	1915.143	15.48	2.69	515992	0182	0216
Coke " Generators	Lbs.	.....	.....	.....	.....	....	....
" " Boilers	"	.....	.....	.....	.....	....	....
Oil Tar used under Boilers	Gals.	.....	.....	.....	.....	....	....
Fuel Oil	"	.....	.....	.....	.....	....	....
Coal Labor		.....	.....	.....	.....	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Cartage		.....	.....	.....	.....	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Demurrage		.....	.....	.....	4	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Handling		\Gen. Coal..... 2636.56/ /Boiler " ..... 1034.59\			367115	0130	.0153
Coke "		.....	.....	.....	.....	....	....
Total Cost of Fuel		.....	.....	.....	2916394	1029	.1219
Gas Oil	Gals.	1117772	3.94	.0391	4380273	1545	.1832
Oxide	Bush.	7628	.0269	13½	102978	0036	.0043
Lime	"	.....	.....	.....	.....	....	....
Water	Cu. ft.	647700	2.28	1.00	64770	0023	.0027
Sundry Supplies		.....	.....	.....	2970	0001	.0001
					.....	....	....

DEFENDANTS' EXHIBIT A41.—*Continued.*

Coke								
Total Cost of Fuel						2916394	1029	.1219
Gas Oil	Gals.	1117772	3.94	.0391		4380273	1545	.1832
Oxide	Bush.	7628	.0269	13½		102978	0036	.0043
Lime	"							
Water	Cu. ft.	647700	2.28	1.00		64770	0023	.0027
Sundry Supplies						2970	0001	.0001
Cartage								
Pipe Line Rental						81789	0029	.0034
Total Cost of Materials						7549174	2663	.3156
Less Oil Tar Sold and Used	Gals.							
Deduct Labor (Residual Expense)								
Net Credit for Oil Tar Sold								
Sold Ashes						3750	0001	.0001
Total Residuals								
Net Cost of Materials						7545424	2662	.3155
er—Superintendence						130357	0046	.0055
Boiler House						244826	0086	.0102
Generator House						283464	0100	.0119
Purifier House						72699	0026	.0030
Miscel.						145768	0051	.0061
Total Labor						877114	0309	.0367
Total Labor and Material						8422538	2971	.3522
airs of Works and Station Structures	—Labor					112074	0040	.0047
" " "	—Material					141808	0050	.0059
Furnaces, Boilers and Accessories	—Labor							
" " " "	—Material							
Steam Engines	—Labor	Labor				29551	0010	.0012
" "	—Material	M't'l				112992	0040	.0047
Misel. Power Plant Equipment	—Labor							
" " " "	—Material							
Water Gas Sets and Accessories	—Labor							
" " " " "	—Material							
Purification Apparatus	—Labor							
" "	—Material	Labor				126579	0045	.0052
Holders	—Labor	M't'l				108221	0038	.0045
"	—Material							
Miscellaneous Equipment	—Labor							
" "	—Material							
Works Tools	—Labor							
" "	—Material					9544	0003	.0004
Total Repairs	—Labor					268204	0095	.0112
" "	—Material					372565	0131	.0155
ense at Works						70055	0025	.0029
Storage "Works"								
Storage "Distributing Stations"								
Total Station Cost						9133362	3222	.3818

Made....cu. ft. 283,467,000.

Defts.' Ex. A44. 6/7/20. G. C. S.

General Report New York and Queens Gas Company.

12 Months 12 31, 1912.

Defts.' A44.

New York and Queens Gas Co.

General Report for 12 Months 12 31, 1912.

Gas on hand	166900	cu. ft.		
Made during	258561000	"		
Sent out	258585400	"		
On Hand	142500	"		
Municipal Street Lighting	9924800	cu. ft.		
Municipal Buildings	2051800	"		
Prepaid Gas	56265700	"		
Commercial Meters	141137800	"	Corrected	259238000
Total Sales	209380100	"		48477300
Used at Works	719400	"	S. O.	
Used at Office	500200	"	Un. Ac.	
Over Cons. P. P. Meters	41900	"	Per cent	1867
Used for Street Light Exhibit	119100	"		
	.....	"		
Unaccounted for 18.49 per cent	47824700	"		
Total sent out	258585400	"		

Production Expenses

Coal sent out ..... 258585400 ..

Production Expenses.

		Amount.	Based on make per M cu. ft.	Based on sales per M cu. ft.
Generator Fuel 3618.823 Tons	1858136	.....	....	....
Boiler Fuel 1344.224 Tons	454458	2312594	0894	1104
Gas Oil 984250 Gals	.....	2979325	1152	1423
Purification Supplies	.....	155815	0060	0074
Water	.....	73920	0029	0038
Miscellaneous Works Expense	.....	56072	0022	0027
Total Cost of Materials	.....	5577726	2157	2663
Repairs—Works and Station Structures	228271	.....	....	....
" Power Plant	47847	.....	....	....
" Gas Apparatus	284375	.....	....	....
" Works Tools	8149	568642	0220	0297
Gas Making Labor:				
Superintendence	120780	.....	....	....
Boiler	209390	.....	....	....
Generator	200690	.....	....	....
Purifier	58455	.....	....	....
Miscellaneous	149140	738455	0285	0353
Total Production Expense	.....	.....	....	....
Less Transmission Pumping	.....	.....	....	....
Total Cost in Holder	.....	6884823	2662	3288

Distribution Expenses.

Transmission Pumping	.....	4557	0002	0002
Superintendence	.....	194133	0075	0093
Supplies and Expenses	.....	17091	0007	0008
Gas Meter and Installation Work	.....	174569	0067	0083
Work on Consumers' Premises	.....	929603	0359	0444
Rep. Stable Eq	97586	.....	....	....
Repairs—Gas Mains	525934	.....	....	....
" Gas Services	21447	.....	....	....
" Gas Meters	309429	.....	....	....
" Distribution Tools	25363	.....	....	....
" Appliances	23404	1003163	0388	0479
Street Lamps	.....	113526	0044	0059
		2436642	0942	1163

Comparison of Sales.

Year	1907	1908	1909	1910	1911	1912
Increase ...	13,636,300	19,415,900	15,098,600	168664800	184720900	209380100
Per Cent ...	1386	1734	1149	1314	952	1335

New York and Queens Gas Co.

Commercial and General Expenses.

Commercial Administration:				Based on sales per M cu. ft.
General Labor	264518	.....	....	....
Accounting	201467	.....	....	....
Contracts	52333	.....	....	....
Collecting	200978	.....	....	....

3A	General Labor	264518	.....	....	....
3B	Accounting	201467	.....	....	....
3C	Contracts	52333	.....	....	....
3D	Collecting	209876	.....	....	....
3E	Meter Reading	133262	.....	....	....
3F	Supplies and Expenses	148117	1009573	....	0482
4	Advertising	.....	37494	....	0018
5	Canvassing and Soliciting	.....	170557	....	....
6	Salaries and Expenses of Officers	.....	754995	....	0361
7	General Office Expense	.....	169966	....	0081
7½	Rent	.....	1678	....	0080
8	Legal Expense	.....	133358	....	0064
9	Insurance	.....	2400	....	0115
9	Amortization	.....	940737	....	0449
10	Accidents and Damages	.....	125	....	0006
12	Stationery and Printing	.....	80553	....	0038
13	Stable Expense	.....	253027	....	0121
14	Undistributed Adjustments	.....	.....	....	....
	Total	.....	3970580	....	1896

Sales.

	Municipal Street Lighting	9,924,800	.....	736894	....	....
	Municipal Buildings	2,051,800	.....	153885	....	....
	Prepaid Gas	56,265,700	.....	5625646	....	....
	Commercial Meters	141,137,800	.....	140874	20603825	9840
		209,380,1				
	Rent of Gas Appliances		415813	.....	....	....
	Merchandise and Jobbing		458969	.....	....	....
	Residuals and By-Products		77	.....	882482	0422
	Gross Earnings		.....	.....	21486307	10262
	Less:					
	Production Expense		.....	6884823	....	....
	Distribution "		.....	2436642	....	....
	Commercial and General Expense—1485 rent off		.....	3970580	13292045	6348
				Dr.	Cr.	8194262	3914
	Deductions:					
15	Taxes		1141033	.....	....	....
16	Uncollectible Bills		34469	.....	....	....
17	Interest Revenues		.....	14570	....	....
19	" on Unfunded Debt		216777	.....	....	....
19	Bad Debts Collected		.....	1061	....	....
21	" " Written Off		16901	.....	....	....
			1409180	15631	1393549	0666
	Gross Profits		.....	.....	6800713	3248
	Less Fixed Charges		.....	.....	40800	1949
	Total Net		.....	.....	2720713	1299
		1911	1843744	.....	....	....
		1910	2528607	.....	0450%	....

Cash Accounts and Liabilities.

Cash on Hand	.....	.....	632567	....
Accounts Receivable	.....	.....	2288295	....
Special Deposits	.....	.....	10400	....
Cash Resources	.....	.....	3960862	....
Less:				
Accounts Payable	.....	2277228	....	....
Bills Payable	.....	25000	....	....
Due on Coupon Account	.....	17000	0477228	....

	Cash on Hand			632567	
	Accounts Receivable			2288295	
	Special Deposits			10400	
	Cash Resources			3960862	
	Less:				
	Accounts Payable		2277228		
	Bills Payable		25000		
	Due on Coupon Account		17000	6477228	
	Balance Cash Deficit			2516366	

Property Accounts.

		1910	1911	1912	
	Construction during Period	338792	424052	297540	
	Construction during Month	4004951	7146704	2740389	

New York and Queens Gas Co.

Commercial and General Expenses.

					Based on sa per M cu. f
23	Commercial Administration:				
23A	General Labor	21767			
23B	Accounting	17767			
23C	Contracts	4333			
23D	Collecting	16540			
23E	Meter Reading	11591			
23F	Supplies and Expenses	20182	92180		0453
24	Advertising		38		0019
25	Canvassing and Soliciting		15692		0077
26	Salaries and Expenses of Officers		64583		0318
27	General Office Expense		164		0081
27½	Rent		138		0068
28	Legal Expense		13773		0068
29	Insurance		200		0098
30	Amortization		65326		0321
31	Accidents and Damages		75		0037
32	Stationery and Printing		6215		0030
33	Stable Expense		13784		0068
34	Undistributed Adjustments				
	Total		333053		1638

Sales.

	Municipal Street Lighting	1,184,600		68382	
	Municipal Buildings	223,800		16785	
	Prepaid Gas	5,178,700		517836	
	Commercial Meters	13,744,800		1372083	1975086 9714
		20,331,9			
	Rent of Gas Appliances		21105		
	Merchandise and Jobbing		53334		
	Residuals and By-Products		1250		75689 0372
	Gross Earnings				2050775 10086
	Less:				
	Production Expense			672422	
	Distribution "			255439	
	Commercial and General Expense			333053	1260914 6202
			Dr.	Cr.	789861 3884
	Deductions:				
35	**Taxes**		121033		
			1570		

	Total			3330530		1638

Sales.

	Municipal Street Lighting	1,184,600		68382		
	Municipal Buildings	223,800		16785		
	Prepaid Gas	5,178,700		517836		
	Commercial Meters	13,744,800		1372083	1975086	9714
		20,331,9				
	Rent of Gas Appliances		21105			
	Merchandise and Jobbing		53334			
	Residuals and By-Products		1250		75689	0372
	Gross Earnings				2050775	10086
	Less:					
	Production Expense			672422		
	Distribution "			255439		
	Commercial and General Expense			333053	1260914	6202
			Dr.	Cr.	789861	3884
	Deductions:					
35	Taxes		121033			
36	Uncollectible Bills		1570			
37	Interest Revenues			863		
39	" on Unfunded Debt		23667			
40	Bad Debts Collected			220		
41	" " Written Off		3588			
			149858	1083	148775	0731
	Gross Profits				641086	3153
	Less Fixed Charges				3400	1672
	Total Net				301086	1481
		1911	192487			
		1910	311622			

Cash Accounts and Liabilities.

Cash on Hand		632567	
Accounts Receivable		2288295	
Special Deposits		10400	
Cash Resources		3960862	
Less:			
Accounts Payable	2277228		
Bills Payable	25000		
Due on Coupon Account	17000	6477228	
Balance Cash Deficit		2516366	

Property Accounts.

	1910	1911	1912
Construction during Month	338792	424052	297540
Construction during Period	4004951	7146704	2740389

2858

Defendants' Exhibit A45.

Defts.' Ex. A45. 6 7 20. G. C. S.

General Report New York and Queens Gas Company.

Month of Dec. & 12 Mos., 1913.

2859

New York and Queens Gas Co.

General Report for 12 Mos. & Dec., 1913.

Gas on hand	142500	cu. ft.		
Made during	271551000	"		
Sent out	271464500	"		
On Hand	229000			
Municipal Street Lighting	11197000	cu. ft.		
Municipal Buildings	1926000	"		
Prepaid Gas	61359000	"		
Commercial Meters	146197300	"	Corrected	
Total Sales	220679300	"		
Used at Works	756400	"	S. O.	264244000
Used at Office	571200	"	Un. Ac.	46097500
Over Cons. P. P. Meters	26700	"	Per Cent	1741
Used for Street Light Exhibit	185000	"		
		"		
Unaccounted for 18 13 100 per cent	49245900	"		
Total sent out	271464500	"		

Production Expenses.

	Amount.	per M cu. ft.	per
2127020			

2	Boiler Fuel 1,525,330 Tons	511827	2648866	0975	1200
5	Gas Oil 1,039,580 Gals. Oil 35,825.99		3629442	1337	1645
	Rent 468.43				
6	Purification Supplies		133466	0044	0061
3	Water		78258	0029	0035
7	Miscellaneous Works Expense		65949	0024	0030
	Total Cost of Materials		6555981	2414	2971
8	Repairs—Works and Station Structures	220996			
9	" Power Plant	65968			
0	" Gas Apparatus	312864			
1	" Works Tools	10634	610462	0225	0277
1	Gas Making Labor:				
1A	Superintendence	130357			
1B	Boiler	215350			
1C	Generator	235495			
1D	Purifier	136550			
1E	Miscellaneous	115660	833412	0306	0377
	Total Production Expense		7999855	2945	3625
	Less Transmission Pumping				
	Total Cost in Holder		7799855	2945	3625

Distribution of Expenses.

2	Transmission Pumping		4670	0002	0002
3	Superintendence		215462	0079	0098
4	Supplies and Expenses		8826	0003	0004
5	Gas Meter and Installation Work		224768	0083	0102
6	Work on Consumers' Premises		936979	0345	0424
7	Repairs—Gas Mains	711036			
8	" Gas Services	32097			
9	" Gas Meters	240241			
0	" Distribution Tools	36452			
1	" Appliances	107623			
3½	" Stable Equip.	139886	1267335	0467	0574
2	Street Lamps		24226	0009	0011
			2681966	0988	1215

Comparison of Sales.

Year	1908	1909	1910	1911	1912	1913
Sales	13,105,600	14,837,400	16,859,000	17831500	20331900	24950000
Increase	1,698,400	1,731,800	2,021,600	972500	2500400	4618100
Per Cent	14.88	13.21	13.62	5.77	14.02	22.71

Commercial and General Expenses.

					Based on sales per M cu. ft.
3	Commercial Administration:				
3A	General Labor	344129			
3B	Accounting	243516			
3C	Contracts	626			
3D	Collecting	268429			
3E	Meter Reading	163363			
3F	Supplies and Expenses	151126			
			1233163		0559
4	Advertising		45142		0020
5	Canvassing and Soliciting		165859		0075
			719158		0323

Commercial and General Expenses.

						Based on sales per M cu. ft.
23	Commercial Administration:					
23A	General Labor		344129	.....	....	....
23B	Accounting		243516	.....	....	....
23C	Contracts		626	.....	....	....
23D	Collecting		268429	.....	....	....
23E	Meter Reading		163363	.....	....	....
23F	Supplies and Expenses		151126	.....	....	....
				1233163	....	0559
24	Advertising		.....	45142	....	0020
25	Canvassing and Soliciting		.....	165859	....	0075
26	Salaries and Expenses of Officers		.....	712158	....	0323
27	General Office Expense		.....	250546	....	0114
27½	Rent		.....	1706	....	0077
28	Legal Expense		.....	1263	....	0057
29	Insurance		.....	322524	....	0146
30	Amortization		.....	773653	....	0351
31	Accidents and Damages		.....	50468	....	0023
32	Stationery and Printing		.....	82358	....	0037
33	Stable Expense		.....	195729	....	0089
34	Undistributed Adjustments		.....	733	....	0
	Total		.....	4127767	....	1871

Sales.

Municipal Street Lighting	11,197,000	.....	833366	....	....
Municipal Buildings	1,926,000	.....	144450	....	....
Prepaid Gas	61,359,000	.....	6134632	....	....
Commercial Meters	146,147,300	.....	14560053	21672501	9821
	220,679,300				
Rent of Gas Appliances		449980	.....	....	....
Merchandise and Jobbing		358876	.....	....	....
Residuals and By-Products		3750	.....	812606	0368
Gross Earnings		.....	.....	22485107	10189
Less:					
Production Expense		.....	7999855	....	....
Distribution "		.....	2681966	....	....
Commercial and General Expense		.....	4127767	14809588	6711
		Dr.	Cr.	7675519	3478
Deductions:					
Taxes		1183281	.....	....	....
Uncollectible Bills		53676	.....	....	....
Interest Revenues		.....	24979	....	....
" on Unfunded Debt		281443	.....	....	....
Bad Debts Collected		.....	2563	....	....
" " Written Off		17522	.....	....	....
		1535922	27542	1508380	0684
Gross Profits		.....	.....	6167139	2794
Less Fixed Charges		.....	.....	40800	1849
Total Net	1912	2720713	.....	2087139	0945
	1911	1843744	.....	....	....
	1910	2528607	.....	....	....

Cash Accounts and Liabilities.

Cash on Hand	.....	.....	1849385	....
Accounts Receivable	.....	.....	2041228	....
Special Deposits	.....	.....	....	....

	Cash on Hand	.....	.....	1849385	....
	Accounts Receivable	.....	.....	2041228	....
	Special Deposits	.....	.....	....	....
	Cash Resources	.....	.....	3890613	....
	Less:				
	Accounts Payable	.....	2505986	....	....
	Bills Payable	.....	25000	....	....
	Due on Coupon Account	.....	17000	6705986	....
	Balance Cash Deficit	.....	.....	2815373	....

Property Accounts.

	1911	1912	1913
Construction during Month	424052	297540	140515
Construction during Period	7146704	2740389	3053368

Commercial and General Expenses.

						Based on sal per M cu. ft
23	Commercial Administration:					
23A	General Labor		33831	.....	....	....
23B	Accounting		28350	.....	....	....
23C	Contracts		54	.....	....	....
23D	Collecting		19965	.....	....	....
23E	Meter Reading		19742	.....	....	....
23F	Supplies and Expenses		17548	.....	....	....
				124836	....	0575
24	Advertising		.....	6646	....	0030
25	Canvassing and Soliciting		.....	2745	....	0013
26	Salaries and Expenses of Officers		.....	52666	....	0243
27	General Office Expense		.....	439	....	0202
27½	Rent		.....	138	....	0064
28	Legal Expense		.....	100	....	0046
29	Insurance		.....	31998	....	0147
30	Amortization		.....	18891	....	0087
31	Accidents and Damages		.....	.....	....	....
32	Stationery and Printing		.....	7215	....	0033
33	Stable Expense		.....	12449	....	0057
34	Undistributed Adjustments		.....	733	....	0003
	Total		.....	324413	....	1494

Sales.

Municipal Street Lighting	1,230,000	.....	70976	....	....
Municipal Buildings	217,400	.....	16305	....	....
Prepaid Gas	6,004,700	.....	600445	....	....
Commercial Meters	14,261,200	.....	1422621	2110347	9719
	21,713,300				
Rent of Gas Appliances		158	.....	....	....
Merchandise and Jobbing		45337	.....	....	....
Residuals and By-Products		1250	.....	28287	0130
Gross Earnings		.....	.....	2082060	9589
Less:					
Production Expense		773717	.....	....	....
Distribution "		264990	.....	....	....
Commercial and General Expense		324413	.....	1363120	6279
		Dr.	Cr.	718940	3310
Deductions:					
35	**Taxes**		83281	.....	....	....

33	Stable Expense		.....	12449	....	0057
34	Undistributed Adjustments		.....	733	....	0003
	Total		.....	324413	....	1494

Sales.

Municipal Street Lighting	1,230,000	.....	70976	....	....
Municipal Buildings	217,400	.....	16305	....	....
Prepaid Gas	6,004,700	.....	600445	....	....
Commercial Meters	14,261,200	.....	1422621	2110347	9719
	21,713,300				
Rent of Gas Appliances		158	.....	....	....
Merchandise and Jobbing		45337	.....	....	....
Residuals and By-Products		1250	.....	28287	0130
Gross Earnings		.....	.....	2082060	9589

Less:

Production Expense		773717	.....	....	....
Distribution "		264990	.....	....	....
Commercial and General Expense		324413	.....	1363120	6279
		Dr.	Cr.	718940	3310

Deductions:

35	Taxes		83281	.....	....	....
36	Uncollectible Bills		3060	.....	....	....
37	Interest Revenues		.....	7038	....	....
39	" on Unfunded Debt		32834	.....	....	....
40	Bad Debts Collected		.....	.....	....	....
41	" " Written Off		.....	.....	....	....
			119175	7038	112137	0516
	Gross Profits		.....	.....	606803	2794
	Less Fixed Charges		.....	.....	3400	1565
	Total Net	1912	301086	.....	266803	1229
		1911	192487			
		1910	311622			

Cash Accounts and Liabilities.

Cash on Hand	.....	.....	1849385	....
Accounts Receivable	.....	.....	2041228	....
Special Deposits	.....	.....	.....	....
Cash Resources	.....	.....	3890613	....

Less:

Accounts Payable	.....	2505986	....	....
Bills Payable	.....	25000	....	....
Due on Coupon Account	.....	17000	6705986	....
Balance Cash Deficit	.....	.....	2815373	....

Property Accounts.

	1911	1912	1913
Construction during Month	424052	297540	140515
Construction during Period	7146704	2740389	3053368

DEFENDANTS' EXHIBIT A46.

Def'ts' Ex. A46. 6 7/20. G. C. S.

Comparative Condensed Balance Sheet.

Assets.

	Dec. 31, 1913.	December 31, 1912.	Variation.
Fixed Capital as of Dec. 31, 1908	140231419	140260599	29180
Fixed Capital Subsequently to Dec. 31, 1908	21432965	18350417	3082548
Total	161664384	158611016	3053368
Stocks and Bonds of other Companies	.....	.....	.....
Cash	1879385	1692360	187025
Bills Receivable	.....	.....	.....
Accounts Receivable	2068954	2458047	389093
Insurance Participation Certificates	.....	.....	.....
Material and Supplies	1762891	1600843	162048
	167375614	164362266	3013348

Liabilities.

	Dec. 31, 1913.	December 31, 1912.	Variation.
Capital Stock—Common	6000000	6000000	.....
Funded Debt	816000	816000	.....
Bonds and Mortgages	.....	.....	.....
Bills Payable	25000	25000	.....
Accounts Payable	4516656	4199609	317047
Consumers' Deposits	1990606	1840986	149620
" Main Contracts	1364387	1340435	23952
Insurance Participation Reserve	.....	.....	.....
Employees' Insurance Reserve	.....	.....	.....
Renewal and Contingency Reserve	.....	.....	.....
	5066549 W. R.	.....	W. R. 614290
Accrued Amortization	[5070729]†	4452259	[618470]†
	10337416 W. R.		W. R. 1908439
Profit and Loss	[10333236]†	8428977	[1904259]†
	167375614	164362266	3013348

†[Figures in brackets erased in copy.]

DEFENDANTS' EXHIBIT A47.

Def'ts' Ex. A47. 6/7/20. G. C. S.

Invested in Plant and Property.

12 Months Ended December, 1913.

	Total investment.	Withdrawals charged against reserve.	Other credits.	Net increase.
Fixed Capital 1908 should show against meters & acct. from which withdrawn & not from 1908	.....	25680	35—	29180
Real Estate	.....	.....	.....	.....
Plant	95424	.....	.....	95424
General Structures	.....	.....	.....	.....
Street Mains	1531164	.....	.....	1531164
Services Net	527726	.....	.....	527726
Meters	464640	.....	.....	464640
" Installation	143249	.....	.....	143249
Gas Stoves Rented	1914	.....	.....	1914
Tools and Implements	65	.....	.....	65
Laboratory Equipment	16446	.....	.....	16446
Arc Lamps in Dist	421	.....	.....	421
Water Heaters Rented	91	.....	.....	91
Horses, Wagons and Harness	75	.....	.....	75
Automobiles and Accessories	113350	175683	100	12333
Office Furniture and Fixtures	44957	.....	.....	44957
General Store Equipment	14675	.....	.....	14675
	3208231	141363	135	3053368
Withdrawals—Plant and Property			141363	
—Material and Supplies			180	
			159363	
Other Credits. Cash received for horse			35—	
" " " auto			100	
			135—	

DEFENDANTS' EXHIBIT A48.

Def'ts' Ex. A48. 6/7/20. G. C. S.

New York & Queens Gas Company.

For 12 Mos., Dec., 1913.

Cost of Material and Labor in Gas Made.

		Quantity.	Quantity per M.	Price.	Amount.	Cost per M.	
terials							
Coal used in Generators	Tons	4077.363	33.63	467	1908205	0703	....
" " Boilers	"	1525.330	12.58	276	422452	0155	....
Coke " Generators	Lbs.	.....	.....	.....	.....	....	....
" " Boilers	"	.....	.....	.....	.....	....	....
Oil Tar used under Boilers	Gals.	.....	.....	.....	.....	....	....
Fuel Oil	"	.....	.....	.....	.....	....	....
Coal Labor		.....	.....	.....	.....	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Cartage		.....	.....	.....	.....	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Demurrage		.....	.....	.....	.....	....	....
Coke "		.....	.....	.....	.....	....	....
Coal Handling		.....	.....	.....	318209	0117	....
Coke "		.....	.....	.....	.....	....	....
Total Cost of Fuel		.....	.....	.....	2648866	0975	....
Gas Oil	Gals.	1039576	3.83	.0344	3582599	1319	....
Oxide	Bush.	.....	.....	.....	127195	0047	....
Lime	"	.....	.....	.....	.....	....	....
Water	Cu. ft.	782580	2.88	1.00	78258	0029	....
Sundry S	s	.....	.....	.....	6271	0002	....
		.....	.....	.....	.....	....	....
		.....	.....	.....	46843	0017	....

Water						
Sundry S				6271	0002	
Cartage						
Gas Oil Pipe Line Rental				46843	0017	
Total Cost of Materials				6490032	2389	
Less Oil Tar Sold and Used Gals.						
Deduct Labor (Residual Expense)						
Net Credit for Oil Tar Sold						
Spent Oxide Sold						
Total Residuals						
Net Cost of Materials				6490032	2389	
e—Superintendence				130357	0048	
Boiler House				215350	0079	
Generator House				235495	0087	
Purifier House				136550	0050	
Miscel.				115660	0043	
Total Labor				833412	0307	
Total Labor and Material				7323444	2696	
irs of Works and Station Structures —Labor						
" " " —Material				220996	0081	
Furnaces, Boilers and Accessories—Labor						
" " " " —Material						
Steam Engines —Labor				65968	0024	
" " —Material						
Misel. Power Plant Equipment —Labor						
" " " " —Material						
Water Gas Sets and Accessories —Labor						
" " " " " —Material						
Purification Apparatus —Labor						
" " —Material				312861	0115	
Holders —Labor						
" —Material						
Miscellaneous Equipment —Labor						
" " —Material						
Works Tools —Labor						
" " —Material				10634	0004	
Total Repairs —Labor						
" " —Material				610462	0224	
nse at Works				65949	0025	
Storage "Works"						
Storage "Distributing Stations"						
Total Station Cost				7999855	2945	

Made....M. cu. ft. 271,551,000.

DEFENDANTS' EXHIBIT A49.

Comp. Ex. A49. June 7-1920. H. S.

General Report New York and Queens Gas Company.

12 Months 12/31, 1911.

366

New York and Queens Gas Co.

General Report for 12 Months 12/31, 1911.

Gas on hand	217100	cu. ft.		
Made during —	225840400	"		
Sent out	225890600	"		
On Hand	166900	"		
Municipal Street Lighting	.....	"		
Municipal Buildings	.....	"		
Prepaid Gas	.....	"		
Commercial Meters	.....	"	Corrected	
Total Sales	184720900	"		
Used at Works	730000	"	S. O.	214468500
Used at Office	553300	"	Un. Ac.	38119800
Over Cons. P. P. Meters	232900	"	Per Cent.	17 77/100
Used for Street Light Exhibit	111500	"		
	.....	"		
Unaccounted for 17 50/100 per cent	39542000	"		
Total sent out	225890600	"		

Production Expenses.

	Amount.	Based on make per M cu. ft.	Based on sales per M cu. ft.
[illegible] Tons	1656406	.....	....

Generator Fuel ..... 3303.692 Tons	....	....	1656406	.....	....	....
Boiler Fuel ..... 1006.882 Tons	0831	1036	352816	2009222	0882	1088
Gas Oil ..... 929657 Gals.	1221	1522	.....	2788971	1234	1509
Purification Supplies	0022	0028	.....	3328	0001	0002
Water	0029	0036	.....	56240	0024	0030
Miscellaneous Works Expense.....	0044	0055	.....	43907	0019	0024
Total Cost of Materials.....	2157	2677	.....	4901668	2170	2653
Repairs—Works and Station Structures.....			198836	.....	....	....
" Power Plant			51585	.....	....	....
" Gas Apparatus			240649	.....	....	....
" Works Tools	0175	0218	7258	498328	0221	0270
Gas Making Labor:						
A Superintendence			120450	.....	....	....
B Boiler			206225	.....	....	....
C Generator			191515	.....	....	....
D Purifier			51960	.....	....	....
E Miscellaneous	0339	0423	148070	718220	0318	0389
Total Production Expense.....	....	....	.....	.....	....	....
Less Transmission Pumping.....	....	....	.....	.....	....	....
Total Cost in Holder.....	2661	3318	.....	6118216	2709	3312

Distribution Expenses.

Transmission Pumping			.....	891	0000	0001
Superintendence	0068	0080	.....	1932	0087	0104
Supplies and Expenses	0017	0021	.....	14716	0007	0008
Gas Meter and Installation Work.....	0058	0073	.....	150249	0066	0081
Work on Consumers' Premises	....	....	.....	723458	0320	0392
Repairs—Gas Mains	....	....	128088	.....	....	....
" Gas Services	....	....	34830	.....	....	....
" Gas Meters	....	....	157292	.....	....	....
" Distribution Tools	....	....	11217	.....	....	....
" Appliances	0145	0180	4001	.....	....	....
				335428	0648	0182
Street Lamps	0052	0065	.....	80088	0035	0043
	0612	0763	.....	1498030	0663	0811

Comparison of Sales.

Year.	1906.	1907.	1908.	1909.	1910.	1911.
Sales	98,346,100	111,982,400	131,398,300	146,496,900	168,664,800	184,720,900
Increase	13,851,800	13,636,300	19,415,900	15,098,600	22,167,900	16,056,100
Per cent	16.39	13.86	17.54	11.49	13.14	09.52

Commercial and General Expenses.

Commercial Administration:			Based on sales per M cu. ft.
A General Labor	239742	.....	....
B Accounting	154340	.....	....
C Contracts	47983	.....	....
D Collecting	148222	.....	....
E Meter Reading	94283	.....	....
F Supplies and Expenses	77936	.....	....
	762506	.....	0521
Advertising	46394	.....	0032
[illegible]	190568	.....	0136

Commercial and General Expenses

Commercial Administration:

					Based on sales per M cu. ft.
A	General Labor	239742	.....	.....	....
B	Accounting	154340	.....	.....	....
C	Contracts	47983	.....	.....	....
D	Collecting	148222	.....	.....	....
E	Meter Reading	94283	.....	.....	....
F	Supplies and Expenses	77936	.....	.....	....
			762506	.....	0521
	Advertising	.....	46394	.....	0032
	ıvassing and Soliciting	.....	199568	.....	0136
	Salaries and Expenses of Officers	.....	625820	.....	0427
	General Office Expense	.....	233653	.....	0159
½	Rent	.....	1726	.....	0118
	Legal Expense	.....	145255	.....	0099
	Insurance	.....	94453	.....	0064
	Amortization	.....	1250750	.....	0854
	Accidents and Damages	.....	.....	.....	....
	Stationery and Printing	.....	79882	.....	0054
	Stable Expense	.....	167332	.....	0114
	Undistributed Adjustments	.....	.....	.....	....
	Total	.....	3778218	.....	2578

Sales.

	Municipal Street Lighting	7,533,700	560599	.....	....
	Municipal Buildings	2,018,300	151432	.....	....
	Prepaid Gas	34,373,600	3780439	.....	....
	Commercial Meters	102,571,300	11279094	15771564	10766
		146,496,900			
	Rent of Gas Appliances	270527	.....	.....	....
	Merchandise and Jobbing	304812	.....	.....	....
	Residuals and By-Products	3820	.....	.....	....
		106854	.....	686013	0468
	Gross Earnings	.....	.....	16457577	11234
	Less:				
	Production Expense	.....	5124434	.....	....
	Distribution "	.....	1112623	.....	....
	Commercial and General Expense	.....	3778218	10015275	6836
		..... Dr.	.....	Cr. 6442302	4398
	Deductions:				
5	Taxes	469251	.....	.....	....
3	Uncollectible Bills	28419	.....	.....	....
7	Interest Revenues	.....	37013	.....	....
9	" on Unfunded Debt	442623	.....	.....	....
9	Bad Debts Collected	.....	8591	.....	....
1	" " Written Off	19501	.....	.....	....
		959794	45604	914190	0624
	Gross Profits	.....	.....	5528112	3774
	Less Fixed Charges	.....	.....	37500	2559
	Total Net	.....	.....	1778112	1215
	1908	1426811	.....	.....	....
	Less	.....	.....	7544	....
				1770568	

Cash Accounts and Liabilities.

	Cash on Hand	.....	726097	.....	....
	[illegible] Receivable	.....	2122263	.....	....

27½	Rent			235053		0159
28	Legal Expense			1726		0118
29	Insurance			145255		0099
30	Amortization			94453		0064
31	Accidents and Damages			1250750		0854
32	Stationery and Printing					
33	Stable Expense			79882		0054
34	Undistributed Adjustments			167332		0114
	Total			3778218		2578

Sales.

Municipal Street Lighting	7,533,700		560599		
Municipal Buildings	2,018,300		151432		
Prepaid Gas	34,373,600		3780439		
Commercial Meters	102,571,300		11279094	15771564	10766
	146,496,900				
Rent of Gas Appliances		270527			
Merchandise and Jobbing		304812			
Residuals and By-Products		3820			
		106854		686013	0468
Gross Earnings				16457577	11234
Less:					
Production Expense			5124434		
Distribution "			1112623		
Commercial and General Expense			3778218	10015275	6836
			Dr.	Cr. 6442302	4398
Deductions:					
35 Taxes		469251			
36 Uncollectible Bills		28419			
37 Interest Revenues			37013		
39 " on Unfunded Debt		442623			
40 Bad Debts Collected			8591		
41 " " Written Off		19501			
		959794	45604	914190	0624
Gross Profits				5528112	3774
Less Fixed Charges				37500	2559
Total Net				1778112	1215
1908		1426811			
Less				7544	
				1770568	

Cash Accounts and Liabilities.

Cash on Hand		726097		
Accounts Receivable		2122263		
Special Deposits		1258319		
Cash Resources		4106679		
Less:				
Accounts Payable	1644107			
Bills Payable	60000			
Due on Coupon Account	15625	9206607		
Balance Cash Resources		5099928		

Property Accounts.

Construction during Month	133557			
Construction during Period	3588022			

Defendants' Exhibit A50.

Comp. Ex. A50. June 7-1920. H. S.

General Report New York and Queens Gas Company, Month of — 12 Months, 12/31, 191).

New York and Queens Gas Co.

General Report for 12 Months, 12/31, 1910.

Gas on hand	103000	cu. ft.		
Made during ——	210264500	"		
Sent out	210150400	"		
On Hand	217100	"		
Municipal Street Lighting	7948600	cu. ft.		
Municipal Buildings	1961700	"		
Prepaid Gas	41107500	"		
Commercial Meters	117647000	"	Corrected	
Total Sales	168664800	"		
Used at Works	813900	"	S. O.	209769300
Used at Office	581100	"	Un. Ac.	39287400
Over Cons. P. P. Meters	318400	"	Per Cent.	18.73
Used for Street Light Exhibit	103700	"		
Unaccounted for 18.88 per cent	39668500	"		
Total sent out	210150400	"		

Production Expenses.

					Amount.	Based on make per M cu. ft.	Based on sa per M cu. f
4	Generator Fuel	3070.336	Tons	1549064	.....	....	....
2	Boiler Fuel	709.946	Tons	197666	1746730	0831	1036
		855.497	Gals	.....	**2566491**	**1221**	**1522**

2	Boiler Fuel	709,946 Tons.....	197666	1746730	0831	1036
5	Gas Oil	855,497 Gals.....	.....	2566491	1221	1522
6	Purification Supplies		.....	46541	0022	0028
3	Water		.....	61106	0029	0036
7	Miscellaneous Works Expense.....		.....	92643	0044	0055
	Total Cost of Materials.....		.....	4513511	2147	2677
8	Repairs—Works and Station Structures.....		102572	.....	....	....
9	" Power Plant		64657	.....	....	....
10	" Gas Apparatus		197633	.....	....	....
11	" Works Tools		3406	368268	0175	0218
1	Gas Making Labor:					
1A	Superintendence		113242	.....	....	....
1B	Boiler		204150	.....	....	....
1C	Generator		215041	.....	....	....
1D	Purifier		48117	.....	....	....
1E	Miscellaneous		133128	713678	0339	0423
	Total Production Expense.....		.....	.....	....	....
	Less Transmission Pumping.....		.....	.....	....	....
	Total Cost in Holder.....		.....	5595457	2661	3318

Distribution Expenses.

12	Transmission Pumping	.....	796	0000	0000
13	Superintendence	.....	135043	0064	0080
14	Supplies and Expenses	.....	35201	0017	0021
15	Gas Meter and Installation Work.....	.....	122973	0058	0073
16	Work on Consumers' Premises.....	.....	579371	0276	0344
17	Repairs—Gas Mains	114153	.....	....	....
18	" Gas Services	10491	.....	....	....
19	" Gas Meters	162750	.....	....	....
20	" Distribution Tools	13837	.....	....	....
21	" Appliances	2775	304006	0145	0180
22	Street Lamps	.....	110282	0052	0065
		.....	1287672	0612	0763

Comparison of Sales.

Year.	1905.	1906.	1907.	1908.	1909.	1910.
Sales	84,494,300	98,346,100	111,982,400	131,398,300	146,496,900	168,664,80
Increase	6,943,800	13,851,800	13,636,300	19,415,900	15,098,600	22,167,90
Per Cent	8.95	16.39	13.86	17.34	11.49	13.1

Commercial and General Expenses.

					Based on sal per M cu. f
23	Commercial Administration:				
23A	General Labor	260954	.....	.....	....
23B	Accounting	154833	.....	.....	....
23C	Contracts	52167	.....	.....	....
23D	Collecting	168712	.....	.....	....
23E	Meter Reading	98640	.....	.....	....
23F	Supplies and Expenses	99990	.....	.....	....
			835296	.....	0495
24	Advertising	.....	35212	.....	0021
25	Canvassing and Soliciting	.....	204629	.....	0122
26	Salaries and Expenses of Officers.....	.....	713799	.....	0423
27	General Office Expense	.....	187695	.....	0111
27½	Rent	.....	1566	.....	0092
28	Legal Expense	.....	148583	.....	0088
29	Insurance	.....	123558	.....	0073
30	Amortization	.....	1351703	.....	0801
31	Accidents and Damages	.....	.....	.....	....
32	Stationery and Printing	.....	86917	.....	0052
33	Stable Expense	.....	303166	.....	0180
34	Undistributed Adjustments	.....	.....	.....	....
	Total	.....	4147158	.....	2453

					Based on sales per M cu. ft.
3A General Labor	260954	.....	.....		....
3B Accounting	154833	.....	.....		....
3C Contracts	52167	.....	.....		....
3D Collecting	168712	.....	.....		....
3E Meter Reading	98640	.....	.....		....
3F Supplies and Expenses	99990	.....	.....		....
4 Advertising	.....	835296	.....		0495
5 Canvassing and Soliciting	.....	35212	.....		0021
6 Salaries and Expenses of Officers	.....	204629	.....		0122
7 General Office Expense	.....	713799	.....		0423
7½ Rent	.....	187695	.....		0111
8 Legal Expense	.....	1566	.....		0092
9 Insurance	.....	148583	.....		0088
10 Amortization	.....	123558	.....		0073
11 Accidents and Damages	.....	1351703	.....		0801
12 Stationery and Printing	.....	.....	.....		....
13 Stable Expense	.....	86917	.....		0052
14 Undistributed Adjustments	.....	303166	.....		0180
Total	.....	.....	.....		....
	.....	4147158	.....		2453

Sales.

Municipal Street Lighting	7,948,600	.....	589398	.....	....
Municipal Buildings	1,961,700	.....	147398	.....	....
Prepaid Gas	41,107,500	.....	4317933	.....	....
Commercial Meters	117,647,000	.....	12363132	17417861	10327
	168,664,800				
Rent of Gas Appliances	300781	.....	.....	.....	....
Merchandise and Jobbing	498814	.....	.....	.....	....
Residuals and By-Products	10755	.....	.....	.....	....
Deficiency Contracts	50616	.....	.....	8609660	0510
Gross Earnings	.....	.....	.....	18278827	10337
Less:					
Production Expense	.....	5595457	.....	.....	....
Distribution "	.....	1287672	.....	.....	....
Commercial and General Expense	.....	4147158	.....	11030287	6539
	.....	Dr.		Cr. 7248540	4293
Deductions:					
Taxes	577485	.....	.....	.....	....
Uncollectible Bills	17351	.....	.....	.....	....
Interest Revenues	.....	39223	.....	.....	....
" on Unfunded Debt	886	.....	.....	.....	....
Bad Debts Collected	.....	5449	.....	.....	....
" " Written Off	6669	.....	.....	.....	....
	690105	44672	.....	645433	0332
Gross Profits	.....	.....	.....	6603107	3916
Less Fixed Charges	.....	.....	.....	40745	2415
Total Net	.....	.....	.....	2528607	1501
1909	1770568	.....	.....	.....	....
1908	1426811	.....	.....	.....	....

Cash Accounts and Liabilities.

Cash on Hand	.....	.....	1082489	....
Accounts Receivable	.....	.....	1992872	....
Special Deposits	.....	.....	1548819	....
Cash Resources	.....	.....	4624180	....
Less:				
Accounts Payable	.....	2198595	.....	....
Bills Payable	.....	.....	.....	....
Due on Coupon Account	.....	17000	3898594	....
Balance Cash Resources	.....	.....	725586	....

Property Accounts.

	1909.	1910.
Construction during Month	133557	338792
Construction during Period	3588022	4004951

DEFENDANTS' EXHIBIT A51.

Comp. Ex. A51. June 7-1920. H. S.

General Report New York and Queens Gas Company.

12 Months 12/31, 1909.

New York and Queens Gas Co.

General Report for 12 Months 12/31, 1909.

Gas on hand	98600	cu. ft.		
Made during —	174653100	"		
Sent out	174648700	"		
On Hand	103000	"		
Municipal Street Lighting	7533700	cu. ft.		
Municipal Buildings	2018300	"		
Prepaid Gas	34373600	"		
Commercial Meters	102571300	"	Corrected	
Total Sales	146496900	"		
Used at Works	546900	"	S. O.	173971100
Used at Office	511100	"	Un. Ac.	35928900
Over Cons. P. P. Meters	427700	"	Per Cent.	2065
Used for Street Light Exhibit	69600	"		
Unaccounted for 15.23 per cent	26596500	"		
Total sent out	174648700	"		

Production Expenses.

			Amount.	Based on make per M cu. ft.	Based on sale per M cu. ft.
4	Generator Fuel ..... 3049.303 Tons	1536464	.....	....	....
2	Boiler Fuel ..... 1335.549 Tons	393491	1929955	1105	1317
5	Gas Oil ..... 709825 Gals	.....	2130120	1219	1454
6	Purification Supplies	.....	33343	0019	0023
3	Water	.....	52618	0030	0036
7	Miscellaneous Works Expense	.....	63887	0037	0044
	Total Cost of Materials	.....	4209923	2410	2874
8	Repairs—Works and Station Structures	57585	.....	....	....
9	" Power Plant	40013	.....	....	....
10	" Gas Apparatus	167389	.....	....	....
11	" Works Tools	2555	267542	0153	0182
1	Gas Making Labor:				
1A	Superintendence	1100	.....	....	....
1B	Boiler	185565	.....	....	....
1C	Generator	207214	.....	....	....
1D	Purifier	62602	.....	....	....
1E	Miscellaneous	81588	646969	0370	0442
		.....	.....	....	....

2	Boiler Fuel ..... 1335.549 Tons.....		393491	1929955	1105	1317
5	Gas Oil ..... 709825 Gals.....		.....	2130120	1219	1454
6	Purification Supplies		.....	33343	0019	0023
3	Water		.....	52618	0030	0036
7	Miscellaneous Works Expense.....		.....	63887	0037	0044
	Total Cost of Materials.....		.....	4209923	2410	2874
8	Repairs—Works and Station Structures.....		57585	.....	....	....
9	" Power Plant		40013	.....	....	....
10	" Gas Apparatus		167389	.....	....	....
11	" Works Tools		2555	267542	0153	0182
1	Gas Making Labor:					
1A	Superintendence		1100	.....	....	....
1B	Boiler		185565	.....	....	....
1C	Generator		207214	.....	....	....
1D	Purifier		62602	.....	....	....
1E	Miscellaneous		81588	646969	0370	0442
	Total Production Expense.....		.....	.....	....	....
	Less Transmission Pumping.....		.....	.....	....	....
	Total Cost in Holder.....		.....	5124434	2933	3498

Distribution Expenses.

12	Transmission Pumping		.....	1	....	....
13	Superintendence		.....	166982	....	0114
14	Supplies and Expenses		.....	16627	....	0011
15	Gas Meter and Installation Work.....		.....	123162	....	0084
16	Work on Consumers' Premises.....		.....	517840	....	0354
17	Repairs—Gas Mains		16544	.....	....	....
18	" Gas Services		11607	.....	....	....
19	" Gas Meters		178696	.....	....	....
20	" Distribution Tools		23712	.....	....	....
21	" Appliances		8271	238830	....	0163
22	Street Lamps		.....	49082	....	0034
			.....	1112623	....	0760

Comparison of Sales.

Year.	1905.	1906.	1906.	1907.	1908.	1909.
Sales	77,550,500	84,494,300	98,346,100	111,982,400	131,398,300	146,496,90
Increase	.....	6,943,800	13,851,800	13,636,300	19,415,900	15,098,60
Per Cent	.....	8.95	16.39	13.86	17.34	11.4

Commercial and General Expenses.

						Based on sal per M cu. f
23	Commercial Administration:					
23A	General Labor		282853	.....	.....	....
23B	Accounting		180267	.....	.....	....
23C	Contracts		59933	.....	.....	....
23D	Collecting		192154	.....	.....	....
23E	Meter Reading		116598	.....	.....	....
23F	Supplies and Expenses	0495	125851	957658	.....	0518
24	Advertising	0021	.....	41202	.....	0023
25	Canvassing and Soliciting.....	0122	.....	183422	.....	0099
26	Salaries and Expenses of Officers.....	0423	.....	735770	.....	0399
27	General Office Expense.....	0111	.....	144537	.....	0078
27½	Rent	0092	.....	1720	.....	0093
28	Legal Expense	0088	.....	126204	.....	0068
29	Insurance	0073	.....	1400	.....	0076
30	Amortization	0801	.....	1383894	.....	0749
31	Accidents and Damages.....	....	.....	40	.....	0002
32	Stationery and Printing	0052	.....	91865	.....	0050
33	Stable Expense	0180	.....	370103	.....	0200
34	Undistributed Adjustments	....	.....	.....	.....	....
	Total	2458	.....	4350655	.....	2355

Commercial and General Expenses.

					Based on sales per M cu. ft.
Commercial Administration:					
General Labor		282855	.....	.....	....
Accounting		180267	.....	.....	....
Contracts		59933	.....	.....	....
Collecting		192154	.....	.....	....
Meter Reading		116598	.....	.....	....
Supplies and Expenses	0495	125851	957658	.....	0518
Advertising	0021	.....	41202	.....	0023
Canvassing and Soliciting	0122	.....	183422	.....	0099
Salaries and Expenses of Officers	0423	.....	735770	.....	0399
General Office Expense	0111	.....	144537	.....	0078
Rent	0092	.....	1720	.....	0093
Legal Expense	0088	.....	126204	.....	0068
Insurance	0073	.....	1400	.....	0076
Amortization	0801	.....	1383894	.....	0749
Accidents and Damages	....	.....	40	.....	0002
Stationery and Printing	0052	.....	91865	.....	0050
Stable Expense	0180	.....	370103	.....	0200
Undistributed Adjustments	....	.....	.....	.....	....
Total	2458	.....	4350655	.....	2355

Sales.

Municipal Street Lighting	9,327,000	....	.....		690204	.....	....
Municipal Buildings	1,976,200	....	.....		148245	.....	....
Prepaid Gas	47,574,400	....	.....		4760071	.....	....
Commercial Meters	125,843,300	1.0327	.....		12589048	18187568	9846
	184,720,900						
Rent of Gas Appliances		....	362119		.....	.....	....
Merchandise and Jobbing		....	426024		.....	.....	....
Residuals and By-Products		....	7995		.....	.....	....
Deficiency Contracts		0510	6171		.....	802309	0434
Gross Earnings		1.0837	.....		.....	18989877	10280
Less:							
Production Expense		....	.....		6118216	.....	....
Distribution "		....	.....		1498050	.....	....
Commercial and General Expense		6539	.....		4350655	11966901	6478
		4298	.....	Dr.	..... Cr.	7022976	3802
Deductions:							
Taxes		....	978361		.....	.....	....
Uncollectible Bills		....	28401		.....	.....	....
Interest Revenues		....	.....		30035	.....	....
" on Unfunded Debt		....	103567		.....	.....	....
Bad Debts Collected		....	.....		1122	.....	....
" " Written Off		....	20060		.....	.....	....
		0382	1130389		31157	1099232	0595
Gross Profits		3916	.....		.....	5923744	3207
Less Fixed Charges		2415	.....		.....	40800	2209
Total Net		1501	.....		.....	1843744	0998
1910			2528607		.....	.....	....
1909			1770568		.....	.....	....

Cash Accounts and Liabilities.

Cash on Hand	.....	.....	980011	....
Accounts Receivable	.....	.....	2011011	....
Special Deposits	.....	.....	846520	....
Cash Resources	.....	.....	3837542	....
Less:				
Accounts Payable	.....	2459333	.....	....
Bills Payable	.....	20000	.....	....
Due on Coupon Account	.....	17000	6159333	....
Balance Cash Resources	.....	..... Deficit	2321791	....

Property Accounts.

	1909.	1910.	1911.

DEFENDANTS' EXHIBIT A52.

Comp's Ex. A52. June 1, 1920. H. S.

New York and Queens Gas Company.

Cubic Feet of Gas Made, Sent Out, and Unaccounted for Month of December, 1919 and 1918.

	1919.	1918.	Variation.	Per ct.
On hand 1st day of the Month	1,041,000	1,039,000	2,000	†
Made—(Corrected)	43,600,000	32,845,000	10,755,000	32.74
Total	44,641,000	33,884,000	10,757,000	31.74
Less on hand last day of the month	1,106,000	1,110,000	4,000	.36
Recorded Send out	43,535,000	32,774,000	10,761,000	32.83
Received from —— Co. at Meters	.....	.....	.....	.....
" " —— Co. " "	.....	.....	.....	.....
" " —— Co. at Station	.....	.....	.....	.....
" " —— Co. " "	.....	.....	.....	.....
Total	.....	.....	.....	.....
Less Gas Manufactured for —— Co.	.....	.....	.....	.....
" " " " —— Co.	.....	.....	.....	.....
Total	.....	.....	.....	.....
Net Total to be accounted for	43,535,000	32,774,000	10,761,000	32.83
Total Sales	33,082,900	30,828,200	2,254,700	7.31
Used by Company	193,300	190,300	3,000	1.57
Total Accounted for	33,276,200	31,018,500	2,257,700	7.27
Unaccounted for	10,258,800	1,755,500	8,503,300	484.38
" " Per Cent	23.56	5.35	18.21	.....
Ratio of Sales to Total to be accounted for	75.99	94.06	18.07	.....
Send Out Nominal Month (Incl. Gas Transferred)	40,813,000	[31,018,500]*	[9,794,500]*	[31.57]*
Unaccounted for Nominal Month	7,536,800	581,500	6,955,300	1,196.09
" " " " Per Cent	18.46	1.84	16.62	.....
Ratio of Sales to Nominal Send Out	81.05	[99.38]*	[18.33]*	.....

12 *Months Ended December 31st, 1919 and 1918.*

	12 mos. 1919.	12 mos. 1918.	Variation.	Per ct.
On hand January 1st, 1917	1,110,000	617,000	493,000	79.90
Made—(Corrected)	380,086,000	358,757,000	21,329,000	5.94
	381,196,000	**359,374,000**	**21,822,000**	**6.07**

Unaccounted for	[illegible]	[illegible]	[illegible]	[illegible]
" " Per Cent	23.56	5.35	18.21	.....
Ratio of Sales to Total to be accounted for	75.99	94.06	18.07	.....
Send Out Nominal Month (Incl. Gas Transferred)	40,813,000	[31,018,500]*	[9,794,500]*	[31.57]*
Unaccounted for Nominal Month	7,536,800	581,500	6,955,300	1,196.09
" " " " Per Cent	18.46	1.84	16.62	.....
Ratio of Sales to Nominal Send Out	81.05	[99.38]*	[18.33]*	.....

12 Months Ended December 31st, 1919 and 1918.

	12 mos. 1919.	12 mos. 1918.	Variation.	Per ct.
On hand January 1st, 1917	1,110,000	617,000	493,000	79.90
Made—(Corrected)	380,086,000	358,757,000	21,329,000	5.94
Total	381,196,000	359,374,000	21,822,000	6.07
Less on hand end of Current Month	1,106,000	1,110,000	4,000	.36
Recorded Send Out	380,090,000	358,264,000	21,826,000	6.09
Received from —— Co. at Meters	.....	.....	.....	.....
" " —— Co. " "	.....	.....	.....	.....
" " —— Co. at Station	.....	.....	.....	.....
" " —— Co. " "	.....	.....	.....	.....
Total	.....	.....	.....	.....
Less Gas Manufactured for —— Co.	.....	.....	.....	.....
" " " " —— Co.	.....	.....	.....	.....
Total	.....	.....	.....	.....
Net Total to be Accounted for	380,090,000	358,264,000	21,826,000	6.09
Total Sales	336,241,400	327,585,600	8,655,800	2.64
Used by Company	1,933,300	1,762,500	170,800	9.69
Total Accounted for	338,174,700	329,348,100	8,826,600	2.68
Unaccounted for	41,915,300	28,915,900	12,999,400	44.95
" " Per Cent	11.02	8.07	2.95	.....
Ratio of Sales to Total to be accounted for	88.46	91.43	2.97	.....
Send Out—Nominal period—(Incl. Gas Transferred)	374,046,000	[357,825,500]*	15,639,00–	4.36
Unaccounted for—Nominal period	35,871,300	29,058,900	6,812,400	23.44
" " " " Per Cent	9.59	8.12	1.47	.....
Ratio of Sales to Nominal Send Out	89.89	[91.55]*	1.51	.....

Miscellaneous.

	Month of December, 1919 and 1918.		12 mos. ended Dec. 31st, 1919 and 1918.	
	1919.	1918.	1919.	1918.
Period covered by Bills rendered	Nov. 15 to Dec. 16	Nov. 16 to Dec. 16	12/16/18 to 12/16/19	12/15/17 to 12/16/18
Number of Days covered by Bills rendered	31	30	365	366
Ratio of Day Output to Total	48.58	45.41	55.68	54.97
Ratio of Night Output to Total	51.42	54.59	44.32	45.03

[*Figures in brackets erased in copy.]
[‡Illegible in copy.]

330. MISCELLANEOUS I

Give hereunder the details of the securities and other property held at any time durin
such investments are subject to pledge, mortgage, or other lien or restriction, or are hel
Group the investments into—
(A) Free investments.

Line No.	Class No.	Name of Issuing Company and Security or of Other Things in which Investment is Made	Nominal date of issue of security	Date of maturity of security	Interest or contractual dividends (if any) Rate % per annum	Dates due
1	a	Fire Ins. Participation Certs.	1/1/14		3	
2	a	" " " "	1/1/15		3	
3	a	" " " "	1/1/16		3	
4	a	" " " "	1/1/17		3	
5	a	" " " "	1/1/18		3	
6	a	" " " "	1/1/19		3	

Defendant's Exhibit a 53

EXHIBIT A 53

the Public Service Commission for the First District, State of New York, for the year ended December 31, 1919

330. MISCELLANEOUS INVESTMENTS (300)

roperty held at any time during the year as investments (as defined in the Uniform System of Accounts), whether ien or restriction, or are held unpledged and free.

of ity ity	Interest or contractual dividends (if any) Rate % per annum	Dates due	Par value of amount held at close of year	Date of acquisition by respondent	Actual money cost to respondent	Amount at which carried on respondent's books at close of year	Income accrued to respondent during year	Income received during year
	3		$84.85	3/11/14		$84.85		
	3		263.00	2/28/15		263 --		
	3		326.33	3/10/16		326.33	$57.58	$57.58
	3		369.37	2/28/17		369.37		
	3		410.20	5/1/18		410.20		
	3		465.47 [illegible]			465.47		

Plaintiff's Exhibit A 54

New York, for the year ended December 31, 1918

ined in the Uniform System of Accounts), whether

Actual money cost to respondent	Amount at which carried on respondent's books at close of year	Income accrued to respondent during year	Income received during year
	$84.85 263 — 326.33 369.37 410.20	$43.61	$43.61

Defendants Exhibit D 33

EXHIBIT A bb -- Concluded

Annual Report of New York & Queens Gas Company to the Public Service Commission for the First District, State of New York, for the year ended December 31, 1917

PAGE 55

570B. DETAIL OF GAS MANUFACTURING EXPENSES AT EACH STATION

Show hereunder the various items of expense incurred in the manufacture of gas during the year ****, classified in accordance with the Uniform System of Accounts, together with the average cost per M cu.ft. made.

From the total manufacturing expenses (line 29) there should be made a deduction for the value of residuals produced (for use or sale), diminished by the special expense involved in preparing for market, selling and delivering (Account No. 837a-d).

All credit entries in this schedule should be made in red ink.

Line No.	Title of Account	Total Manufacturing expense	Cts. per M cu.ft.made
1	Works superintendence (601a)	$2,340.87	00.75
2	Boiler house labor (601b)	3,713.74	01.18
3	Retort house labor (601c)		
4	Generator house labor (601d)	5,638.94	01.80
5	Purifier house labor (601e)	519.04	00.17
6	Miscellaneous labor at works (601f)	345.28	00.11
7	Gas making labor (601)	$12,557.87	04.01
8	Boiler fuel (602)	10,375.65	03.32
	" " Water gas tar	114.40	00.03
9	Water (603)		
10	Fuel under retorts (604a)		
11	Coal carbonized (604b)		
12	Coal gas enricher (605)		
13	Generator fuel (606)	32,914.39	10.51
14	Water gas oil (607)	69,473.50	22.20
15	Purification supplies (608)	1,364.50	00.44
16	Miscellaneous works expense (609)	2,213.16	00.71
17	Repairs at works and station structures(610)	1,208.15	00.39
18	Repairs of furnaces,boilers,etc.(508)	2,025.77	00.65
19	Repairs of steam engines (509)		
20	Repairs of gas engines (511b)		
21	Repairs of misc. power plant equip. (513)		
22	Repairs of benches and retorts (611)		
23	Repairs of water gas sets and acces's (511a)	4,823.91	01.54
24	Repairs of purification apparatus (612)		
25	Repairs of holders (613)		
26	Repairs of miscellaneous equipment (614)		
27	Repairs of works tools (615)	241.84	00.07
28	Gas storage (616)		
29	Total of foregoing	$137,313.14	43.87
30	Residuals produced--Cr.-	59.49	00.02
31	Net cost of gas in holder	$137,253.65	43.85
32	Cubic feet of gas manufactured	313,005,000 (in pencil)	
33	Unit cost (cents per M cu.ft.made) Of--		
34	Gas making labor (601)	$12,557.87	04.01
35	Boiler fuel (602)	10,375.65	03.32
36	Gas coal (604)		
37	Generator fuel (606)	32,914.39	10.51
38	Gas oil (605, 607)	69,473.50	22.20
39	Other supplies,etc.(603,608,609,616)	3,692.06	01.18
40	Repairs at works (lines 17-27)	8,299.67	02.65
41	Total	$137,313.14	43.87
42	Residuals produced--Cr	59.49	00.02
43	Total net cost (line 31)	$137,253.65	43.85

570B. DETAIL OF GAS MANUFACTURING EXPENSES AT EACH STATION

Show hereunder the various items of expense incurred in the manufacture of gas during the year ****, classified in accordance with the Uniform System of Accounts, together with the average cost per M cu.ft. made.

From the total manufacturing expenses (line 29) there should be made a deduction for the value of residuals produced (for use or sale), diminished by the special expense involved in preparing for market, selling and delivering (Account No. 837a-d).

All credit entries in this schedule should be made in red ink.

Line No.	Title of Account	Total manufacturing expense	Cts. per M cu.ft.made
1	Works superintendence (601a)	$1,641.39	00.58
2	Boiler house labor (601b)	4,286.68	01.50
3	Retort house labor (601c)		
4	Generator house labor (601d)	3,953.67	01.39
5	Purifier house labor (601e)	536.64	00.19
6	Miscellaneous labor at works (601f)	1,220.98	00.43
7	Gas making labor (601)	$11,639.36	04.09
8	Boiler fuel (602)	8,816.80	03.10
	" " Water gas tar	675.60	00.24
9	Water (603)		
10	Fuel under retorts (604a)		
11	Coal carbonized (604b)		
12	Coal gas enricher (605)		
13	Generator fuel (606)	27,092.46	09.51
14	Water gas oil (607)	39,061.14	13.72
15	Purification supplies (608)	1,656.82	00.58
16	Miscellaneous works expense (609)	1,176.41	00.41
17	Repairs at works and station structures (610)	984.19	00.34
18	Repairs of furnaces, boilers, etc. (508)		
19	Repairs of steam engines (509)	1.590.76	00.56
20	Repairs of gas engines (511b)		
21	Repairs of misc. power plant equip. (513)		
22	Repairs of benches and retorts (611)		
23	Repairs of water gas sets and accessories (511a)		
24	Repairs of purification apparatus (612)	4,328.86	01.52
25	Repairs of holders (613)		
26	Repairs of miscellaneous equipment (614)		
27	Repairs of works tools (615)	229.53	00.08
28	Gas storage (616)		
29	Total of foregoing	$97,251.93	34.15
30	Residuals produced—Cr.-	36	00.01
31	Net cost of gas in holder [sic]	$77,215.93	34.14
32	Cubic feet of gas manufactured	284,713 M	
33	Unitcost (cents per M cu.ft.made) Of—		
34	Gas making labor (601)	$11,639.36	04.09
35	Boiler fuel (602)	8,816.80	03.10
36	Gas coal (604)		
37	Generator fuel (606)	27,092.46	09.51
38	Gas oil (605, 607)	39,061.14	13.72
39	Other supplies, etc. (603, 608, 609, 616)	3,508.83	01.23
40	Repairs at works (lines 17-27)	7,133.34	02.50
41	Total	$97,251.93	34.15
42	Residuals produced—Cr	36 -	00.01
43	Total net cost (line 31)	$97,215.93	34.14

330. MISCELLANEOUS INVESTMENTS (300)

Give hereunder the details of the securities and other property held at any time during the year as investm
such investments are subject to pledge, mortgage, or other lien or restriction, or are held unpledged and free.
Group the investments into—
(A) Free investments,

Line No.	Class No.	Name of Issuing Company and Security or of Other Things in which Investment is Made	Nominal date of issue of security	Date of maturity of security	Interest or contractual dividends (if any) Rate % per annum	Dates due	Par v of am held at cl of ye
1	a	Fire Ins. Participation Cert's	1-1-14		3		$84.8
2	a	" " "	1-1-15		3		263.0
3	a	" " "	2-17-16		3		326.3

Defendant's Exhibit A-56

EXHIBIT A 56

) the Public Service Commission for the First District, State of New York, for the year ended December 31, 1916

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330. MISCELLANEOUS INVESTMENTS (300)

property held at any time during the year as investments (as defined in the Uniform System of Accounts), whether lien or restriction, or are held unpledged and free.

Date of maturity of security	Interest or contractual dividends (if any) Rate % per annum	Dates due	Par value of amount held at close of year	Date of acquisition by respondent	Actual money cost to respondent	Amount at which carried on respondent's books at close of year	Income accrued to respondent during year	Income received during year
	3		$84.85	3/11/14	o	$84.85	$2.55	
	3		263.00	2/28/15	o	263.00	7.89	
	3		326.33	3/10/16	o	326.33	9.79	$30.66

2883

330. MISCELLANEOUS INVESTMENTS (300)

Give hereunder the details of the securities and other property held at any time during the year as inves
such investments are subject to pledge, mortgage, or other lien or restriction, or are held unpledged and fre
Group the investments into—

(A) Free investments.

Line No.	Class No.	Name of Issuing Company and Security or of Other Things in which Investment is Made	Nominal date of issue of security	Date of maturity of security	Interest or contractual dividends (if any) Rate % per annum	Dates due	Par of a he at c of y
1	a	Fire Ins. Participation Certs.	1-1-14		3%		$84
2	a	" " "	1-1-15		"		263

Defendants' Exhibit A 57

EXHIBIT A 57--Concluded

Annual Report of New York & Queens Gas Company to the Public Service Commission for the First District, State of New York, for the year ended December 31, 1915

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570B. GAS PRODUCTION EXPENSES

Show hereunder the various items of expense incurred in the manufacture of gas during the year****, classified in accordance with the Uniform System of Accounts, together with the average cost per M cu.ft. made.

From the total production expenses (line 29) there should be made a deduction for residuals produced, at a fairly estimated cost of manufacture based upon a consideration of average selling price less the special expense involved in preparing for market, selling and delivering.

All credit entries in this schedule should be in red ink.

Line No.	Title of Account	Total mfg.cost of water gas	Cts. per M cu.ft.made
1	Works superintendence (601a)	$1,303.57	00.45
2	Boiler house labor (601b)	3,004.36	01.04
3	Retort house labor (601c)		
4	Generator house labor (601d)	2,792.95	00.97
5	Purifier house labor (601e)	408.50	00.14
6	Miscellaneous labor at works (601f)	1,453.02	00.50
7	Gas making labor (601)	$8,962.40	03.10
8	Boiler fuel (602)	7,883.28	02.73
9	Water (603)	663.90	00.23
10	Fuel under retorts (604a)		
11	Coal carbonized (604b)		
12	Coal gas enricher (605)		
13	Generator fuel (606)	24,029.40	08.31
14	Water gas oil (607)	37,843.98	13.08
15	Purification supplies (608)	1,560.01	00.55
16	Miscellaneous works expense (609)	698.76	00.24
17	Repairs of works and station structures (610)	2,477.57	00.85
18	Repairs of furnaces, boilers, etc. (508)		
19	Repairs of steam engines (509)	549.92	00.19
20	Repairs of gas engines (511b)		
21	Repairs of miscel. power plant equip. (513)		
22	Repairs of benches and retorts (611)		
23	Repairs of water gas sets and acces's (511a)		
24	Repairs of purification apparatus (612)	3,099.72	01.07
25	Repairs of holders (613)		
26	Repairs of miscellaneous equipment (614)		
27	Repairs of works tools (615)	193.62	00.07
28	Gas storage (616)		
29	Total of foregoing	$87,982.56	30.42
30	Residuals produced--Cr.		
31	Net cost of gas in holder	$87,982.56	
32	Cubic feet of gas manufactured	289,162.000	
33	Unit cost (cents per M cu.ft.made) of:**********		
34	Gas making labor (601)	$8,962.40	03.10
35	Boiler fuel (602)	7,883.28	02.73
36	Gas coal (604)		
37	Generator fuel (606)	24,029.40	08.31
38	Gas oil (605, 607)	37,843.98	13.08
39	Other supplies, etc. (603, 608, 609, 616)	2,942.67	01.02
40	Repairs at works (lines 17-27)	6,320.83	02.18
41	Residuals produced--Cr.		
42	Total net cost (line 31)	$87,982.56	30.42

Defendant's Exhibit Q 58

EXHIBIT A 58—Concluded

Annual Report of New York & Queens Gas Company to the Public Service Commission for the First District, State of New York, for the year ended December 31, 1914

PAGE 55

570B. GAS PRODUCTION EXPENSES

Show hereunder the various items of expense incurred in the manufacture of gas during the year ****, classified in accordance with the Uniform System of Accounts, together with the average cost per M cu.ft. made.

Residuals produced in connection with the respondent's gas operations should be credited to production expenses at a fairly estimated cost of manufacture through the account "Residuals produced--Cr." The estimated cost of manufacture should be determined upon a consideration of average selling price less expense involved in preparing for market, selling and delivering. Residuals put in store should be charged to "Materials and Supplies" at such estimated cost, and when later sold should be charged over to "Cost of manufacturing residuals sold" in General and Miscellaneous Operating Expenses (see p. 57, line 15).

All credit entries in this schedule should be made in red ink.

Line No.	Title of Account	Total mfg. cost of water gas
1	Works superintendence (601a)	$1,303.57
2	Boiler house labor (601b)	2,448.26
3	Retort house labor (601c)	0
4	Generator house labor (601d)	2,834.64
5	Purifier house labor (601e)	726.99
6	Miscellaneous labor at works (601f)	1,457.68
7	Gas making labor (601)	$8,771.14
8	Boiler fuel (602)	6,198.51
9	Water (603)	647.70
10	Fuel under retorts (604a)	0
11	Coal carbonized (604b)	0
12	Coal gas enricher (605)	0
13	Generator fuel (606)	22,965.43
14	Water gas oil (607)	44,620.62
15	Purification supplies (608)	1,059.48
16	Miscellaneous works expense (609)	700.55
17	Repairs of works and station structures (610)	2,538.82
18	Repairs of furnaces, boilers, etc. (508)	
19	Repairs of steam engines (509)	1,425.43
20	Repairs of gas engines (511b)	
21	Repairs of miscel. power plant equip. (513)	
22	Repairs of benches and retorts (611)	
23	Repairs of water gas sets and acces's (511a)	
24	Repairs of purification apparatus (612)	2,348.00
25	Repairs of holders (613)	
26	Repairs of miscellaneous equipment (614)	
27	Repairs of works tools (615)	95.44
28	Gas storage (616)	
29	Total of foregoing	$91,371.12
30	Residuals produced--Cr.	
31	Net cost to manufacture	$91,371.12
32	Cubic feet of gas manufactured	283,467.000
33	Cost per M cu.ft. made of: **********	
34	Gas making labor (601)	$8,771.14
35	Boiler fuel (602)	6,198.51
36	Gas coal (604)	0
37	Generator fuel (606)	22,965.43
38	Gas oil (605, 607)	44,620.62
39	Other supplies, etc. (603, 608, 609, 616)	2,407.73
40	Repairs at works	6,407.69
41	Residuals produced--Cr	
42	Total net cost --line 31	91,371.12

Annual Report of New York & Queens Gas Company to the Public Service Commission for the First District, State of New York, for the year ended December 31, 1913

570B. GAS PRODUCTION EXPENSES

Show hereunder the various items of expense incurred in the manufacture of gas during the year ####, classified in accordance with the Uniform System of Accounts, together with the average cost per M cu.ft. made.

Residuals produced in connection with the respondent's gas operations should be credited to production expenses at a fairly estimated cost of manufacture through the account "Residuals produced—Cr." The estimated cost of manufacture should be determined upon a consideration of average selling price less expense involved in preparing for market, selling and delivering. Residuals put in store should be charged to "Materials and Supplies" at such estimated cost, and when later sold should be charged over to "Cost of manufacturing residuals sold" in General and Miscellaneous Operating Expenses (see p. 57, line 15).

All credit entries in this schedule should be made in red ink.

Line No.	Title of Account	Total mfg.cost of water gas	Cts.per M cu.ft.made
1	Works superintendance (601a)	$1,303.57	00.48
2	Boiler house labor (601b)	2,153.50	00.79
3	Retort house labor (601c)	0	
4	Generator house labor (601d)	2,354.95	00.87
5	Purifier house labor (601e)	1,365.50	00.50
6	Miscellaneous labor at works (601f)	1,156.60	00.43
7	Gas making labor (601)	$8,334.12	03.07
8	Boiler fuel (602)	5,116.27	01.88
9	Water (603)	782.58	00.29
10	Fuel under retorts (604a)	0	
11	Coal carbonized (604b)	0	
12	Coal gas enricher (605)	0	
13	Generator fuel (606)	21,370.39	07.87
14	Water gas oil (607)	36,294.42	13.37
15	Purification supplies (608)	1,334.66	00.49
16	Miscellaneous works expense (609)	669.49	00.24
17	Repairs of works and station structures (610)	2,209.96	00.81
18	Repairs of furnaces, boilers, etc. (508)		
19	Repairs of steam engines (509)	669.68	00.24
20	Repairs of gas engines (511b)		
21	Repairs of miscel. power plant equip. (513)		
22	Repairs of benches and retorts (611)		
23	Repairs of water gas sets and acces's (611a)		
24	Repairs of purification apparatus (612)	3,129.64	01.15
25	Repairs of holders (613)		
26	Repairs of miscellaneous equipment (614)		
27	Repairs of works tools (615)		
28	Gas storage (616)	106.34	00.04
29	Total of foregoing	$79,998.55	29.45
30	Residuals produced—Cr.		
31	Net cost to manufacture	$79,998.55	29.45
32	Cubic feet of gas manufactured	271,551,000	
33	Cost per M cu.ft. made of:		
34	Gas making labor (601)	$8,334.12	03.07
35	Boiler fuel (602)	5,116.27	01.88
36	Gas coal (604)		
37	Generator fuel (606)	21,370.39	07.87
38	Gas oil (605, 607)	36,294.42	13.37
39	Other supplies, etc. (603, 608, 609, 616)	2,776.73	01.02
40	Repairs at works	6,104.62	02.24
41	Residuals produced--Cr	79,998.55	29.45
42	Total net cost --line 31		

EXHIBIT A 60

Annual Report of New York & Queens Gas Company to the Public Service Commission for the First District, State of New York, for the year ended December 31, 1912

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570B. GAS PRODUCTION EXPENSES during

Show hereunder the various items of expense incurred in the manufacture of gas/the year 1912, classified in accordance with the Uniform System of Accounts, together with the average cost per M cu.ft. made.

Residuals produced in connection with the respondent's gas operations should be credited to production expenses at a fairly estimated cost of manufacture through the account "Residuals produced—Cr." The estimated cost of manufacture should be determined upon a consideration of average selling price less expense involved in preparing for market, selling and delivering. Residuals put in store should be charged to "Materials and Supplies" at such estimated cost, and when later sold should be charged over to "Cost of manufacturing residuals sold" in General and Miscellaneous Operating Expenses (see p. 57, line 15).

All credit entries in this schedule should be made in red ink.

Line No.	Title of Account	Total mfg.cost of water gas	Cts.per M cu.ft.made
1	Works superintendence (601a)	$1,207.80	
2	Boiler house labor (601b)	2,093.90	
3	Retort house labor (601c)	0	
4	Generator house labor (601d)	2,006.90	
5	Purifier house labor (601e)	584.55	
6	Miscellaneous labor at works (601f)	1,491.40	
7	Gas making labor (601)	$7,384.55	02.85
8	Boiler fuel (602)	4,544.58	01.76
9	Water (603)	739.20	00.29
10	Fuel under retorts (604a)	0	
11	Coal carbonized (604b)	0	
12	Coal gas enricher (605)	0	
13	Generator fuel (606)	18,581.36	07.18
14	Water gas oil (607)	29,793.25	11.52
15	Purification supplies (608)	1,558.15	00.60
16	Miscellaneous works expense (609)	560.72	00.22
17	Repairs of works and station structures (610)	2,282.71	
18	Repairs of furnaces, boilers, etc. (508)	478.47	
19	Repairs of steam engines (509)		
20	Repairs of gas engines (511b)		
21	Repairs of miscel. power plant equip. (513)		
22	Repairs of benches and retorts (611)		
23	Repairs of water gas sets and acces's (611a)	2,843.75	
24	Repairs of purification apparatus (612)		
25	Repairs of holders (613)		
26	Repairs of miscellaneous equipment (614)		
27	Repairs of works tools (615)	81.49	
28	Gas storage (616)		02.20
29	Total of foregoing	$68,848.23	26.62
30	Residuals produced—Cr.		
31	Net cost to manufacture	$68,848.23	26.62
32	Cubic feet of gas manufactured	258,561.000	
33	Cost per M cu.ft. made of:		
34	Gas making labor (601)	$7,384.55	02.85
35	Boiler fuel (602)	4,544.58	01.76
36	Gas coal (604)	0	
37	Generator fuel (606)	18,581.36	07.18
38	Gas oil (605, 607)	29,793.25	11.52
39	Other supplies, etc. (603, 608, 609, 616)	2,858.07	01.11
40	Repairs at works	5,686.42	02.20
41	Residuals produced--Cr		
42	Total net cost --line 31	68,848.23	26.62

Respondents Exhibit A-61

EXHIBIT A 61

Annual Report of New York & Queens Gas Company to the Public Service Commission for the First District, State of New York, for the year ended December 31, 1911

PAGE 55

570B. GAS PRODUCTION EXPENSES

Show hereunder the various items of expense incurred in the manufacture of gas during the year same, classified in accordance with the Uniform System of Accounts, together with the average cost per M cu.ft. made.

Residuals produced in connection with the respondent's gas operations should be credited to production expenses at a fairly estimated cost of manufacture through the account "Residuals produced—Cr." The estimated cost of manufacture should be determined upon a consideration of average selling price less expense involved in preparing for market, selling and delivering. Residuals put in store should be charged to "Materials and Supplies" at such estimated cost, and when later sold should be charged over to "Cost of manufacturing residuals sold" in General and Miscellaneous Operating Expenses (see p. 57, line 15).

All credit entries in this schedule should be made in red ink.

Line No.	Title of Account	Total mfg.cost of water gas	Cts.per M cu.ft.made
1	Works superintendence (601a)	$1,204.50	
2	Boiler house labor (601b)	2,062.25	
3	Retort house labor (601c)	0	
4	Generator house labor (601d)	1,915.15	
5	Purifier house labor (601e)	519.60	
6	Miscellaneous labor at works (601f)	1,480.70	
7	Gas making labor (601)	$7,182.20	03.18
8	Boiler fuel (602)	3,528.16	01.56
9	Water (603)	562.40	00.24
10	Fuel under retorts (604a)	0	
11	Coal carbonized (604b)	0	
12	Coal gas enricher (605)	0	
13	Generator fuel (606)	16,564.06	07.34
14	Water gas oil (607)	27,869.71	12.34
15	Purification supplies (608)	33.28	00.01
16	Miscellaneous works expense (609)	439.07	00.19
17	Repairs of works and station structures (610)	1,988.36	00.88
18	Repairs of furnaces, boilers, etc. (508)	515.85	00.22
19	Repairs of steam engines (509)	0	
20	Repairs of gas engines (511b)	0	
21	Repairs of miscel. power plant equip. (513)	0	
22	Repairs of benches and retorts (611)	0	
23	Repairs of water gas sets and accss's (511a)	2,406.49	01.07
24	Repairs of purification apparatus (612)	0	
25	Repairs of holders (613)	0	
26	Repairs of miscellaneous equipment (614)	0	
27	Repairs of works tools (615)	72.58	00.04
28	Gas storage (616)	0	
29	Total of foregoing		
30	Residuals produced—Cr.		
31	Net cost to manufacture	$61,182.16	27.09
32	Cubic feet of gas manufactured	225,840.400	
33	Cost per M cu.ft. made of:		
34	Gas making labor (601)		03.18
35	Boiler fuel (602)		01.56
36	Gas coal (604)		0
37	Generator fuel (606)		07.34
38	Gas oil (605, 607)		12.34
39	Other supplies, etc. (603, 608, 609, 616)		00.44
40	Repairs at works		02.21
41	Residuals produced--Cr		
42	Total net cost --line 31		27.09

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Def'ts' Ex. A42. 6/7/20. G. C. S.

Invested in Plant and Property.

12 Months Ended December, 1914.

	Total investment.	Withdrawals charged against reserve.	Other credits.	Net increase.
Real Estate	.....	.....	.....	.....
Plant	319497	.....	.....	319497
General Structures	9534	.....	.....	9534
Street Mains	1342333	.....	.....	1342333
Services	599882	.....	.....	599882
Meters	748521	5676	.....	742845
" Installation	152696	.....	.....	152696
Gas Stoves Rented	1709716	.....	.....	1709716
Tools and Implements	2080	.....	.....	2080
Horses, Wagons and Harness	6135	.....	.....	6135
Automobiles and Accessories	148525	.....	.....	148525
Office Furniture and Fixtures	20701	.....	.....	20701
General Store Equipment	.....	.....	.....	.....
Withdrawals—Plant and Property, Meters				
—Material and Supplies	5059620	5676	.....	5053944
Other Credits	.....	.....	5676	.....

Meters condemned 56.76.

(Here follow Defendants' Exhibits A43-A63, inclusive, marked pages 2853-2893, inclusive.)

2894 DEFENDANTS' EXHIBIT A-64.

Def'ts' Ex. A-64.

Charter of the City of New York.

Sec. 522. The said commissioner of water supply, gas and ele... ity shall appoint inspectors who shall inspect and test the illumi... ing gas manufactured within The City of New York or furn... or sold to said city or to any consumer therein. The compens... of said inspectors shall be fixed by the board of estimate and... portionment and paid by the city. The gas manufactured, furn... or sold as aforesaid shall be tested with reference to illumin... power, pressure and purity, in a suitable manner and by proje... paratus at least once each day, and shall also be tested whenev... said commissioner shall direct. The inspectors shall report u... oath the results of their tests to the said commissioner daily a... said commissioner shall file the said reports in his office a... same shall be public records. (As amended by L. 1905, ch. 7...

2895 DEFENDANTS' EXHIBIT A-65.

Logarithm tables for temperature and barometer.
Not printed.

DEFENDANTS' EXHIBIT A-66.

Logarithm tables for observed candle power.
Not printed.

DEFENDANTS' EXHIBIT A-67.

Logarithm tables for consumption of sperm.
Not printed.

(Here follows Defendants 'Exhibit A-68, marked pages 2896 to 2... inclusive.)

Defendant's Exhibit A 68

2966.

Gas Examination Form No. 2

INSPECTOR'S DAILY REPORT OF GAS TESTS

DATE: Jan 2, 1917

THE CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY
INSPECTOR'S DAILY REPORT OF GAS TESTS

PHOTOMETRIC STATION: Flushing

State and City of New York, County of Kings ss.:

Robert A. Wacker being duly sworn, deposes and says that he is employed in the Department of Water Supply, Gas and Electricity as an Inspector to inspect and test Illuminating gas. That the following are the results of his tests made on the second day of January 1917

Robert A. Wacker
Gas Inspector.

Sworn to before me, this 2nd day of January 1917

D. N. Rugen
Notary Public City of Brooklyn
County of Kings Reg. #193

GAS COMPANY	Illuminating Power — Candles	Pressures on Service Main — Maximum — Inches	Pressures on Service Main — Minimum — Inches	Sulphuretted Hydrogen	Time of Tests
New York & Queens	21.05				6:10 P.M.
	21.35	4.80	3.90	None	6:35 "

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Defendant's Exhibit A 68

Gas Examination Form No. 1
TEST FOR ILLUMINATING POWER

DATE AND TIME
Jan 2, 1917
6:10 P.M.

THE CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY
TEST FOR ILLUMINATING POWER

PHOTOMETRIST OR TESTER
J. Pershing

Gas Company... New York & Queens

Gas Consumption, Rate per Hour in Cubic Feet... 0.10.0

Candle Consumption, Time of Burning 40 Grs... 1.84 mm

Equivalent to Grs per Hour... 121.95

Pressure at Base of Burner Filter in Inches... 0.65

Barometer... 30.05 ... Inches Temperature of Gas 77 Degrees Fahrenheit

OBSERVATIONS AT INTERVALS OF ONE MINUTE

1st Minute	10.2
2nd "	10.1
3rd "	10.0
4th "	9.9
5th "	9.8
6th "	9.7
7th "	9.9
8th "	10.0
9th "	9.8
10th "	9.7
Average	9.91
	2
Obs. Ill. Power	1982 = Log

PRESSURES

Maximum 4.80"
Minimum 3.70"

Saturated Hydrogen None

~~Corrected~~ Uncorrected 21.05
2nd " 21.05
Average 21.20

Log correction for Gas —
" Candle 0070
" Barometer 1992
" Temperature 0200
2971
8239

Corrected Illuminating Power 21.05

I hereby certify to the correctness of the above report.

R. A. Hacker
Gas Inspector

THE CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY

PHOTOMETRIC STATION: Flushing

TEST FOR ILLUMINATING POWER

Date: June 2, 1917
Time: 6:35 P.M.

Gas Company: New York & Queens

Gas Consumption, Rate per Hour in Cubic Feet: 5.00

Candle Consumption, Time of Burning 40 Grs.: 10.32 mins

Equivalent to Grs. per Hour: 116.28

Pressure at Base of Burner Pillar in Inches: 0.65

Barometer: 30.06 inches. Temperature of Gas: 77 degrees Fahrenheit

OBSERVATIONS AT INTERVALS OF ONE MINUTE

1st Minute	10.8
2nd "	10.7
3rd "	10.5
4th "	10.4
5th "	10.4
6th "	10.6
7th "	10.6
8th "	10.5
9th "	10.5
10th "	10.4
Average	10.54

PRESSURES

Maximum		
Minimum		
Sulphuretted Hydrogen		
Specific Gravity		

Log Correction for Gas: —

" " " Candle: 9863

" " " Barometer: 9992

" " " Temperature: 0200

3239

3294

2 ... Obs. Ill. Power 21.08 = Log

Corrected Illuminating Power: 21.35

I hereby certify to the correctness of the above report.

2898 R. A. Hacker

M (8-22-14) (B) 5000
Gas Examination Form No. 2
Inspector's Daily Report of Tests

DATE: May 1st 1916

CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY

INSPECTOR'S DAILY REPORT OF GAS TESTS

PHOTOMETRIC STATION: Flushing

State and City of New York, County of Kings ss.:

Robert A. Wacker being duly sworn, deposes and says that he is employed in the Department of Water Supply, Gas and Electricity as an Inspector to inspect and test illuminating gas. That the following are the results of his tests made on the first day of May 1916

Robert A Wacker
Gas Inspector.

Sworn to before me, this 2nd day of May 1916

D. A. Rugen
Deputy Comm. of Deeds City of New York
County of Kings - Reg # 193

GAS COMPANY	Illuminating Power — Candles	Pressures on Service Main — Maximum — Inches	Pressures on Service Main — Minimum — Inches	Sulphuretted Hydrogen	Time of Test
	18.65				11:25 A.M.
New-York & Queens	19.09	500	400	Trace	11:50 "

2899

May 1st 16
1125 A.M.

DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY

TEST FOR ILLUMINATING POWER

PHOTOMETRIC STATION: Flushing

Gas Company: New York & Queens

Gas Consumption, Rate per Hour in Cubic Feet: 5 0 0

Candle Consumption, Time of Burning 40 Grs.: 9 8 2 mins

Equivalent to Grs. per Hour: 122 20

Pressure at Base of Burner Pillar in inches: 0.66

Barometer 30 0 5 inches. Temperature of Gas 61 degrees Fahrenheit

OBSERVATIONS AT INTERVALS OF ONE MINUTE

1st Minute	8.9
2nd "	8.9
3rd "	8.8
4th "	9.0
5th "	9.2
6th "	9.1
7th "	9.3
8th "	9.4
9th "	9.4'
10th "	9.5
Average	9.15

Obs. Ill. Power 18.30 / 2 = Log

PRESSURES

Maximum	5.00 "
Minimum	4.00 "

Sulphuretted Hydrogen

1st test = 18.65
2nd " = 19.09
Average = 18.87

Log Correction for Gas —

" " " Candle 0079

" " " Barometer 9992

" " " Temperature 0011

2625

2707

Corrected Illuminating Power 18.65

2900

I hereby certify to the correctness of the above report.

R. A. Wacker
Gas Inspector.

Defendant's Exhibit A 68

38-C-31-16 (B)1M-1000
Gas Examination Form No. 1
TEST FOR ILLUMINATING POWER

DATE AND TIME
May 1 1916
11:50 A.M.

CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY

TEST FOR ILLUMINATING POWER

PHOTOMETRIC STATION
Flushing

Gas Company New York & Queens

Gas Consumption, Rate per Hour in Cubic Feet 5.00

Candle Consumption. Time of Burning 40 Grs. 9.85 mins

Equivalent to Grs. per Hour 12183

Pressure at Base of Burner Pillar in Inches 067

Barometer 30.05 inches. Temperature of Gas 62 degrees Fahrenheit

OBSERVATIONS AT INTERVALS OF ONE MINUTE

1st Minute	92
2nd "	93
3rd "	9.4
4th "	9.4
5th "	9.5
6th "	9.5
7th "	9.4
8th "	9.5
9th "	9.3
10th "	9.2
Average	937
2	
Obs. Ill. Power	1874 = Log

PRESSURES

Maximum	
Minimum	
Sulphuretted Hydrogen	
Specific Gravity	

Log Correction for Gas	
" " " Candle	0066
" " " Barometer	9992
" " " Temperature	0022
	2728
	2808

Corrected Illuminating Power 19.09

2901

I hereby certify to the correctness of the above report

R. A. Hacker
Gas Inspector.

Defendant's Exhibit A 68

40 D-5118-17-18 Gas Examination Form No. 2

Inspector's Daily Report of Gas Tests

DATE: Aug 2, 1918

CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY

INSPECTOR'S DAILY REPORT OF GAS TESTS

PHOTOMETRIC STATION: Flushing

State and City of New York, County of Kings ss.:

Robert A Wacker being duly sworn, deposes and says that he is employed in the Department of Water Supply, Gas and Electricity as an Inspector to inspect and test illuminating gas. That the following are the results of his tests made on the second day of August 1918

Robert A Wacker
Gas Inspector

Sworn to before me, this 2nd day of Aug. 1918

D. F. Regan

COMMISSIONER OF DEEDS CITY OF NEW YORK
NEW YORK COUNTY CLERK'S NO 195
KINGS COUNTY CLERK'S NO 98A
COMMISSION EXPIRES JULY 10TH 1919

GAS COMPANY	Illuminating Power — Candles	Pressures on Service Main — Maximum — Inches	Pressures on Service Main — Minimum — Inches	Sulphuretted Hydrogen	Time of Test
New York v Queens	2229	5.60	4.25	None	5:05 P.M.

Defendant's Exhibit A-68

40 D-2014-17-B
Gas Examination Form No. 1
Test for Illuminating Power

DATE AND TIME
8/2/1918
5:05 P. M.

THE CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY

PHOTOMETRIC STATION
Flushing

TEST FOR ILLUMINATING POWER

Gas Company: New York & Queens

Gas Consumption, Rate per Hour in Cubic Feet: 5.00

Candle Consumption, Time of Burning 40 Grs.: 1015 mins.

Equivalent to Grs. per Hour: 11823

Pressure at Base of Burner Pillar in Inches: 0.69

Barometer: 29.95 inches Temperature of Gas: 79 degrees Fahrenheit

OBSERVATIONS AT INTERVALS OF ONE MINUTE

1st Minute	10.2
2nd "	10.3
3rd "	10.5
4th "	10.6
5th "	10.8
6th "	10.7
7th "	10.9
8th "	11.0
9th "	11.0
10th "	11.2
Average	10.72

PRESSURES

Maximum 5.60 "
Minimum 4.25 "

Sulphuretted Hydrogen None

~~Specific Gravity~~ no calorimetric test made

Log Correction for Gas

" " " Candle 9935

" " " Barometer 0007

" " " Temperature 0226

Obs. Ill. Power 21.44^2 = Log .3312 / 3480

Corrected Illuminating Power 22.29

I hereby certify to the correctness of the above report

R. A. Wacker

2903

DATE

Nov 1 1919

CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY

INSPECTOR'S DAILY REPORT OF GAS TESTS

PHOTOMETRIC STATION
Flushing

State and City of New York, County of Kings ss.:

Robert A Wacker being duly sworn, deposes and says that he is employed in the Department of Water Supply, Gas and Electricity as an inspector to inspect and test illuminating gas. That the following are the results of his tests made on the first day of November 1919

Robert A Wacker
Gas Inspector.

Sworn to before me, this 1st day of November 1919
D. N. Mugen

GAS COMPANY	Illuminating Power — Candles	Pressures on Service Main — Maximum — Inches	Pressures on Service Main — Minimum — Inches	Sulphuretted Hydrogen	Time of Test
New York & Queens	22.08	no record		Slight Trace	11:30 AM

Defendant's Exhibit

46 D-0014-14-11
Gas Examination Form No. 1
TEST FOR ILLUMINATING POWER

DATE AND TIME
11/1/1919
11:30 A.M.

THE CITY OF NEW YORK
DEPARTMENT OF WATER SUPPLY, GAS AND ELECTRICITY
BUREAU OF GAS AND ELECTRICITY

TEST FOR ILLUMINATING POWER

PHOTOMETRIC STATION
Flushing

Gas Company: New York & Queens

Gas Consumption, Rate per Hour in Cubic Feet: 5.00

Candle Consumption, Time of Burning 40 Grs.: 9.56 mins

Equivalent to Grs. per Hour: 12552

Pressure at Base of Burner Pillar in Inches: 0.65

Barometer: 29.78 inches. Temperature of Gas: 67 degrees Fahrenheit

OBSERVATIONS AT INTERVALS OF ONE MINUTE

1st Minute	10.5
2nd "	10.3
3rd "	10.3
4th "	10.1
5th "	10.1
6th "	10.0
7th "	10.1
8th "	10.3
9th "	10.5
10th "	10.7
Average	10.29

PRESSURES = No record

~~Maximum~~

~~Minimum~~

Sulphuretted Hydrogen: Slight Trace

~~Specific Gravity~~

No calorimetric test made

Log Correction for Gas

" " " Candle 0195

" " " Barometer 0032

" " " Temperature 0078

3134

3439

Obs. Ill. Power 20.58 / 2 = Log

Corrected Illuminating Power 2208

I hereby certify to the correctness of the above report.

R A Wacker
Gas Inspector.

2905

2906

Defendants' Exhibit A69.

Defts.' Ex. 69.

Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1916.		Illuminating Power Corrected.	Inspector.
Jan.	3	22.63	A. J. Cassassa
"	4	22.34	"
"	5	22.79	"
"	6	22.49	"
"	7	22.14	"
"	8	20.24	"
"	10	20.62	"
"	11	19.67	"
"	12	19.10	"
"	13	20.61	"
"	14	21.19	"
"	15	20.98	"
"	17	19.34	"
"	18	18.25	"
"	19	20.49	"
"	20	20.96	"
"	21	23.59	"
"	22	23.52	"
"	24	23.86	"
"	25	23.73	"
"	26	23.08	"
"	27	24.18	"
"	28	23.48	"
"	29	23.01	"
"	31	23.75	"

Number of Violations 11
Average " 20.13
Average 21.84

2907 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1916.		Illuminating Power Corrected.	Inspector.
Feb.	1	24.28	A. J. Cass.
"	2	22.96	"
"	3	22.83	"
"	4	22.24	"
"	5	22.50	"
"	7	22.65	"
"	8	22.09	"
"	9	22.69	"
"	10	22.22	"
"	11	22.59	"
"	14	20.18	"
"	15	19.62	"
"	16	20.89	"
"	17	21.41	"
"	18	21.76	"
"	19	22.04	"
"	21	21.49	"
"	23	22.18	"
"	24	22.24	"
"	25	22.27	"
"	26	21.81	"
"	28	20.07	"
"	29	22.22	"
	Average	21.97	
	No. of violations	8	"
	Average	20.91	"

2908 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1916.		Illuminating Power Corrected.	Inspector.
Mar.	1	23.29	A. J. Casassa
"	2	23.10	"
"	3	23.02	"
"	4	22.84	"
"	6	19.95	"
"	7	20.72	"
"	8	21.83	"
"	9	22.12	"
"	10	22.72	"
"	11	22.17	"
"	13	22.12	"
"	14	22.21	"
"	15	22.08	"
"	16	21.39	"
"	17	20.73	"
"	18	18.88	"
"	20	19.71	"
"	21	20.60	"
"	22	19.89	"
"	23	20.39	"
"	24	18.31	"
"	25	18.84	"
"	27	19.57	"
"	28	18.17	"
"	29	18.74	"
"	30	18.97	"
"	31	19.31	"
	Average	20.80	
	No. of violations	17	"
	Average violations	19.76	"

2909 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1916.		Illuminating Power Corrected.	Inspector.
Apr.	1	19.25	A. J. Cass
"	3	21.06	"
"	4	21.06	"
"	5	21.65	"
"	6	22.06	"
"	7	22.50	"
"	8		"
"	10	23.20	"
"	11	23.31	"
"	12	23.74	"
"	13	23.66	"
"	14	24.01	"
"	15	22.93	"
"	17	22.91	"
"	18	22.77	"
"	19	23.12	"
"	20	22.90	"
"	21	22.29	"
"	22	22.48	"
"	24	22.21	"
"	25	22.63	"
"	26	22.75	"
"	27	22.31	"
"	28	22.89	"
"	29	22.85	"
	Average	22.52	R. A. Wa
	Violations reported	4	"
	Average violations	20.74	"

2910 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1916.		Illuminating Power Corrected.	Inspector.
May	1	18.87	R. A. Wacker
	2	20.19	"
	3	20.48	"
	4	21.22	"
	5	25.85	"
	6	23.16	"
	8	24.16	"
	9	23.28	"
	10	22.19	"
	11	22.02	"
	12	21.20	"
	15	20.82	"
	16	22.56	"
	17	22.50	"
	18	23.05	"
	19	23.54	"
	20	24.28	"
	22	22.78	"
	23	21.00	"
	24	22.53	"
	25	22.68	"
	26	22.68	"
	27	21.91	"
	29	24.47	"
	31	22.91	"
	Average	22.41	"
	Violations Reported, 8		"
	Average Violations	20.71	"

2911 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1916.		Illuminating Power Corrected.	Inspector.
June	1	21.40	R. A. Wa
"	2	21.67	"
"	3	24.40	"
"	5	23.77	"
"	6	23.00	"
"	7	21.88	"
"	8	21.83	"
"	9	23.20	"
"	10	23.21	"
"	12	24.94	"
"	13	23.45	"
"	14	24.07	"
"	15	22.53	"
"	16	23.51	"
"	17	24.28	"
"	19	23.75	"
"	20	23.23	"
"	21	20.44	"
"	22	20.71	"
"	23	21.02	"
"	24	22.54	"
"	26	23.40	"
"	27	22.14	"
"	28	22.73	"
"	29	22.78	"
"	30	19.58	"
	Average	22.67	"
	Violations reported.. 8		"
	Average violations.	21.06	"

Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	19.18	R. A. Wacker
3	20.28	"
5	20.92	"
6	21.40	"
7	21.58	"
8	22.12	D. H. Schweisguth
10	21.81	R. A. Wacker
11	21.80	"
12	22.09	"
13	19.01	"
14	18.72	"
15	18.93	"
17	22.58	"
18	22.87	"
19	23.13	"
20	22.91	"
21	22.24	"
22	21.04	"
24	22.89	S. Straus
25	22.52	"
26	22.24	"
27	22.02	"
28	20.73	"
29	20.83	"
31	20.95	D. H. Schweisguth

Average 21.39
Violations reported . . 14
Average Violations . . 20.51

2913 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1916.		Illuminating Power Corrected.	Inspector.
Aug.	1	22.49	D. H. Schweisgut
"	2	21.96	"
"	3	21.75	"
"	4	22.40	"
"	5	22.64	"
"	7	23.06	"
"	8	22.68	"
"	9	22.54	"
"	10	21.37	"
"	11	21.72	"
"	12	22.97	"
"	14	21.50	R. A. Wacket
"	15	21.34	"
"	16	21.35	"
"	17	21.63	"
"	18	22.85	"
"	19	22.73	"
"	21	21.51	"
"	22	20.32	"
"	23	21.82	"
"	24	20.38	"
"	25	22.23	"
"	26	21.33	"
"	28	19.56	"
"	29	20.25	"
"	30	21.59	"
"	31	21.56	"
	Average	21.76	"
	Violations reported	19	"
	Average violations	21.23	"

Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
	21.68	R. A. Wacker
2	19.96	"
	19.68	"
5	19.52	"
	20.75	"
5	21.34	"
0	20.32	"
	17.83	"
2	20.68	"
3	22.10	"
	22.93	"
	21.40	"
5	19.22	"
5	20.33	"
0	20.34	"
0	22.33	"
	21.38	"
2	21.48	"
3	19.56	"
	19.69	"
5	19.03	"
	21.22	"
5	21.53	"
0	22.20	"
0	18.62	"
Average	20.60	"
Violations reported	21	"
Average violations	20.26	"

2915 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1916.		Illuminating Power Corrected.	Inspector.
Oct.	2	18.38	R. A. Wacker
"	3	17.32	"
"	4	19.45	"
"	5	19.35	"
"	6	22.57	"
"	7	19.65	"
"	9	22.45	"
"	10	19.17	"
"	11	22.30	"
"	13	22.59	"
"	14	21.53	"
"	16	22.00	"
"	17	22.00	"
"	18	21.32	"
"	19	22.34	"
"	20	23.71	"
"	21	22.56	"
"	23	21.57	"
"	24	23.10	"
"	25	22.10	"
"	26	21.69	"
"	27	20.56	"
"	28	20.56	"
"	30	22.50	"
"	31	22.69	"
	Average	21.34	"
	Violations reported	12	"
	Average violations	20.05	"

Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens — Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	23.31	R. A. Wacker
2	21.70	"
3	21.01	"
4	20.74	"
6	22.78	"
8	22.64	"
9	22.75	"
10	21.78	"
11	20.59	"
13	21.24	"
14	21.82	"
15	22.32	"
16	21.12	"
17	23.98	"
18	23.55	"
20	21.50	"
21	22.14	"
22	22.88	"
23	22.89	"
24	22.20	"
25	21.30	"
27	20.90	"
28	21.48	"
29	20.56	"
Average	21.97	"
Violations Reported	13	"
Average Violations	21.21	"

2919 Department of Water Supply, Gas and Electricity. 2920

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1917		Illuminating Power Corrected.	Inspector	1917.
Feb.	1	21.32	R. A. Wade	Mar.
"	2	19.39	"	"
"	3	16.85	"	"
"	5	18.16	"	"
"	6			"
"	7	21.20	W. E. B.	"
"	8	21.39	R. A. Wade	"
"	9	19.24	"	"
"	10	19.98	"	"
"	13	16.07	"	"
"	14	20.26	"	"
"	15	19.48	"	"
"	16	20.38	"	"
"	17	19.38	"	"
"	19	20.13	"	"
"	20	18.82	"	"
"	21	20.26	"	"
"	23	20.47	"	"
"	24	20.00	"	"
"	26	22.21	"	"
"	27	20.45	"	"
"	28	19.71	"	"
			"	"
	Average	19.77	"	"
	Violations reported	20	"	"
	Average Violations	19.65		"

epartment of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
	20.65	R. A. Wacker
	19.21	"
	19.29	"
	18.99	"
	18.55	"
	20.60	"
	20.53	"
	19.33	"
	20.06	"
	19.37	"
	21.60	"
	22.48	"
	21.51	"
	18.72	"
	22.96	"
	23.98	"
	20.85	"
	24.10	"
	22.69	"
	23.68	"
	21.82	"
	21.51	"
	23.33	"
	22.60	"
	22.26	"
	21.80	"
	20.72	"
verage	21.23	"
iolations Reported	18	"
verage violations	20.28	"

2921 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1917.		Illuminating Power Corrected.	Inspector
Apr.	2	22.55	H. A. Wells
"	3	23.63	"
"	4	22.15	"
"	5	21.12	"
"	6	22.89	"
"	7	22.00	"
"	9	22.33	"
"	10	20.96	"
"	11	21.67	"
"	12	21.31	"
"	13	22.06	"
"	14	21.68	"
"	16	21.76	"
"	17	20.59	"
"	18	23.03	"
"	19	22.65	"
"	20	22.12	"
"	21	22.92	"
"	23	23.59	"
"	24	22.73	"
"	25	23.45	"
"	26	22.08	"
"	27	22.29	"
"	28	23.34	"
"	30	23.61	"
	Average	22.34	"
	Violations reported.	7	"
	Average Violations.	21.30	

partment of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

Illuminating Power Corrected.	Inspector.
22.84	R. A. Wacker
23.38	"
22.02	"
23.59	"
22.94	"
22.84	"
22.20	"
21.87	"
21.07	"
23.33	"
23.18	"
23.97	"
23.28	"
22.56	"
21.65	"
23.86	"
24.07	"
24.29	"
24.06	"
22.30	"
23.03	"
22.64	"
22.80	"
22.72	Sol. Frank
23.45	"
23.43	"

verage 22.89
olations Reported 3
verage violations.. 21.53

2923 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1917.		Illuminating Power Corrected.	Inspector.
June	1	22.96	Sol. Fra
"	2	22.01	"
"	4	22.70	"
"	5	21.59	"
"	6	22.67	"
"	7	22.11	"
"	8	23.19	"
"	9	21.60	"
"	11	21.41	"
"	12	21.21	"
"	13	22.71	"
"	14	22.07	"
"	15	22.10	"
"	16	22.05	"
"	18	21.74	"
"	19	22.40	"
"	20	21.20	"
"	21	22.49	"
"	22	22.02	"
"	23	21.23	"
"	25	21.82	"
"	26	21.95	"
"	27	22.54	"
"	28	21.20	"
"	29	22.00	"
"	30	21.75	"

Average 22.02
No. of violations reported 11
Average violations .. 21.52

Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
2	22.59	Sol. Frank
3	21.23	"
5	22.06	"
6	21.54	"
7	21.47	"
9	22.42	"
10	21.34	"
11	21.03	"
12	20.46	"
13	21.83	"
14	21.55	"
16	21.46	"
17	21.40	"
18	22.13	"
19	22.43	"
20	23.84	"
21	22.52	"
23	22.53	"
24	23.34	"
25	22.17	"
26	23.25	"
27	22.80	"
28	21.76	"
30	22.01	S. Hirscheintz
31	23.07	"
Average for July, 1917	22.09	"
Average Violations	21.37	"
No. of Violations	11	

Recorded.

2925 Department of Water Supply, Gas and Electricity. 2926

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1917.		Illuminating Power Corrected.	Inspector.
Aug.	1	22.25	S. Hirschem
"	2	22.52	"
"	3	22.55	"
"	4	22.14	"
"	6	22.16	"
"	7	22.38	"
"	8	22.13	"
"	9	23.30	"
"	10	22.53	"
"	11	22.92	"
"	13	22.08	"
"	14	22.57	"
"	15	22.41	"
"	16	22.96	"
"	17	22.24	"
"	18	22.07	"
"	20	22.65	"
"	21	23.60	"
"	22	22.09	"
"	23	22.69	"
"	24	22.76	"
"	25	22.54	"
"	27	21.82	"
"	28	22.28	"
"	29	22.92	"
"	31	22.30	"
	Average for August, 1917	22.48	"
	No. of violations	1	

Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	22.22	S. Hirscheintz
4	22.14	"
5	22.45	"
6	22.22	"
7	22.03	"
8	19.90	"
10	21.78	Sol Frank
11	22.28	"
12	21.84	"
13	22.41	"
14	21.81	"
15	21.71	"
19	21.97	"
20	22.93	"
21	21.22	"
22	21.02	"
24	20.55	"
25	22.71	"
27	24.19	"
28	25.12	"
29	21.10	"
Average C. P.	22.22	"
No. of Valuations reported	9	"
Average valuations	21.31	"

Recorded.

2927 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens — Co.

Flushing Photometric Stations.

1917.		Illuminating Power Corrected.	Inspector.
Oct.	1	22.52	Sol Frank
"	2	21.62	"
"	3	22.25	"
"	4	21.55	"
"	5	23.48	"
"	6	21.97	"
"	8	22.06	"
"	9	21.36	"
"	10	24.06	"
"	11	23.75	"
"	13	22.25	"
"	15		R. A. Wacke
"	16	22.37	"
"	17	22.17	"
"	18	23.40	"
"	19	22.32	"
"	20	22.07	"
"	22	22.10	"
"	23	20.93	"
"	24		"
"	25	21.94	"
"	26	22.13	"
"	27	22.01	"
"	29	22.50	"
"	30	22.40	"
"	31	21.64	"
	Average	22.28	"
	Violations Reported. 7		"
	Average Violations.	21.57	"

2928 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1917.		Illuminating Power Corrected.	Inspector.
Nov.	1	21.84	R. A. Wacker
"	2	22.03	"
"	3	22.93	"
"	5	23.00	"
"	7	23.15	"
"	8	21.13	"
"	9	23.21	"
"	10	22.40	"
"	12	20.30	"
"	13	20.41	"
"	14	20.92	"
"	15	20.93	"
"	16	21.95	"
"	17	21.17	"
"	19	20.25	"
"	20	20.25	"
"	21	24.33	"
"	22	22.89	"
"	23	22.62	"
"	24	20.99	"
"	26	23.40	"
"	27	23.36	"
"	28	24.54	"
"	30	23.09	"
	Average	22.13	"
	Violations reported	11	"
	Average Violations	20.92	"

2929 Department of Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1917.		Illuminating Power Corrected.	Inspector.
Dec.	1	22.00	R. A. Wacke
"	3	25.90	"
"	4	21.94	"
"	5	22.27	"
"	6	22.54	"
"	7	22.01	"
"	8	20.78	"
"	10	20.44	"
"	11	21.15	"
"	12	21.90	"
"	13	21.77	"
"	14	20.19	"
"	15	21.08	"
"	17	22.76	"
"	18	22.20	"
"	19	20.31	"
"	20	20.54	"
"	21	23.17	"
"	22	23.29	"
"	24	21.18	"
"	26	22.22	"
"	27	21.45	"
"	28	24.28	"
"	29	23.12	"
"	31		"
	Average	22.02	"
	Violation- reported	12	"
	Average violations	21.06	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
2	15.05	R. A. Wacker
3	14.59	" "
4	13.94	" "
5	12.89	" "
7	16.63	" "
8	17.76	" "
9	18.41	" "
10	18.35	" "
11	17.34	" "
12	17.40	" "
14	16.96	" "
15	18.88	" "
16	18.85	" "
17	19.97	" "
18	18.68	" "
19	19.22	" "
21	15.63	" "
22	16.59	" "
23	15.22	" "
24	16.01	" "
25	17.65	" "
26	18.24	" "
28	18.33	" "
29	19.67	" "
30	20.37	" "
31	19.64	" "
Average	17.39	" "
Violations reported 26		" "
Average violations	17.39	" "

Recorded.

2931 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas,

New York and Queens Gas Co.

Flushing Photometric Stations.

1918.		Illuminating Power Corrected.	Inspector.
Feb.	1	18.99	R. A. Wanke
"	2	20.02	"
"	4	19.21	"
"	5		"
"	6	17.62	"
"	7	17.26	"
"	8	18.79	"
"	9	16.83	"
"	11	18.93	"
"	13	18.08	"
"	14	17.52	"
"	15	18.14	"
"	16	15.99	"
"	18	15.94	"
"	19	15.47	"
"	20	15.98	"
"	21	14.40	"
"	23	15.17	"
"	25	17.68	"
"	26	20.82	"
"	27	21.96	"
"	28	23.05	"
	Average	18.01	"
	Violations reported..20		"
	Average violations..	17.76	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	22.69	R. A. Wacker
2	22.28	"
4	20.72	"
5	22.28	"
6	21.42	"
7	22.50	"
8	24.18	"
9	23.42	"
11	23.32	"
12	22.35	"
13	23.46	"
14	18.91	"
15	22.99	"
16	22.50	"
18	22.34	"
19	22.39	"
20	21.67	"
21	20.98	"
22	24.23	"
23	22.29	"
25	21.84	"
26	18.99	"
27	22.18	"
28	23.12	"
29	23.63	"
30	23.46	"
Average	22.31	"
Violations reported	7	"
Average violations	20.65	"

Recorded.

2933 Department Water Supply, Gas and Electricity. 2934

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1918.		Illuminating Power Corrected.	Inspector.
April	1	23.67	R. A. Wacker
"	2	23.34	"
"	3	23.05	"
"	4	21.80	"
"	5	21.81	"
"	6	21.10	"
"	8	22.05	"
"	9	22.00	"
"	10	20.30	"
"	11	20.95	"
"	12	22.43	"
"	13	20.34	"
"	15	25.15	"
"	16	23.68	"
"	17	23.70	"
"	18	23.55	"
"	19	24.03	"
"	20	24.34	"
"	22	24.15	"
"	23	23.48	"
"	24	22.61	"
"	25	22.42	"
"	27	22.75	"
"	29	22.66	"
"	30	22.28	"
	Average	22.71	"
	Violations reported	6	"
	Average violations	21.05	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	22.49	R. A. Wacker
2	22.16	"
3	22.60	"
4	23.75	"
6	25.09	"
7	23.23	"
8	21.43	"
9	22.24	"
10	22.94	"
11	22.15	"
13	22.98	"
14	23.88	"
15	23.43	"
16	22.00	"
17	22.60	"
18	22.01	"
20	23.87	"
21	absent a/c illness.	
22	"	"
23	24.65	R. A. Wacker
24	22.76	"
25	22.45	"
27	21.87	"
28	22.64	"
29	22.01	"
31	23.27	"
Average	22.85	"
Violations reported	2	"
Average Violations	21.65	"

2935 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1918.		Illuminating Power Corrected.	Inspector
June	1	22.52	R. A. W.
"	3	22.98	"
"	4	22.88	"
"	5	21.92	"
"	6	21.52	"
"	7	22.17	"
"	8	22.04	"
"	10	22.34	"
"	11	22.08	"
"	12	23.85	"
"	13	22.14	"
"	14	21.66	"
"	15	21.55	"
"	17	22.97	"
"	18	22.31	"
"	19	21.85	"
"	20	22.97	"
"	21	22.48	"
"	22	21.56	"
"	24	21.25	"
"	25	23.58	"
"	26	23.44	"
"	27	22.23	"
"	28	22.39	"
"	29	20.38	"
	Average	22.28	"
	Violations reported.. 8		"
	Average violations ..	21.46	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
	25.12	R. A. Wacker
	22.44	"
	23.90	"
	23.66	"
	23.20	"
	22.05	"
	21.16	"
	22.49	"
	22.24	"
	22.47	"
	20.80	"
	20.64	"
	21.80	"
	21.07	"
	22.75	"
	21.79	"
	21.50	"
	22.94	"
	22.13	"
	22.85	"
	22.75	"
	21.86	"
	21.49	"
	22.90	"
	23.01	"
	22.04	"
verage	22.35	"
iolations reported	9	"
verage violations	21.34	"

2937 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1918.		Illuminating Power Corrected.	Inspector
Aug.	1	21.85	R. A. Wa
"	2	22.29	"
"	3	21.52	"
"	5	21.66	"
"	6	21.55	"
"	7	21.65	"
"	8	23.10	"
"	9	22.53	"
"	10	20.80	"
"	12	21.11	"
"	13	23.69	"
"	14	23.31	"
"	15	21.46	"
"	16	23.53	"
"	17	21.07	"
"	19	21.04	"
"	20	22.30	"
"	21	21.16	"
"	22	21.75	"
"	23	22.88	"
"	24	22.06	"
"	26	23.20	"
"	27		
"	28	21.39	"
"	29	22.26	"
"	30	19.90	"
"	31	19.53	"
	Average	22.36	"
	Violations reported	11	"
	Average violations	21.09	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
3	20.52	Charles A. Hillig
4	20.84	"
5	21.94	"
6	22.23	"
7	24.34	"
9	22.26	"
10	22.06	"
11	23.22	"
12	24.64	"
13	27.72	"
14	24.96	"
16	28.51	"
17	27.80	"
18	26.16	"
19	25.56	"
20	25.40	"
21	18.11	"
23	23.18	"
24	23.68	"
25	23.96	"
26	25.05	"
27	23.27	"
28	20.04	"
30	22.95	"

Average candlepower 23.69
Violations Reported.. 5.
Average of Violations 20.29

2939 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1918.		Illuminating Power Corrected.	Inspector
Oct.	1	22.70	R. A. Wade
"	2	22.57	"
"	3	22.48	"
"	4	21.74	"
"	5	21.77	"
"	7	21.57	"
"	8	21.73	"
"	9	21.13	"
"	10	21.47	"
"	11	22.11	"
"	14	22.93	"
"	15	21.65	"
"	16	22.00	"
"	17	21.36	"
"	18	22.76	"
"	19	20.58	"
"	21	21.46	"
"	22	22.02	"
"	23	22.54	"
"	24	20.50	"
"	25	22.58	"
"	26	24.53	"
"	28	24.41	"
"	29	23.14	"
"	30	24.80	"
"	31	23.94	"
	Average	22.44	"
	Violations reported	10.	"
	Average violations	21.36	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	23.89	R. A. Wacker
2	20.26	"
4	24.75	"
6	21.71	"
7	20.67	"
8	21.78	"
11	21.95	"
12	21.67	"
13	23.42	"
14	21.65	"
15	19.57	"
16	20.17	"
18	25.26	"
19	25.36	"
20	20.29	"
21	19.52	"
22	19.17	"
23	18.76	"
25	23.86	"
26	21.52	"
27	18.64	"
29	20.00	"
30	22.25	"
Average	21.58	"
Violations reported	16	"
Average violations	20.46	"
9	no record	"

2941 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1918.		Illuminating Power Corrected.	Inspector.
Dec.	2	24.59	R. A. Wacker
"	3	25.60	"
"	4	24.76	"
"	5	22.94	"
"	6	20.67	"
"	7	20.63	"
"	9	21.04	"
"	10	21.45	"
"	11	19.84	"
"	12	22.54	"
"	13	23.94	"
"	14	23.47	"
"	16	23.85	"
"	17	23.41	"
"	18	22.66	"
"	19	21.71	"
"	20	23.12	"
"	21	22.01	"
"	23	22.33	"
"	24	19.99	"
"	26	22.67	"
"	27	21.78	"
"	28	21.44	"
"	30	21.42	"
"	31	22.88	"
	Average	22.43	"
	Violations reported	10	"
	Average violations	21.00	"

2942 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1919.		Illuminating Power Corrected.	Inspector.
Jan.	2	24.39	R. A. Wacker
"	3	22.26	"
"	4	21.52	"
"	6	20.13	"
"	7		"
"	8		"
"	9		"
"	10		"
"	11		"
"	13		"
"	14	23.62	"
"	15	no test made	"
"	16	23.10	"
"	17	21.25	"
"	18	20.72	"
"	20	18.54	"
"	21	20.82	"
"	22	18.88	"
"	23	18.52	"
"	24	23.62	"
"	25	22.16	"
"	27	21.68	"
"	28	22.42	"
"	29	24.89	"
"	30	24.35	"
"	31	22.43	"
	Average	21.86	"
	Violations reported	9	"
	Average violations	20.23	"

2943 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1919.		Illuminating Power Corrected.	Inspector
Feb.	1	21.27	R. A. Wait
"	3	19.08	"
"	4	20.41	"
"	5	21.39	"
"	6	22.34	"
"	7	22.09	"
"	8	22.95	"
"	10	21.00	"
"	11	19.89	"
"	13	19.82	"
"	14	22.01	"
"	15	21.52	"
"	17	20.89	"
"	18	22.08	"
"	19	23.85	"
"	20	23.99	"
"	21	23.62	"
"	24	27.90	"
"	25	26.06	"
"	26	25.49	"
"	27	24.57	"
"	28	23.94	"
	Average	22.51	"
	Violations reported. 9		"
	Average violations	20.59	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	23.90	R. A. Wacker
3	20.89	"
4	22.28	"
5	25.85	"
6	24.98	"
7	25.05	"
8	23.49	"
10	22.02	"
11	24.14	"
12	22.28	"
13	23.79	"
14	22.31	"
15	22.09	"
17	23.81	"
18	24.08	"
19	20.66	"
20	22.75	"
21	24.44	"
22	20.19	"
24	16.20	"
26	20.80	"
27	21.74	"
28	20.06	"
29	21.29	"
31	32.83	"
Average	22.48	"
Violations reported. 8		"
Average violations.	20.23	"

2945 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1919.		Illuminating Power Corrected.	Inspector.
April	1	22.70	R. A. Wacke
"	2	22.49	"
"	3	21.34	"
"	4	21.48	"
"	5	22.57	"
"	7	22.84	"
"	8	22.56	"
"	9	21.46	"
"	10	21.94	"
"	11	21.45	"
"	12	22.06	"
"	14	23.34	"
"	15	23.35	"
"	16	24.31	"
"	17	24.95	"
"	18	23.90	"
"	19	22.59	"
"	21	23.09	"
"	22	22.35	"
"	23	21.86	"
"	24	21.21	"
"	25	21.05	"
"	26	19.26	"
"	29	22.95	"
"	30	21.90	"
	Average	22.36	"
	Violations reported	10	"
	Average violations	21.30	"

46 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

09.		Illuminating Power Corrected.	Inspector.
	1	22.68	R. A. Wacker
	2	20.71	"
	3	22.19	"
	5	25.09	"
	7	21.66	"
	8	22.02	"
	9	21.04	"
	10	20.43	"
	12	22.07	"
	13	23.46	"
	14	24.41	"
	15	23.55	"
	16	23.29	"
	17	22.33	"
	19	23.59	"
	20	21.19	"
	21	21.76	"
	22	21.61	"
	23	24.69	"
	24	21.85	"
	26	25.12	"
	27	21.89	"
	28	23.59	"
	29	24.76	"
	Average	22.71	"
	Violations reported	9	"
	Average violations	21.35	"

2947 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1919.		Illuminating Power Corrected.	Inspector.
June	2	21.29	R. A. Wacker
"	3	23.78	"
"	4	22.72	"
"	5	25.98	"
"	6	25.48	"
"	7	24.45	"
"	9	21.69	"
"	10	23.23	"
"	11	22.27	"
"	12	23.49	"
"	13	24.32	"
"	14	23.34	"
"	16	21.63	"
"	17	22.84	"
"	18	21.12	"
"	19	21.54	"
"	20	22.81	"
"	21	22.43	"
"	23	23.86	"
"	24	23.26	"
"	25	22.72	"
"	26	23.10	"
"	27	22.37	"
"	28	22.21	"
"	30	22.73	"
	Average	22.99	"
	Violations reported	5	"
	Average violations	21.45	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	23.20	R. A. Wacker
2	22.90	"
3	21.31	"
7	20.63	"
8	20.46	"
9	18.08	"
10	20.44	"
11	22.28	"
12	21.56	"
14	21.77	"
15	20.98	"
16	23.01	"
17	25.00	"
18	22.08	"
19	24.86	"
21	24.37	"
22	25.75	"
23	24.55	"
24	27.50	"
25	25.70	"
26	24.27	"
28	25.21	"
29	23.71	"
30	22.61	"
31	21.78	"
Average	22.96	"
Violation- reported	9	"
Average violations	20.78	

2949 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1919.		Illuminating Power Corrected.	Inspector.
Aug.	1	23.17	R. A. Wacke
"	2	21.93	"
"	4	22.87	"
"	5	22.25	"
"	6	22.04	"
"	7	21.40	"
"	8	24.91	"
"	9	24.29	"
"	11	22.49	"
"	12	23.25	"
"	13	22.22	"
"	14	22.08	"
"	15	22.01	"
"	16	20.19	"
"	18	24.57	"
"	19	25.36	"
"	20	26.02	"
"	21	25.49	"
"	22	25.24	"
"	23	23.96	"
"	25	24.65	"
"	26	24.97	"
"	27	24.69	"
"	28	24.44	"
"	29	26.03	"
"	30	24.54	"
	Average	23.66	"
	Violations reported.. 3		"
	Average violations..21.17		"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
2	23.53	R. A. Wacker
3	23.39	"
4	23.02	"
5	22.44	"
6	20.49	"
8	24.85	George J. Elsasser
9	21.78	"
10	No test	"
11	23.10	"
12	19.91	"
13	20.62	"
15	20.66	"
16	19.57	"
17	22.37	"
18	21.71	"
19	19.41	"
20	22.37	"
22	21.49	"
23	20.96	"
24	18.70	"
25	20.17	"
26	20.20	"
27	22.73	"
29	21.36	"
30	23.65	"
Average Candle Power	21.60	George J. Elsasser
No. of Violations	14	
Average of Violations	20.50	

2951 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1919.		Illuminating Power Corrected.	Inspector.
Oct.	1	25.05	George J. Elsas
"	2	23.83	"
"	3	23.05	"
"	4	24.62	"
"	6	24.82	R. A. Wacker
"	7	24.04	"
"	8	22.61	"
"	9	22.87	"
"	10	25.41	"
"	11	25.48	"
"	14	23.08	"
"	15	23.40	"
"	16	25.27	"
"	17	23.59	"
"	18	22.27	"
"	20	22.49	"
"	21	22.48	"
"	22	22.47	"
"	23	22.00	"
"	24	23.99	"
"	25	22.37	"
"	27	22.48	"
"	28	22.99	"
"	29	20.71	"
"	30	21.35	"
"	31	21.78	"
	Average	23.25	"
	Violations reported, 3		"
	Average violations	21.28	"

2052 Department Water Supply, Gas, and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1919.		Illuminating Power Corrected.	Inspector.
Nov.	1	22.08	R. A. Wacker
"	3	22.09	"
"	5	21.24	"
"	6	21.26	"
"	7	23.23	"
"	8	22.45	"
"	10	24.27	"
"	11	23.28	"
"	12	23.69	"
"	13	23.28	"
"	14	21.23	"
"	15	23.04	"
"	17	25.03	"
"	18	23.91	"
"	19	22.60	"
"	20	22.33	"
"	21	22.83	"
"	22	22.78	"
"	24	21.82	"
"	25	21.83	"
"	26	23.17	"
"	28	23.52	"
"	29	23.15	"
	Average	22.78	"
	Violations reported. 5		"
	Average violations	21.48	"

2953 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1919.		Illuminating Power Corrected.	Inspector.
Dec.	1	21.11	R. A. Wacker
"	2	22.44	"
"	3	20.81	"
"	4	19.38	"
"	5	19.59	"
"	6	20.54	"
"	8	22.49	"
"	9	22.96	"
"	10	22.66	"
"	11	22.28	"
"	12	22.56	"
"	13	23.55	"
"	15	22.00	"
"	16	22.88	"
"	17	21.65	"
"	18	21.47	"
"	19	19.09	"
"	20	20.31	"
"	22	23.26	"
"	23	23.79	"
"	24	23.85	"
"	26	23.65	"
"	27	23.39	"
"	29	21.92	"
"	30	22.94	"
"	31	22.29	"
	Average	22.01	"
	Violations reported.	10	"
	Average violations.	20.59	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
2	21.16	R. A. Wacker
3	21.74	"
5	21.67	"
6	22.06	"
7	22.70	"
8	24.20	"
9	23.59	"
10	22.29	"
12	23.07	"
13	21.44	"
14	22.71	"
15	19.05	"
16	22.13	"
17	22.23	"
19	20.17	"
20	21.15	"
21	21.74	"
22	23.21	"
23	21.96	"
24	22.00	"
26	21.52	"
27	23.48	"
28	25.52	"
29	23.81	"
30	23.80	"
31	21.59	"
Average	22.31	"
Violations reported	11	"
Average violations	21.20	"

2955 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1920.		Illuminating Power Corrected.	Inspector.
Feb.	2	19.14	R. A. Wack
"	3	23.72	"
"	4	22.11	"
"	5	No work done acc't lack of transportation due to Blizz	
"	6	" " " " " " "	"
"	7	22.96	R. A. Wack
"	9	23.94	"
"	10	23.50	"
"	11	24.58	"
"	13	23.76	"
"	14	21.46	"
"	16	20.77	"
"	17	19.07	"
"	18	21.47	"
"	19	21.75	"
"	20	20.00	"
"	21	20.63	"
"	24	21.27	"
"	25	22.65	"
"	26	22.39	"
"	27	21.30	"
"	28	17.24	"
	Average	21.69	"
	Violations reported	11	"
	Average violations	20.36	"

Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

	Illuminating Power Corrected.	Inspector.
1	20.28	R. A. Wacker
2	21.93	"
3	23.17	"
4	23.75	"
5	23.72	"
6	No work done acc't lack of transportation due to snow storm	
8	22.03	"
9	22.43	"
10	23.46	"
11	24.89	"
12	24.07	"
13	24.21	"
15	24.47	"
16	22.75	"
17	22.27	"
18	22.86	"
19	22.84	"
20	22.83	"
22	23.59	"
23	23.26	"
24	23.53	"
25	22.01	"
26	20.97	"
27	21.84	"
29	22.77	"
30	22.75	"
31	21.73	"
Average	22.85	"
Violations reported..	5	"
Average violations	21.35	"

2957 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1920.		Illuminating Power Corrected.	Inspector.
Apr.	1	23.10	R. A. Wacker
"	3	22.66	"
"	5	22.66	"
"	6	24.24	"
"	7	22.66	"
"	8	22.15	"
"	9	22.37	"
"	10	20.77	"
"	12	21.49	"
"	13	23.34	"
"	14	21.12	"
"	15	23.10	"
"	16	24.91	"
"	17	23.77	"
"	19	22.22	"
"	20	22.73	"
"	21	22.58	"
"	22	22.24	"
"	23	23.59	"
"	24	21.75	"
"	26	21.87	"
"	27	20.49	"
"	28	22.44	"
"	29	23.64	"
"	30	22.57	"
	Average	22.58	"
	Violations reported 6		"
	Average violations	21.25	"

2958 Department Water Supply, Gas and Electricity.

Examinations of Illuminating Gas.

New York and Queens Gas Co.

Flushing Photometric Stations.

1920.		Illuminating Power Corrected.	Inspector.
May	1	24.37	R. A. Wacker
"	3	26.13	"
"	4	24.30	"
"	5	24.75	"
"	6	24.15	"
"	7	24.76	"
"	8	24.49	"
"	10	26.35	"
"	11	24.57	"
"	12	25.12	"
"	13	23.35	"
"	14	24.48	"
"	15	22.59	"
"	17	24.06	"
"	18	22.22	"
"	19	21.95	"
"	20	24.60	"
"	21	22.68	"
"	22	23.20	"
"	24	24.13	"
"	25	24.91	"
"	26	25.36	"
"	27	24.71	"
"	28	23.17	"
"	29	24.93	"

2959 DEFENDANTS' EXHIBIT A-70.

Extract from the Minutes of the Meeting of the Board of Directors of the New York and Queens Gas Company, Held at No. 208 5th Avenue, New York City, on Friday, October 22nd, 1909, at 2:30 o'clock P. M.

"A letter from Messrs. Krauthoff, Harmon and Mathewson, under date of October 5, 1909, was presented, giving as their opinion that Treasury bonds now held by the Lincoln Trust Company, as collateral for money borrowed, could be sold and the proceeds applied on the

payment of the loans, without making application to the Public Service Commission."

2960 DEFENDANTS' EXHIBIT A-71.

Letter dated November 9, 1910 from Treasurer of the New York and Queens Gas Company, contained in defendant's exhibit A-23. Not printed here.

2961 DEFENDANTS' EXHIBIT A-72.

Def'ts' Ex. A-72. June 9, 1920. H. S.

Attorney General,

State of New York.

The tax law requires that all real estate shall be assessed at its full and true value.

To secure proper attention this form must be used and the questions clearly answered.

N. B.—A separate application must be made for each Block, and filed with the Department of Taxes and Assessments on or before November 15th.

Owner: New York & Queens Gas Co. Address: Flushing, L. I. Borough of Queens.

Application for Correction of Assessed Valuation of Real Estate.

(State Separately for Each Parcel.)

Location of Property No. — —— Street.
Ward or Section —; Volume —; Block 170, Lot 31.
Assessed Valuation, 1917: Land, $12,600.; Total, $577,000.

First. The assessment complained of in this application is erroneous by reason of overvaluation, in that your Honorable Board and the Deputy Tax Commissioners acting under your instructions have assessed the improvements upon the aforesaid lot at the sum of $564,400, whereas the impaired value of such improvements, based upon earnings impaired by rate regulation, taxes and increased cost of operation, is the sum of $540,100. The extent of the overvaluation is, therefore, the sum of $24,300.

Second. The assessment complained of in this application is unequal, disproportionate and erroneous for the reason that in assessing other real estate of like character and all other property improved with manufacturing plants in the ward and borough in which the aforesaid property of your Complainant is situated, and in the City of New York generally, your Honorable Board and the Deputy Tax

missioners acting under your instructions failed to include in the ssment of the improvements on such real estate or property the ue of the machinery, apparatus and appurtenances located therein, ch machinery, apparatus and appurtenances under the provisions ubdivision 6, Section 2 of the Tax Law, are taxable as real estate. his failure to include the value of such machinery, apparatus appurtenances in the assessment of the real estate and improve- nts containing such machinery, apparatus and appurtenances, resulted in the assessment of all real estate of like character and of all lands and of all improvements containing 2 & 2963 such machinery, apparatus and appurtenances (excepting the real property of the Complainant) at the of 60% of the full value of the land, improvements and ma- nery, apparatus and appurtenances, whereas the aforesaid prop- of your Complainant has been assessed at the full cost to repro- e the same, including all machinery, apparatus and appurte- ces. Such inequality is not confined to specific instances, but is eral throughout the City of New York.

The assessment complained of in this application should, therefore, reduced to the sum of $336,660.

Without waiving the objection contained in paragraph "Second" his complaint, complainant alleges as follows:

Third. The aforesaid assessment is unequal, disproportionate and neous for the reason that your Honorable Board and the Deputy Commissioners acting under your instructions, in fixing the ue of Complainant's land and improvements, including ma- nery, apparatus and appurtenances, have fixed and determined assessment of the same at the cost to reproduce such property, rovements, machinery, apparatus and appurtenances, while, upon rmation and belief, the assessments of all other taxable land, real ate and real property in the Borough of Queens, for the year 1917 e been made at valuations equal to about 85% of the full value the land, real estate and real property so assessed. The aforesaid essment should, therefore, be reduced to the sum of $469,795.

The undersigned represents that it is the owner of the above- cribed property and claims to be aggrieved by the aforesaid as- sed valuation, and makes application to the Commissioners of Tax d Assessments to have the same reviewed and corrected, in ac- rdance with the allegations of the aforesaid complaint.

NEW YORK AND QUEENS GAS COMPANY,
By L. B. GAWTRY,
Vice-President.

964 City of New York,
County of New York, ss:

L. B. Gawtry, being duly sworn, says that he is the Vice-President, ner of the above-mentioned premises, and that the statements con-

tained in this application for the revision and correction of the assessed valuation thereof are true.

Name: L. B. GAWTRY,
Address: 130 E. 15th St., City.

Sworn to before me this 14th day of November, 1916.

M. A. COSS,
Commissioner of Deeds, N. Y. City,
Residing in Kings Co.

N. Y. County Clerk's No. 1168.
Register's No. 17072.

Commission expires Sept. 21, 1917.

2965 Dated New York, Dec. 11, 1916.

Hon. Commissioners of Taxes and Assessments.

GENTLEMEN:

I have re-examined the property referred to in the within application, and report as follows:

40 on Farrington.
20 " Myrtle.
20 " Centre.

Factor-Land $—; Building $—; Stories High —.
Sq. Ft. of Floor Surface —.
Condition, Improvements: Good, Suitable.
General Surroundings: Factory & poor tenement frame houses.
Leases ——.
Rents ——.
General remarks: Land is equitably assessed; the Water Gas Plant Bldgs. and Holders are assessed at the total of $564,400, or at the figures of the State Tax Department, after depreciation, of date June 30, 1916.

Land	$12,600
Bldgs.	21,400
Equip.	543,000
	$577,000

Respectfully submitted.

T. J. CRONIN,
Deputy Tax Commissioner.

2966 [Endorsed:] New York & Queens Gas Co., Borough of Queens. Application for Correction of Assessed Valuation of Real Estate. Filed Nov. 15, 1916. Ward 3, Volume 2, Page — Block No. 170, Lot No. 31. Street or Avenue —. Name: New York & Queens Gas Co. 1917: Assessed, $577,000; Land Value, $12,600. 1916: Assessed, $146,500; Land Value, $12,600. New

Defendant's Exhibit 89

Form A-1914

Form A-1904

Defendant's Exhibit 89

REPORT

Defts Ex. 89 2d
June 9 - 20

OF THE

Newtown and Flushing Gas Co

TO THE

Recorded

State Board of Tax Commissioners

OF THE

STATE OF NEW YORK

FOR THE

Year Ending June 30, 1903

2968

2

Office of the
State Board of Tax Commissioners

ALBANY, _____

SIR:

The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the Report of your company required by Section 43, Chapter 712, Laws 1899.

☞ It is requested that you complete and forward such report as required by that Act on or before December 1, 1903.

Very respectfully,
STATE BOARD OF TAX COMMISSIONERS.

EXTRACT FROM LAW RELATING TO TAXATION OF SPECIAL FRANCHISES

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles, and appurtenances; all supports and inclosure for electrical conductors and other appurtenances upon, above and under ground, all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through streets, highways or public places; all railroad structures, substructures and superstructures; tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate in, under, above, upon, or through any streets, highways or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

3

SCHEDULE A

Title of Company: Watertown and Alexandria Bay R. R. Co.

General Offices at: 97 Mohawk Street, Watertown, N.Y.

Date at close of Fiscal Year: August 1st

For information concerning this Report address: Johnson F. Williamson, Vice Pres. 208 - 15th Ave. New York City

OFFICERS OF THE COMPANY WITH P. O. ADDRESS:

President	Frank Tilford	208 - 15th Ave. New York City
Vice-President	Johnson F. Williamson	208 - 15th Ave. New York City
Secretary	Harry F. Snyder	4 Spring Place, New York City
Treasurer	" "	" " " "
General Manager	Charles Thomas	2 Wall St. New York City

DIRECTORS OF THE COMPANY:

Name	P. O. Address
Frank Tilford	208 - 15th Ave. New York City
Johnson F. Williamson	208 - 15th Ave. New York City
Abraham E. Smith	4 Spring Place, New York City
Louis A. Snyder	4 Spring Place, New York City
Thomas W. Wallace	2 Wall St. New York City

As last reported

SCHEDULE B

Description of special franchise, showing streets, highways or public places possessed or rights enjoyed and in what tax district or districts same is located.

Note: If this information was given in former report and map filed, state such fact, giving only additional grants since last report.

Defendant's Exhibit 89

Defendant's Exhibit 89

5

SCHEDULE C

Copy of special law, grant, ordinance or contract or reference to general law under which "special franchise is held, possessed or enjoyed and statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed."

Note: If this information was given in former report and copies filed, state such fact, giving only additional rights since last report.

As last reported

CAPITAL STOCK—SCHEDULE E

	No. Shares	Total Par Value	Dividends Declared During Year: Rate	Dividends Declared During Year: When Payable	Market Value During Year: Highest	Market Value During Year: Lowest	Market Value During Year: Present
Common issued	3000	300,000			None so far as known	"	"
Preferred issued	500	50,000	6	F & A	"	"	"
Total							

FUNDED DEBT—SCHEDULE F

Designation of Lien	Date	Maturity	Amount Outstanding	Interest: Rate	Interest: When Payable	Market Value During Year: Highest	Market Value During Year: Lowest	Market Value During Year: Present
Mortgage subject to prior mortgage covering the greater part of the company's property securing issue of bonds	Aug 1st 1901	Aug 1st 1931	300,000	5%	F & A	Unknown - No sales reported	Estimated at not over 90%	

Defendants Exhibit 89

SCHEDULE D

Statement of Assets and Liabilities June 30, 1904

ASSETS	AMOUNT		LIABILITIES	AMOUNT	
Cost of Real Estate & Improvem'ts	Unknown		Capital Stock	350000	
Cost of Equipment	"		Funded Debt	300,000	
Stock & Bonds of other Companies	None		Accounts and Bills Payable	31,861	04
Material and Supplies	6827	46	Int. on Funded Debt Due & Acc'd	6250	
Accounts and Bills Receivable	9253	44	Rentals Due and Accrued		
Cash on hand	12845	04	Dividends unpaid		

SCHEDULE G

Statement of Receipts and Disbursements for year ending June 30, 1904

RECEIPTS		AMOUNT		
From Actual Operation	$	91	964	48
Interest and Dividends				
Rentals (not including tracks)				
Advertising				
Sales of Stock				
Sales of Bonds				
Bills Payable		20	000	
Other Sources		6	367	40
Rents Received for Tracks and Terminals				
Deficit		118	522	38
Total				

Defendant's Exhibit 89

SCHEDULE G

The Report below must be MADE IN DETAIL as called for.

DISBURSEMENTS			AMOUNT		
Salaries of General Officers		$	3	000	
Salaries of Clerks and Office Expenses			5	989	70
Law Expenses			1	423	02
Other Operating Expenses			41	209	44
Maintenance	In Streets $ 513.89		12	190	92
	Outside Streets $ 11677.03				
Reconstruction	In Streets $		14	792	
	Outside Streets $ 14792				
New Construction (Extension)	In Streets $ 11534.59		18	153	13
	Outside Streets $ 6618.54				
Rentals			1	082	60
Interest paid			15	000	
Rents paid for Tracks and Terminals					
Taxes on Capital Stock and Earnings paid State Comptroller				324	06
Taxes paid on Special Franchise					
Taxes on Real Estate in this State other than Special Franchise				770	92
Taxes on Personal Estate in this State					
Taxes on Property in other States					
Payments Covered by Sec. 46, Tax Law.	Percentage on Gross Earnings paid Municipality				
	Other Items				
Dividends paid ..... % Common Stock					
Dividends paid 6 % Preferred Stock			3	000	
Amount paid for New Street Paving					

NAME OF EACH TOWNSHIP AND CITY WHEREIN LOCATED AND WARDS IN CITY WHERE DIFFERENT TAX RATES PREVAIL	PRESENT VALUE OF PROPERTY IN Streets, Highways and Public Places on Basis of Cost of Reproduction. (New)	PRESENT VALUE OF PROPERTY IN Streets, Highways and Public Places. (Abolishing depreciation)	PRESENT VALUE OF PROPERTY outside Streets, Highways and Public Places on Basis of Cost of Reproduction. (New)
Borough of Queens Entire Gas Plant	44,752.65	21,941.76	22,810.89

STATEMENT OF COST TO REPRODUCE NEW PROPERTY IN STREETS, HIGHWAYS, ETC.; VALUE, LESS DEPRECIATION

SCHEDULE K

TO

Defendants Exhibit 89

Defendant's Exhibit 89

16176

QUEENSBORO GAS & Elect.

Received
March 11, 1904,
State Board of
Tax Commissioners,
Albany, N. Y.

Harmon & Mathewson

--------- No. 40 Wall Street,

New York, March 10, 1904.

Benjamin S. Harmon,
Charles F. Mathewson,
Edward J. Patterson
J. Frederick Eagle.

NEWTOWN & FLUSHING GAS COMPANY.

State Board of Tax Commissioners,

Albany, N. Y.

Dear Sirs:-

Referring to our letter of the 7th inst. and affidavit of the Vice-President Thomas therein enclosed, respecting the assessment on franchises for the current year, we beg to add:

We find that the local assessment for "real property of corporations" (that is pipes and mains outside of the public streets), has been increased to $15,000 for 1904, as against $2750 in 1903. On asking of the assessors here an explanation of this fact, they say that they have discovered that a large part of the company's mains are located in ways which have never been dedicated or condemned for public streets, and which cannot be. Consequently, they have assessed these pipes and mains as outside of public high-ways.

This adds a conclusive consideration, we submit, to the application of the company through Mr. Thomas' affidavit to reduce its assessment; since this very fact was stated by

Respondents Exhibit 87

Mr. Thomas in his affidavit, and it would be double taxation for you to assess these pipes as part of the franchises, when they are assessed by the City and recognized to be outside of public high-ways.

Yours truly,

Harmon & Mathewson.

Defendant's Exhibit 89

☞ **NOTE: Use one of these forms for each township, city, and for each ward in a city where the tax rates differ, stating name of district.**

FORM A-1-1904

GAS

REPORT

OF THE

40 Miles #23.009

Newtown and Flushing Gas Company

OF

TANGIBLE REAL PROPERTY

Located in, upon, under or above Streets, Highways and Public Places

---

☞ Pursuant to the provisions of Section 43, Chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office on or before December 1, 1904 3

Defendants Exhibit 89

Tax District of Queens Ward 3

GAS

Land Previous to June 30, 1904.

Report only on property located in, upon, under or above Streets, Highways (including Crossings over 250 ft.) and Public Places

Diameter of pipe inches	Length in Feet: Cast Iron	Length in Feet: Steel and Wrought Iron	Average Age years	Weight per foot	Number	Size of meters	Age years	Number of lots	Age years	Size and Number	Length in feet	Age	Kind	Kind of Paving
3"	6,344	None	Unknown		None	None								
4"	23,857													
6"	31,033													
8"	14,785													
10	1,362													
12	3,564													
	85,934													
4"	4,430	None												
6"	92													

Present value reproduced (new) $ 95,772.64

Present value allowing depreciation $ 21,941.75

Laid from June 30, 1903 to Nov. 1, 1903

Value (new) $ 1067.25

State of New York
County of Kings } ss.

Henry K. Wilson, Vice President of the Newtown and Flushing Gas Company being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

Subscribed and sworn to before me

Defendants Exhibit 89

11

SCHEDULE K

AND SAME OUTSIDE WITH ASSESSMENTS IN EACH TAX DISTRICT

PRESENT VALUE OF PROPERTY *Outside* STREETS, HIGHWAYS AND PUBLIC PLACES. (Allowing depreciation)	ASSESSMENT OF REAL ESTATE in STREETS, HIGHWAYS, ETC., IN 1901	ASSESSMENT OF REAL ESTATE *Outside* STREETS, HIGHWAYS, ETC., IN 1904	REMARKS
33700	75000	32700	The foregoing figures except the last two are necessarily estimated.

Defendant's Exhibit 89

SCHEDULE L

Detailed statement of shares of stock actually owned in other corporations which are taxable on their capital stock and all other non-taxable securities owned.

DESCRIPTION	AMOUNT
None	

SCHEDULE M

STATEMENT IN DETAIL OF RENTALS PAID

NAME OF LESSOR	ANNUAL RENTAL PAID BY LESSEE	PORTION USED FOR PAYMENT OF INTEREST ON DEBT OF LESSOR	PORTION USED FOR PAYMENT OF DIVIDENDS ON CAPITAL STOCK OF LESSOR
None			
Total Amount of Annual Rental.....			

SCHEDULE N

STATEMENT IN DETAIL OF RENTALS RECEIVED

NAME OF LESSEE	THE ANNUAL AMOUNT

SCHEDULE O

DETAILS OF ROADS OWNED AND LEASED

This schedule is applicable only to Railroad Corporations

NAME OF ROAD	FROM	TO	MILES OWNED	MILES LEASED

Total Mileage.....

14

Defendants Exhibit 89
Joseph Hunt Ellard

15

The accompanying blanks are an integral part of this report. A separate blank should be used for *each township, city, and for each ward in a city where the tax rates differ.* Additional blanks will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not contain the proper blanks for the different fields of construction needed to make a satisfactory report, other blanks will be furnished on request, covering surface street railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them

The Law requires that every report made under this section shall have annexed thereto the affidavit of the President, Vice-President, Secretary or Treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK,
County of New York } ss.

Henry R. Wilson, Vice President

of the Newtown and Flushing Gas Company

being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this Company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said Company and the value thereof at the close of the year ending June 30, 1904, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

Henry R Wilson

[L. S.]

Subscribed and sworn to before me this
27th day of November, 1903

Form A

Defendant's Exhibit To

REPORT

OF THE

Newtown and Flushing Gas Company

TO THE

Recorded

State Board of Tax Commissioners

OF THE

STATE OF NEW YORK

FOR THE

Year Ending June 30, 1902

2985

State Board of Tax Commissioners

ALBANY,.....

SIR:

The following forms, prepared in conformity with the requirements of law, are forwarded you for use in preparing the Report of your company required by Section 43, Chapter 712, Laws 1899.

☞ It is requested that you complete and forward such report as required by that act on or before December 1, 1902.

Very respectfully,

STATE BOARD OF TAX COMMISSIONERS.

EXTRACT FROM LAW RELATING TO TAXATION OF SPECIAL FRANCHISES

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under, or above or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosure for electrical conductors and other appurtenances upon, above and under ground, all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through streets, highways or public places; all railroad structures, substructures and superstructures; tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate in, under, above, upon, or through any streets, highways or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

SCHEDULE A

Title of Company Flushing Gas Company

General offices at 97 Main St. Flushing, New York

Date at close of Fiscal Year August 1st

For information concerning this report address Henry R. Wilson Vice President

208 Fifth Ave. New York City

OFFICERS OF THE COMPANY WITH ADDRESS:

President Frank Tilford

34th Street and Broadway, New York City

Vice-President Henry R. Wilson

208 Fifth Ave New York City

Secretary Harry L. Snyder

208 Fifth Ave. New York City

Treasurer

General Manager Vice President Charles Hanna

97 Main Street Flushing, New York

9987

Alfred Adams & Co Ltd

5

SCHEDULE C

Copy of special Law, grant, ordinance or contract or reference to general law under which "special franchise is held, possessed or enjoyed and statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed."

Note: If this information was given in former report and copies filed state such fact, giving only additional rights since last report.

C. Reported Jan 1904

SCHEDULE B

Description of special franchise showing streets, highways or public places possessed or rights enjoyed and in what tax district, or districts same is located.

Note: If this information was given in former report and map filed, state such fact, giving only additional grants since last report.

C. Reported Jan 1904

March 6th, 1902.

Peter Deyo, Esq.,

Secretary-State Board of Tax Commissioners,

Albany, N. Y.

Dear Sir:

The Newtown & Flushing Gas Company, formerly New York & Queens Gas, Electric Light & Power Company, own no electric light plant. The electric light plant reported by the old company is now the property of the New York & Queens Electric Light & Power Company. The Newtown & Flushing Gas Company's office is 41 Wall Street, New York.

Yours truly,

P. F. Wittmer.

Statement of Assets and Liabilities June 30, 1902.

SCHEDULE D

ASSETS	AMOUNT		LIABILITIES	AMOUNT	
Cost of Real Estate & Improvements	Unknown		Capital Stock	300,000	
Cost of Equipment	Unknown		Funded Debt	300,000	
Stock & Bonds of other Companies	None		Accounts and Bills Payable	13,053	69
Material and Supplies	13,376	80	Int. on Funded Debt Due & Acc'd	6,250	
Accounts and Bills Receivable	8,512	96	Rentals Due and Accrued	None	
Cash on hand	26,503	64	Dividends unpaid	None	

Defendant's Exhibit 70

11311

NEWTOWN AND FLUSHING GAS COMPANY.

Received
Dec. 23, 1902.
State Board of
Tax Commission-
ers. Albany, N. Y.

208 5th Avenue.

41 Wall Street, New York, December 22, 1902

Frank Tilford, President,
Henry R. Wilson, Vice-President,
Chas. Thomas, Vice-Pres't & Gen'l Mgr.
H. L. Snyder, Secretary & Treasurer.

State Board of Tax Commissioners,

Albany,

N. Y.

N. Y.

Dear Sirs:-

I am in receipt of your favor of the 17th instant by Secretary Deyo reading as follows:

"In your report, received at this office December 4th, 1902, you have failed to state the value of your capital stock under Schedule E. If there have been no sales, please quote a fair estimated market value.

Under Schedule G you state that you received $50,000 for capital stock. How much stock was sold for that sum?

The facts in reference to the preferred stock issue, sale and value are as follows: In the spring of 1902 it became apparent that the earnings of the Company were insufficient to meet requirements and that it was necessary to provide at least $50,000 additional funds. It was also apparent that in the present condition of the Company's finances, it would be impossible to place either stock or bonds of the Company with the public; and accordingly, as the

Defendant's Exhibit 90

case was imperative, the interests owning the Company conferred and agreed to make up a fund of the above amount for the Company, each interest contributing its pro rata share.

It was at first designed to issue corporate bonds for the amount; but as the property was already covered by two mortgages (See Schedule F), it was finally determined to increase the $300,000 of common stock, by the creation and issue of preferred stock which should go to the interests contributing; and it being illegal to issue stock for less than par, such interests advanced the $50,000 to the Company and received $50,000 of preferred stock at par therefore.

Whether or not said transaction so far as the Company is concerned might technically be termed a "sale" of the stock at that figure, it was not and is not so considered by the parties. The stock could not have been sold to outsiders at any price; it was not considered by the parties as worth par or anything like it. It made no difference to the respective parties contributing to the fund as to what amount of preferred stock they each received, since they contributed and received preferred stock in the same ratio as their previous holdings of common stock, and their relative interests in the property were thus preserved.

So far as I know, and I think I am in a position to know, there is no "market" value whatsoever for either the preferred or common stock of the Company. There have been no sales of either class of stock to my knowledge, except as the

foregoing may be termed a "sale" of preferred stock. It is difficult, therefore, to quote a "fair market value" unless I were to reply "nothing". There is in fact no "market value" for either. If I were to leave out the work "market" I think I would say that the common stock had no value at present, and that the preferredstock might be worth to the holders (but to no one else) not exceeding 25 per cent of par. I may add that the $50,000 fund went chiefly to payment of debts and construction account outside of the streets.

Trusting that this will give you the information required, we remain,

Yours very truly,

Henry R. Wilson,

Vice-President.

Defendant's Exhibit 90

December 17, 1902.

Dictated by J. H. E.

Newtown & Flushing Gas Company,

Henry R. Wilson, Vice-President,

208 Fifth Avenue,

New York City.

Dear Sir:

In your report, received at this office December 4th, 1902, you have failed to state the value of your capital stock under Schedule E. If there have been no sales, please quote a fair estimated market value.

Under Schedule G. you state that you received $50,000 for capital stock. How much stock was sold for that sum?

Yours very truly,

Secretary.

M. F.

CAPITAL STOCK—SCHEDULE E

	No. Shares	Total Par Value	Dividends Declared During Year		Market Value During Year		
			Rate	When Payable	Highest	Lowest	Present
Common issued.....	3000	300,000	None		None as far as known		
Preferred issued	500	50,000					
Total							

FUNDED DEBT—SCHEDULE F

Designation of Lien	Date	Maturity	Amount Outstanding	Interest		Market Value During Year		
				Rate	When Payable	Highest	Lowest	Present
Mortgage subject to a prior mortgage covering the greater part of the company's property securing $103,000 of bonds	August 1, 1903	August 1, 1933	300,000	5%	Feb & Aug	Unknown as no sales Estimated at not over 90% of par		

2996

RECEIPTS	AMOUNT
From Actual Operation	$ 14 028 08
Interest and Dividends	
Rentals	
Advertising	
Sales of Stock	000 25
Sales of Bonds	
Bills Payable	
Other Sources	48 136 54

SCHEDULE G

Statement of Receipts and Disbursements for year ending June 30, 1902.

8

Defendants Exhibit No

9

SCHEDULE G

☞ Report below must be MADE IN DETAIL as called for.

DISBURSEMENTS	AMOUNT $			
Salaries of General Officers		87	224 000	41
Salaries of Clerks and Office Expenses		4	819	95
Law Expenses		1	321	46
Other Operating Expenses		31	762	48
Maintenance		21	754	85
Reconstruction		24	566	67
New Construction (Extension) In streets $		7	445	67
New Construction (Extension) Outside streets $		34	257	83
Rentals				
Interest paid		15	000	
Taxes on Capital Stock and earnings paid Comptroller			237	39
Taxes paid on Special Franchise				
Taxes on Real Estate in this State other than Special Franchise			775	03
Taxes on Personal Estate in this State				
Taxes on Property in Other States				
Payments Covered by Sec. 46, Tax Law. Percentage on Gross Earnings paid Municipality				
Payments Covered by Sec. 46, Tax Law.				
Payments Covered by Sec. 46, Tax Law.				
Payments Covered by Sec. 46, Tax Law. Other Items				
Dividends Paid ..... % Common Stock				
Dividends Paid ..... % Preferred Stock				
Amount Paid for New Street Paving		17	225	40
Surplus		162	165	73
Total				

Received
Feb. 23, 1903.
State Board of
Tax Commissioners.
Albany, N.Y.

Harmon & Mathewson

No. 40 Wall Street.

New York, February 21st, 1903.

Benjamin S. Harmon,
Charles F. Mathewson,
Edward J. Patterson.

J. Frederick Eagle.

In the Matter of the Assessment of the
NEWTOWN AND FLUSHING GAS COMPANY on
Special Franchises for the year 1903.

State Board of Tax Commissioners,

Albany, N. Y.

Dear Sirs:-

Referring to the application filed with you on the 18th instant and the writer's oral statement, in relation to the assessment of the above company for the year 1903, and the points which were raised by your engineer respecting which the writer was not able to answer definitely, but offered to afford you further information, we have to say:

1. The Company has acquired no street rights or franchises since the assessment of 1902; on the contrary certain of its franchises covering much the larger part of its territory have been questioned and are under dispute, as shown in said application.

2. It is true, as the report shows, and as your engineer suggested, that for the year ending June 30. 1902 the mileage of the company's pipes in the streets increased; and if such increased pipe were productive, and if the present cost of pipe could be considered

3000

12168

Lyttenbarr Exhibit 90

10

SCHEDULE K

STATEMENT OF COST TO REPRODUCE NEW PROPERTY IN STREETS, HIGHWAYS, ETC., VALUE LESS DEPRECIATION

NAME OF EACH TOWNSHIP AND CITY WHEREIN LOCATED AND WARDS IN CITY WHERE DIFFERENT TAX RATES PREVAIL	PRESENT VALUE OF PROPERTY in Streets, Highways and Public Places on Basis of Cost of Reproduction (New)	PRESENT VALUE OF PROPERTY in Streets, Highways and Public Places (Allowing depreciation)	PRESENT VALUE OF PROPERTY outside STREETS, HIGHWAYS AND PUBLIC PLACES ON BASIS OF COST OF REPRODUCTION (New)
Borough of Queens	$2,92.48	20836.17	50000
City of Flushing			
	See reports of 1900 and 1901 and 1902		

Defendant's Exhibit 90

a fair average cost or value, and if the company's other mains had not depreciated within the year, the value of the company's total mileage in the streets over that specified in the preceding report might fairly be accepted on the basis mentioned by your engineer.

On this subject, however, we beg to say:

(a) The 8-inch pipe of about a mile was run around the border of the village of College Point to pick up the unconnected ends of 3- and 4-inch pipe, in order to make a better circulation in the company's system and to overcome the complaints of poor pressure. It resulted in substantially no new consumers (probably not over a dozen) and was not a "supply line". Consequently it is virtually non-income producing.

The 6-inch pipe, about two miles, was to connect College Point with Whitestone, through an unproductive stretch. There are only fourteen meters on this line, and it is also, therefore, virtually unproductive.

The 4-inch pipe alone is what may be termed "supply pipe", with an income-producing capacity.

(b) The present price of pipe cannot be called an average or reasonable value therefor. The price of all iron and steel products is at present abnormal. In fact, the present cost of pipe is nearly twice the cost at which it has been procurable, at times within the last ten years.

Consequently we claim that it would be unjust to assess the pipe now as of anything more than the fair average cost in ordinary times; that is to say, at least 33% to 40% below present prices.

(c) The old pipes in the ground we find so rotten and corroded that they are worthless when dug up. They are never worth removing from the ground, and are not removed unless we lay the other pipe in the same tranch, and if removed to make room for other pipe are merely sold for junk in every instance, and sometimes the junkman refuses to pay anything for them even as junk.

The pipes being so old and in this condition, the deterioration for a single year is much greater than would be the case with new pipe; and consequently a very large allowance must be made and is made by us for depreciation on such pipe from year to year.

The foregoing represents the consideration which induced the company's estimate of the aggregate increase in value of its

Defendant's Exhibit 70

S.B. of T. C. 3

pipe lines on June 30, 1902 as compared with June 30, 1901. It is submitted that an increase in the assessment of "special franchises" of nearly 50%, from $54,000 to $80,000, is not sustainable in view of the facts now before the Board, and would be a very serious injustice to the company.

Yours very truly,

Harmon & Mathewson

STATE OF NEW YORK,

City and County of New York, ss;

CHARLES THOMAS, being duly sworn, says: That he is Vice-President and General Manager of the Newtownand Flushing Gas Company, and that the foregoing facts and explanations are true and accurate.

Sworn to before me, this

21st day of February, 1903.

Charles Thomas.

Harry M. Austin,
Notary Public in and for Queens County.
Certificate filed in New York County.

Defendants Exhibit 90

☞**NOTE: Use one of these forms for each township, city, and for each ward in a city where the tax rates differ, stating name of district.**

FORM A-1

Tax District Borough of Queens, City of New York.

GAS

REPORT

39 Miles

OF THE

Newtown & Flushing Gas Company

OF

TANGIBLE REAL PROPERTY

Located in, upon, under or above Streets, Highways, and Public Places

---

☞Pursuant to the provisions of Section 43, Chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office on or before December 1st, 1902.

Yours very truly,

STATE BOARD OF TAX COMMISSIONERS.

b34/8

Defendants Exhibit 90

11

SCHEDULE K

AND SAME OUTSIDE WITH ASSESSMENTS IN EACH TAX DISTRICT.

PRESENT VALUE OF PROPERTY *Outside* STREETS, HIGHWAYS AND PUBLIC PLACES. (Allowing depreciation.)	ASSESSMENT OF REAL ESTATE *In* STREETS, HIGHWAYS, ETC., IN 1902.	ASSESSMENT OF REAL ESTATE *Outside* STREETS, HIGHWAYS, ETC., IN 1902.	REMARKS
32,725	54000	32,725	The foregoing figures except the last two Gas Company Lands necessarily "estimates"
		Including existing rights, as well as taxable property in Chicago in several counties	

GAS

Laid Previous to June 30, 1902. Report only on property located in, upon, under or above Streets, Highways and Public Places.

Diameter of pipe inches	Length in Feet: Cast Iron	Length in Feet: Steel and Wrought Iron	Average Age years	Wt. per foot	Valves and Boxes: Number	Valves and Boxes: Size in inches	Valves and Boxes: Age years	Hydrants: Number	Hydrants: Age years	Service Connections: Size and Number	Service Connections: Length in feet	Service Connections: Age	Service Connections: Kind	Kind of Paving
3"	63,444	7lone	Unknown		7lone									7lone
4"	70,238	"	"	"	"									
6"	26,728	"	"	"	"									
8"	8,494	"	"	"	"									
10"	7,264	"	"	"	"									
12"	1,026	"	"	"	"									

Laid from June 30, 1902, to Nov. 1, 1902

4"	10,356	7lone	about 18	7lone	"	"	"	"	"	"	91	3	"	7lone
6"	4293	"	30	"	"	"	"	"	"	"	33	6	"	
8"	6066	"	11	"	"	"	"	"	"	"	11	12	"	
3"	3,198	"	35	"	"	"	"	"	"	"	11	12	"	
12"	2,184	"	70	"	"	"	"	"	"	"	3	12	"	

Present value reproduced (new) $ 824,3.18

Present value allowing depreciation, $ 208,26.72

Defendants Exhibit 90

3004

State of New York } ss:

County of New York }

Gas Company, the Plaintiff herein, and as such is duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

Subscribed and sworn to before me this 22 day of December 1902

Notary Public

Wofer Auto's & Rubt 90

Detailed statement of shares of stock actually owned in other corporations which are taxable on their capital stock and all other non-taxable securities owned

SCHEDULE L

DESCRIPTION	AMOUNT
None	

Road Corporations.

DETAILS OF ROADS OWNED AND LEASED

SCHEDULE M

FROM	TO	MILES OWNED	MILES LEASED

Defendant's Exhibit 91

Form A

B 10054

REPORT

OF THE

Newtown and Flushing Gas Company

TO THE

Corrected

State Board of Tax Commissioners

To be filed

OF THE

STATE OF NEW YORK

FOR THE

Year Ending June 30, 1901

6008

EXTRACT FROM LAW RELATING TO TAXATION OF SPECIAL FRANCHISES

State Board of Tax Commissioners

Defendants' Ex Exhibit 91

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SCHEDULE A

Title of Company Newtown and Flushing Gas Company

General offices at 97 Main Street, Flushing, N.Y.

Date at close of Fiscal Year June 30

For information concerning this report address

Henry R. Wilson, Vice President

41 Wall Street, New York City

OFFICERS OF THE COMPANY WITH ADDRESS:

President Frank Tilford

34th Street & Broadway, New York City

Vice President Henry R. Wilson

41 Wall Street, New York City

Secretary Harry L. Snyder

41 Wall Street, New York City

Defendant's Exhibit 71

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SCHEDULE C

Copy of special Law, grant, ordinance or contract or reference to general law under which "special franchise is held, possessed or enjoyed and statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed."

Note: If this information was given in former report and copies filed state such fact, giving only additional rights since June 30, 1900.

Those reported in 1900.

Also those reported in 1900 by the College Point Gas Company, which was merged into the Newtown and Flushing Gas Company in the spring of 1901

CAPITAL STOCK—SCHEDULE E

	No. SHARES	TOTAL PAR VALUE	DIVIDENDS DECLARED DURING YEAR		MARKET VALUE DURING YEAR		
			RATE	WHEN PAYABLE	HIGHEST	LOWEST	PRESENT
Common issued	3,000	$300,000			Par		
Preferred issued							
Total							

FUNDED DEBT—SCHEDULE F

DESIGNATION OF LIEN	DATE	MATURITY	AMOUNT OUTSTANDING	INTEREST RATE	INTEREST WHEN PAYABLE	MARKET VALUE DURING YEAR HIGHEST	LOWEST	PRESENT
Secured by mortgage dated to secure mortgages covering the part of the company's property	Aug 1, 1900	Aug 1, 1930	$300,000	5%	J & J	Unknown no sales known. Estimate of not over 90% of par		

3014

Statement of Assets and Liabilities June 30, 1901.

SCHEDULE D

ASSETS	AMOUNT	LIABILITIES	AMOUNT
Cost of Real Estate & Improvem'ts	Unknown	Capital Stock	300,000 00
Cost of Equipment	Unknown	Funded Debt	300,000 00
Stock & Bonds of other Companies	None		
Material and Supplies	3,168 04	Accounts and Bills Payable	12,000 26
Accounts and Bills Receivable	29,546 94	Int. on Funded Debt Due & Accr'd	4500
		Rentals Due and Accrued	None
Cash on hand	4,102 12	Dividends unpaid	None

Defendant's Exhibit 91

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SCHEDULE G

Report below must be made in detail as called for.

DISBURSEMENTS		AMOUNT
Salaries of General Officers		$ 1 974 93
Salaries of Clerks and Office Expenses		3 397 72
Law Expenses		
Other Operating Expenses		17 453 01
		22 825 66
Maintenance		7 777 18
Reconstruction		17 052 53
New Construction (Extension)	In streets $	
	Outside streets $	
Rentals		
Interest paid		5 075
Taxes on Capital Stock and earnings paid Comptroller		57 70
Taxes Paid on Special Franchise		
Taxes on Real Estate in this State other than Special Franchise		468 66
Taxes on Personal Estate in this State		
Taxes on Property in Other States		
Payments Covered by Sec. 46, Tax Law.	Percentage on Gross Earnings paid Municipality	
	Other Items	
Dividends Paid ....% Common Stock		
Dividends Paid ....% Preferred Stock		
Amount Paid for New Street Paving		

Defendants' Ex Exhibit 91

FORM A-1 — 8445?

Tax District Borough of Queens – New York City

Note. Use one of these forms for each Tax District

GAS

REPORT

OF THE

Newtown and Flushing Gas Company

27.7 Miles Pipe

OF

TANGIBLE REAL PROPERTY

Located in, upon, under or above Streets, Highways and Public Places

☞ Pursuant to the provisions of Section 43, Chapter 712, Laws of 1899, you are requested to make report of the matters contained in the within blank, and return to this office on or before December 1st, 1901

Yours very truly,

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SCHEDULE K

STATEMENT OF COST TO REPRODUCE NEW PROPERTY IN STREETS, HIGHWAYS, ETC., VALUE LESS DEPRECIATION

NAME OF EACH TOWNSHIP AND CITY WHEREIN LOCATED AND WARDS IN CITY WHERE DIFFERENT TAX RATES PREVAIL.	PRESENT VALUE OF PROPERTY in *Streets, Highways and Public Places* on BASIS OF COST OF REPRODUCTION (New)	PRESENT VALUE OF PROPERTY *in streets, Highways and Public Places.* (Allowing depreciation.)	PRESENT VALUE OF PROPERTY *outside* STREETS, HIGHWAYS AND PUBLIC PLACES ON BASIS OF COST OF REPRODUCTION (New)
Borough of Queens City of New York	50,801.76	20,015.89	30,501
	Analyzed as follows:	Analyzed as follows:	Analyzed as follows:
	Newtown & Flushing Gas Co. before merger $41,801.76	Newtown & Flushing Gas Co before merger $16,469.89	Newtown & Flushing Gas Co before merger $25,332
	College Point Gas Company before merger $4,000	College Point Gas Company before merger $3,546	College Point Gas Company before merger $5,169
	The reports and affidavits relating to assessment for 1901, as to age and bad condition of mains of both companies		The operating plant College Point Gas Co abandoned & dest. Current year – con. all the property

GAS

Last Previous to June 30, 1901. Report only on property located in open, used or active Streets, Highways and Public Places.

State of New York
County of New York } ss.

Henry A. Wilcox, President of the Newtown and Flushing Gas Company,
being duly sworn, deposes and says that the foregoing statements have been compiled from the books and records of this company and from facts in the possession of its officers and employees, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said company and the value thereof as to all the matters herein set forth, to the best of my knowledge and belief.

Subscribed and sworn to before me this
21st day of November 1901

Henry A. Wilcox

Notary Public

Defendant's Exhibit

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SCHEDULE K

AND SAME OUTSIDE WITH ASSESSMENTS IN EACH TAX DISTRICT.

PRESENT VALUE OF PROPERTY OUTSIDE STREETS, HIGHWAYS AND PUBLIC PLACES. (Allowing depreciation.)	ASSESSMENT OF REAL ESTATE IN STREETS, HIGHWAYS, ETC., IN 1901.	ASSESSMENT OF REAL ESTATE OUTSIDE STREETS, HIGHWAYS, ETC., IN 1901.	REMARKS.
23000	48900	$22735	The foregoing figures in the
	including both	Of this sum	first four columns are the
Analyzed as	intangible right	$22210 was	best estimate that the Com-
follows:	and tangible	assessed in the	pany is able to make.
Newtown & Flushing	property included	name of the	
Gas Co before merger	in the Company's	Newtown and	
$22700	"special franchise"	Flushing Gas	
College Point Gas	Of the above	Company and	
Company before	$39,000 was assessed	$525 in the name	
merger $300	in the name of	of the College	
	the Newtown and	Point Gas	
nt of the former	Flushing Gas	Company	
mpany has been	Company and		
royed during the	$9900 against		
statutory virtually	the College Point		
outside Streets as	Gas Company		

Detailed statement of shares of stock actually owned in other corporations which are taxable on their capital stock and all other non-taxable securities owned.

SCHEDULE L

DESCRIPTION	AMOUNT
None	
Total	
Value of tangible personal property, material, supplies, cars, mules, pipes, etc.	
Total assessment of personal property	
Is there any contest on 1921 personal assessment?	

3021

[redacted]

13

STATEMENT IN DETAIL OF RENTALS PAID

SCHEDULE H

NAME OF LESSOR	ANNUAL RENTAL PAID BY LESSEE	PORTION USED FOR PAYMENT OF INTEREST ON DEBT OF LESSOR	PORTION USED FOR PAYMENT OF DIVIDENDS ON CAPITAL STOCK OF LESSOR
None			
Total amount of Annual Rental.....			

SCHEDULE J

STATEMENT IN DETAIL OF RENTALS RECEIVED

NAME OF LESSEE	THE ANNUAL AMOUNT
None	

Defendant's Exhibit 91

The accompanying blanks are an integral part of this report. A separate blank should be used for *each township, city, and for each ward in a city where the ward rates differ.* Additional copies will be furnished if a sufficient number does not accompany the report.

They are intended for detailed data showing character of construction. Whenever there are peculiar conditions that tend to cause more rapid depreciation than ordinary, or any special conditions that tend to make the property less valuable, additional data should be furnished.

If any report does not conain the proper blanks for the different fields of construction needed to make a satisfactory report other blanks will be furnished on request, covering surface street railroads, elevated railroads, surface steam railroads, telegraph, telephone, compressed air, oil, steam heat, electric light and power and subway construction. Other special blanks will be prepared if the nature of any special construction requires them.

The Law requires that every report made under this section shall have annexed thereto the affidavit of the President Vice-President, Secretary or Treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same.

STATE OF NEW YORK,
County of New York } ss.

Henry R. Wilson Vice President

of the Newtown and Flushing Company

being duly sworn, deposes and says that the foregoing Statements have been compiled from the Books and records of this Company, and after careful examination of the same, declares them to be a true, full and correct statement of the property of said Company and the value thereof at the close of the year ending June 30, 1901, as well as of its financial condition and affairs on the said date, to the best of my knowledge and belief.

Henry R. Wilson

[L. S.]

Subscribed and Sworn to before me this 29th day of November 1901

J. Frederick Eagles
Notary Public, New York County
Certificate Filed in Kings and Queens Counties
County, N. Y.

Defendant's Exhibit 91

DETAILS OF ROADS OWNED AND LEASED.

SCHEDULE M

From	To	Miles Owned	Miles Leased
	Total Mileage		

Applicable only to Rail Road Corporations.

York, —— —, 191–. The Assessed Valuation of the Property referred to in this petition is hereby fixed at $550,000. In Board. Jan. 30, 1917. Approved: T. P. W., Commissioner of Taxes & Asses.

2967 DEFENDANTS' EXHIBITS A-73 TO A-88, INCLUSIVE.

Report of the New York and Queens Gas Company to the Tax Department for the years 1905 to 1919, inclusive.
Not printed.

(Here follow Defendants' Exhibits Nos. 89, 90, and 91, marked pages 2968 to 3024, inclusive.)

3025 *Affidavits Accompanying Foregoing Exhibits.*

Received March 21, 1902. State Board of Tax Commissioners, Albany, N. Y.

Copy.

In the Matter of the Assessment of the NEWTOWN AND FLUSHING GAS COMPANY on Special Franchises for the Year 1902.

STATE OF NEW YORK,
County of New York, ss:

Harry L. Snyder, being duly sworn, says: I am the Secretary of the Newtown and Flushing Gas Company.

The figures on page 9 of the last report of said company were furnished by me. The amount $17,052.53 opposite the word "Reconstruction" includes both reconstruction and new construction both within and without the limits of the public streets.

The greater part thereof represents improvements to the Company's gas plant at Flushing outside the streets in the shape of new holders and additional furnishings, machinery, etc.

HARRY L. SNYDER.

Sworn to before me this 26th day of March, 1902.

J. FREDERICK EAGLE,
Notary Public, New York County.

Certificates filed in Kings and Queens Counties.

3026 In the Matter of the Assessment of the NEWTOWN AND Flushing Gas Company on Special Franchises for the Year 1902.

STATE OF NEW YORK,
City and County of New York, ss:

Charles G. M. Thomas, being duly sworn, says: I am the Vice-President and General Manager of the Newtown and Flushing Gas Company. I have read the affidavit of Harry L. Snyder hereto annexed, and his statement in reference to the item of $17,052.53 is entirely correct. The amount of new construction in said figures is, so far as my knowledge on the ground goes, extremely small. As to the figures of the value of the existing mains of the Company as stated in the Company's last report, it is my opinion that said figures are a very full statement of the value of such mains. The mains of the Company have been in the ground most of them for forty-five or fifty years and are as rotten as gas mains can be and still be in service. In digging up I find them of all sizes and in some places different sizes jumbled together, and laid without any apparent plan, so that they are much more expensive to the Company in use than mains properly laid. Besides this a large part

of them are three-inch mains and under, which in present conduct of the gas business are obsolete and have been for at least fifteen or twenty years.

(Signed) CHARLES G. M. THOMAS.

Sworn to before me this 26th day of March, 1921.

FREDERICK EAGLE,
Notary Public.

Certificates Filed in Kings and Queens Counties.

3027 Received Mar. 18, 1902. State Board of Tax Commissioners, Albany, N. Y.

In the Matter of the Application of the NEWTOWN AND FLUSHING Gas Company for the reduction of the Assessment on Its "Special Franchises" for the Year 1902.

CITY AND COUNTY OF NEW YORK, *ss:*

Henry R. Wilson, being duly sworn says:

I am the Vice-President of the Newtown and Flushing Gas Company, and apply for a reduction of the assessment of special franchises of said company for the year 1902 at the sum of $58,150 on the following separate grounds:

1. That the act and amendments thereof imposing a tax on such special franchises is and are in toto unconstitutional and invalid.

2. That the provision of said acts authorizing and empowering this board to assess the value of such special franchises are unconstitutional and invalid.

3. That the assessment above mentioned is excessive.

In the year 1901 said special franchises were owned in part by said Newtown and Flushing Gas Company and in part by the College Point Gas Company, said College Point Gas Company having been merged into said Newtown and Flushing Gas Company in or about March, 1901.

Such special franchises for said year 1901 were assessed by this Board as follows:

Newtown and Flushing Gas Company	$39,000.
College Point Gas Company	9,900.
Total	$48,900.

3028 There has been no change in the character, amount or value of said "special franchises" since the second Monday of January, 1901; except that the mains, fixtures and other tangible property in the street included therein have increased in value in the aggregate (as shown by the Newtown and Flushing Gas Company's report last heretofore submitted from $19,177.05 to $20,-

015.89, to wit: by the sum of $838.84, and this added to the assessment of said special franchises for the year 1901, to wit: $48,900 makes the total value of said special franchises at present (assuming the assessment for 1901 to be correct) $49,738.84.

The condition of the mains of the Newtown and Flushing Company (including those formerly of the College Point Gas Company) has been set out in papers filed with the commission; and I refer to and repeat the allegations of said papers as part of this application.

Said Newtown and Flushing Company applies for the entire cancellation of said assessments on the first two grounds above stated; and separately by reason of the facts hereinbefore set forth and referred to said company applies for the reduction of said assessment to not exceeding the sum of $49,738.84, if it shall not be wholly canceled. Deponent urges on information, belief and the best investigation that he is able to make, that the present value of such "special franchises" does not exceed at the outside said sum of $49,738.84.

(Signed) HENRY R. WILSON.

Sworn to before me, this 17th day of March, 1902.

WILLIAM C. RADEN,
Notary Public, #5, *N. Y. Co., N. Y.*

3029 Received Feb. 18th, 1903. State Board of Tax Commissioners, Albany, N. Y.

In the Matter of the Assessment of the NEWTOWN AND FLUSHING GAS COMPANY on Special Franchises for the Year 1903.

COUNTY OF NEW YORK, *ss.*:

Charles Thomas, being duly sworn, says: that he is Vice-President and General Manager of the Newtown and Flushing Gas Company and that in behalf of said company he makes application for the cancellation of the assessment of $80,000 heretofore notified to said Company on the following separate grounds:

1. That the provisions of statute under which said assessment has been made are unconstitutional and invalid.

2. That the State Board of Tax Commissioners had and has no legal or constitutional power to make said assessment.

3. That said assessment is excessive on the facts now and heretofore presented to the State Board of Tax Commissioners, and higher proportionately than that of other property on the same roll made by the same officers.

There has been no substantial increase in the value of the tangible property of the company within the street limits and included in the definition of "Special Franchises" since the assessment of 1902; nor has there been any increase whatever in the value of the intangible

franchises of the company since the assessment of 1902. On the contrary doubt has been thrown on the validity of the company's franchises in the streets for the entire Second Ward (former
3030 Town of Newtown) and a considerable part of the Third Ward (former Town of Flushing) of the Borough of Queens, comprising altogether about three-fourths of the entire territory covered by the franchises claimed by this Company; the Corporation Counsel of the City of New York having declined to give an opinion that the franchises from the Board of Highway Commissioners, such as are held by this Company, are valid, without concurrence of other municipal officers.

Deponent respectfully submits that in these circumstances said franchises should not be in any event considered, or certainly not considered at a full and certain value.

Deponent also shows that while the company has made considerable increases in its reconstruction account, said reconstruction is chiefly of operating plant outside of the streets; and that the small amount expended for new construction and reconstruction within the street lines is largely offset by the continued depreciation of the old pipes and plant of the constituent companies which the Newtown and Flushing Gas Company succeeded, which were both incorporated nearly fifty years ago, and whose pipes were largely of obsolete sizes, rotten, and constantly giving out.

Deponent believes that the assessed value of the special franchises, tangible and intangible, should not, therefore, exceed that for the year 1902, even should objections "1," and "2," above be overruled by the Board.

(Signed):

CHARLES THOMAS.

Sworn to before me this 17th day of February, 1903.

FREDERICK EAGLE,
Notary Public, New York County.

3031 Received Mar. 8, 1904. State Board of Tax Commissioners, Albany, N. Y.

State Board of Tax Commissioners.

In the Matter of the Assessment of the NEWTOWN AND FLUSHING GAS COMPANY for the Year 1904.

STATE OF NEW YORK,
City and County of New York, ss:

Charles Thomas, being duly sworn, says: I am Vice-President and General Manager of the Newtown and Flushing Gas Company.

Said company operates in the Third Ward of the Borough of Queens, to wit: the territory formerly known as the Town of Flushing.

The assessment against the Company by the Commissioners for

1903 was $75,000; while for 1904 it is fixed at $104,500, being a
increase of nearly fifty per cent. The increase from 1902 to 190
was also nearly fifty per cent; so that the present assessment is pra
tically double that of two years ago.

As to the financial condition of the company it will be observe
that the last report before the one under consideration, showed
surplus of $17,225.40; while the present report shows a surplus o
only $1,296.09 for the year, after payment of $3,000 in dividend
The payment of dividends does not, therefore, necessarily indica
an improved financial condition. Theretofore earnings were used fo
construction.

3032 It will be observed that on November 1st, 1902, the feet o
main in the streets was specified as 204,203; and on the firs
day of November, 1903, as 211,445. The increase of property in th
streets is therefore insignificant. Further than this, the Compan
has discovered that about 14,000 feet of its mains heretofore report
as within a public street are located in tracts recently improved whi
are not public streets, having never been either dedicated or co
demned for this purpose. This is more than double the amount o
increased mileage between the last two reports; and while I cann
state in detail at the moment, I have ascertained that there are othe
locations of the same character where our mains are not in publ
streets. Furthermore, as stated in previous affidavits a large propo
tion of the company's mains are of great age, some of them runnin
back some fifty years, and they are constantly and increasingl
deteriorating in value from year to year.

Furthermore, within the last year the company has completed
new production plant at large expense, which has necessarily im
proved to that extent the economy of manufacture of the company
product. This naturally has a beneficial effect upon the company
finances, but it will at once be seen that such effect is not due to a
increase in the company's franchises in public streets, tangible o
intangible.

Indeed, the local assessment of the company's plant outside o
the street between 1902 and 1903, was increased seventy-five per ce
on account of these very improvements, and an increase of the asse
ment of the company's franchises by reason of results flowing fro
such improvements would amount to a double taxation.

It is to be noted that the company is not operating in th
3033 entire Borough of Queens, but only in a small part of th
Third Ward of said Borough. Said Ward altogether do
not occupy more than about one-fourth of the total area of sa
Borough. In said Third Ward the population is less dense than i
any other part of the greater City of New York; and gas is made an
furnished from our own generators, while in most of the rest of th
Borough of Queens gas is furnished from tanks of larger compani
supplying a dense population in other parts of the City.

The company respectfully contends, therefore, that its assessme
should not be increased over last year, which the company consider
an excessive increase at that time over the previous years.

CHARLES THOMAS

efore me this 7th day of March, 1904.

J. FREDERICK EAGLE,
Notary Public, New York County.

ed Mar. 15, 1905. State Board of Tax Commissioners, Albany, N. Y.

State Board of Tax Commissioners.

of the Special Franchise Assessment of the NEW YORK AND QUEENS GAS COMPANY.

omas, being duly sworn, says that he is the Vice Presi-neral Manager of the New York and Queens Gas Com-Company operates only in the Third Ward of the Bor-ens, to wit, the territory formerly known as the town and owns no franchises or property other than those ned and reported by the Newtown and Flushing Gas hich was merged into the New York and Queens Gas July, 1904.

l franchise assessment against the Company for 1904 while for 1905 it is assessed at $110,000., an increase In 1902 it was $54,000., so that in two years the State essors has increased the assessment of the Company's ise about 105%, although its franchises are absolutely hey were in 1902. As will appear in the reports filed value of property in streets, highways and public places ost of reproduction was $52,912.48, and allowing for was $20,826.77, whereas in 1904 the present value on f reproduction was $60,047. and allowing for depreciа-829.

ear by all of the Company's reports that the Company arging its manufacturing plant rather than increasing of its property in the streets, highways and public so that any betterment which may appear in the ny's financial condition is due not to the enlarge-of its franchises, but to improving, modernizing and plant.

ear from the two last reports filed, the gross receipts $118,532.38 whereas for 1904 the gross receipts were 0.91. In 1903, the amount received from actual opera-964.98, whereas in 1904 it was $97,744.64, or an in-$5,000. This increase from actual operation is not ncreased franchises, but to the perfecting of its plant. for the increase in the surplus and dividends for the horoughly explained by "Schedule G" on the 9th page . In 1903 the Company paid for maintenance $12,-for reconstruction $14,792. making a total of $26,-eas in 1904 the total paid for said items was but owing that in 1903 there was expended for mainte-construction $24,540.30 more than in 1904. It is refore, that in 1903 instead of paying dividends upon tock and accumulating surplus the Company expended

funds upon reconstruction and improving its system, which funds would otherwise have been applicable to dividends and surplus. In 1904 the Company was assessed on the reconstruction and improvement of 1903 as aforesaid, and the fact that it did not expend so large an item in 1904 as in 1903 for maintenance and reconstruction cannot, of course, be considered an increase in the value of the Company's franchises.

Many of the streets in the Third Ward of the Borough of Queens are owned by the abutting property owners, and have never been dedicated or taken by the City, and the Commissioners of Taxes of the City of New York are now taxing the property in such undedicated streets as "Real Estate of Corporations". This Company pays in its Special Franchise Report has always reported the property in such undedicated streets as though it were property taxable under its special franchises, but in view of the action of the Local Assessors, should the State Board of Tax Commissioners assess such property it will result in double taxation.

It should be noted that the Company is not operating in the entire Borough of Queens but only in a small part of the Third Ward of the Borough. Said Ward altogether does not occupy more than one quarter of the total area of said Borough. In said Third Ward the population is less dense than in any part of the City of New York, and the Company furnishes and makes its gas in its own generators while in most of the rest of the Borough of Queens gas is furnished from the tanks of other Companies supplying a vast amount to the population of the rest of the City.

As stated in previous affidavits and reports, a large proportion of the Company's mains are of great age, some of them running back some fifty years, and they are constantly and increasingly deteriorating in value from year to year.

It should be borne in mind that the earning capacity of the Company has been increased by reason of the construction, reconstruction and now construction both upon private property and in streets highways and public places, and that the Company having been assessed in previous years upon such construction in the streets, highways and public places any increased assessment on account of increased earnings by reason of such construction would result in double taxation, first upon the construction itself, and secondly upon the natural result thereof, to wit, increased earnings.

In view of the above facts the Company contends that the 3037 assessment of its Special Franchises should not be increased over last year, which the Company considered an excessive increase at that time over previous years.

(Signed) CHARLES THOMAS

Sworn to before me this 14th day of March, 1905.

THOMAS ROBINSON,
Notary Public, New York County.

(Here follow Defendants' Exhibits Nos. 92a, 93a, 94a, 95a, marked pp. 3038 to 3041, inclusive.)

Defendants Exhibit A 92

New York & Queens Gas Co.
v. Newton et al
Schedule No. 8

CHARGES TO RESERVES, SURPLUS, AND OTHER ACCOUNTS ON ACCOUNT OF FIXED CAPITAL CREDITS

(A) SUMMARY BY YEARS

Year	Total fixed capital credits	Charged to -- Accrued amortization of capital	Renewals and replacements-Plant withdrawn from service	Corporate surplus or deficit	Materials and supplies	Recoveries* and reductions in cost	Consumers	Operating accounts
	A	B	C	D	E	F	G	H
1909	$3,461.02	$1,596.53	.....	.....	$207.00	(a) $729.47	$852.58	$75.44
1910	1,357.56	400.00	.....	.....	.....	277.63	622.01	57.92
1911	12,791.88	2,338.00	.....	$8,866.60	348.00	351.58	887.70	.....
1912	2,146.55	413.92	.....	455.68	503.25	.....	773.70	.....
1913	2,272.90	(b) 1,413.63	.....	.....	.....	135.00	724.27	.....
1914	691.84	56.76	.....	.....	.....	133.75	501.33	.....
1915	2,162.66	.....	$1,652.77	.....	.....	140.60	355.75	13.54
1916	6,735.73	.....	(c) 5,549.57	.....	.....	510.58	675.58	.....
1917	5,402.30	.....	3,966.88	.....	.....	50.00	1,385.42	.....
1918	15,511.38	.....	13,081.02	.....	.....	.....	1,970.36	460.00
1919	17,875.80	.....	10,086.41	.....	.....	(a) 1,576.95	5,518.66	693.78
Total	$70,409.62	$6,218.84	$34,336.65	$9,322.28	$1,058.25	$3,905.56	$14,267.36	$1,300.68

* Cash and charges to others.

(B) SUMMARY BY ACCOUNTS

	A	B	C	D	E	F	G	H
Fixed Capital, Dec. 31, 1908	$42,006.53	$4,905.25	$25,142.82	$9,322.28	$1,031.00	$1,569.85	$35.33	.....
Fixed Cap. since 1908								
and devoted to gas oper'ns	29.75	.....	.....	.....	.....	29.75	.....	.....
General equipment - office	143.02	.....	143.02	.....	.....	.....	.....	.....
General equipment - store	453.67	.....	453.67	.....	.....	.....	.....	.....
General equipment - stable	4,510.57	1,256.83	3,033.74	.....	.....	220.00	.....	.....
Works and station structures	25.00	.....	.....	.....	.....	25.00	.....	.....
Holders	12.95	.....	.....	.....	.....	.....	.....	12.95
Furnaces, boilers & accessories	57.92	.....	.....	.....	.....	.....	.....	57.92

1914	691.84	56.76	.....	.....	.....	133.75	501.33	....
1915	2,162.66	.....	$1,652.77	.....	.....	140.60	355.75	13
1916	6,735.73	.....	(c) 5,549.57	.....	.....	510.58	675.58	....
1917	5,402.30	.....	3,966.88	.....	.....	50.00	1,385.42	....
1918	15,511.38	.....	13,081.02	.....	.....	.....	1,970.36	460.
1919	17,875.80	.....	10,086.41	.....	.....	(a) 1,576.95	5,518.66	693.
Total	$70,409.62	$6,218.84	$34,336.65	$9,322.28	$1,058.25	$3,905.56	$14,267.36	$1,300

* Cash and charges to others.

(B) SUMMARY BY ACCOUNTS

	A	B	C	D	E	F	G	H
Fixed Capital,Dec.31,1908	$42,006.53	$4,905.25	$25,142.82	$9,322.28	$1,031.00	$1,569.85	$35.33	....
Fixed Cap. since 1908								
Land devoted to gas oper'ns	29.75	.....	.....	.....	.....	29.75	.....	....
General equipment - office	143.02	.....	143.02	.....	.....	.....	.....	....
General equipment - store	453.67	.....	453.67	.....	.....	.....	.....	.....
General equipment - stable	4,510.57	1,256.83	3,033.74	.....	.....	220.00	.....	.....
Works and station structures	25.00	.....	.....	.....	.....	25.00	.....	.....
Holders	12.95	.....	.....	.....	.....	.....	.....	12.
Furnaces,boilers & accessories	57.92	.....	.....	.....	.....	.....	.....	57.
Steam engines	368.37	.....	350.00	.....	.....	.....	.....	18.
Misc. power plant equipment	11.90	.....	.....	.....	.....	11.90	.....	.....
Water-gas sets & accessories	134.12	.....	90.00	.....	.....	.....	.....	44.
Purification apparatus	1,235.45	.....	1,229.00	.....	.....	6.45	.....	.....
Accessory equipment at works	662.08	.....	662.08	.....	.....	.....	.....	.....
Trunk lines and mains	1,979.52	.....	71.26	.....	.....	1,908.26	.....	.....
Gas services	14,232.03	.....	.....	.....	.....	.....	14,232.03	.....
Meters	1,712.68	56.76	1,521.57	.....	.....	134.35	.....	.....
Gas engines and appliances	2,013.29	.....	845.97	.....	.....	.....	.....	1,167.
Gas tools and implements	148.77	.....	148.77	.....	.....	.....	.....	.....
Other tangible gas capital	662.00	.....	634.75	.....	27.25	.....	.....	.....
Laboratory equipment	10.00	.....	10.00	.....	.....	.....	.....	.....
Total	$70,409.62	$6,218.84	$34,336.65	$9,322.28	$1,058.25	$3,905.56	$14,267.36	$1,300.

(a) Includes contributions by realty companies to extend mains for the development of their property,1909,$200;1919,$
(b) There was also charged to ~~xxix~~ Accrued Amortization of Capital, $180 credited to Materials and supplies, Gas Arcs.
(c) There was also charged Accrued Amortization of Capital, $647.80 credited to Materials and supplies, Gas Arcs.

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7/31/16
iron and steel pipes in
& holder plants. 8/1/
of company, its operati
made to increase serv
loor
ion projects.
e capital investment
ms, $106.92;
t.05;Gas Connection,$1
$15.59; Gas connection
. 1 to Dec. 31,1918,
ers, $2.91;
s in Douglaston Manor
sion
r bill of N.Y.Edison
r bill of N.Y.Edison
e appeal, 429.90;
g
g works
r bill of N.Y.Edison
ite for Douglaston
U P E R I N T E N D E

Defendant's Exhibit A 943

N. Y. & Queens
Gas Co. v. Newton, et al
Schedule No. 14

ANALYSIS OF ACCOUNT INTEREST DURING CONSTRUCTION

Folio	Date	Explanation			Dr.
J 91	Dec. 1915	Interest on money borrowed from Consolidated Gas Co. for payments on new holder as follows:			$402.97
		$17,154.70	91 days	$256.26	
		2,198.33	64 days	23.12	
		22,136.17	34 days	123.59	
J 193	Nov. 1919	Interest on money borrowed from Consolidated Gas Co. for 16" mains and Douglaston Extension:			$1,152.32
		$50,000	Aug. 29	91 days	$747.94
		50,000	Oct. 20	42 days	345.20
		40,000	Nov. 22	9 days	59.18
			Total		$1,555.29

New York & Queens Gas Co.
v. Newton et al
Schedule No.14

ANALYSIS OF ACCOUNT "ENGINEERING AND SUPERINTENDENCE"

Journal Folio No.	Date	Particulars		Amount	Distribution by Projects: Douglaston Extension	Flushing Works	Other
198	August 31, 1916	Services of engineers and superintendence on construction projects to 7/31/16		$1,408.48			$1,408.48
254	Dec. 31, 1916	Services and expenses of Prof. Ganz and staff in testing corrosion of iron and steel pipes in soil		4.17			4.17
291	Dec. 31, 1916	Services of engineers and superintendence on construction projects, mfg.& holder plants, 8/1/16 to 12/31/16		1,938.51			1,938.51
340	Aug. 22, 1917	D. C. & W. B. Jackson - survey of production and distribution systems of company, its operating methods and territory served, to ascertain what changes should be made to increase service to large industrial consumers		5,000.00			5,000.00
389	Dec. 31, 1917	Special services at gas works	(C)	500.00			500.00
408	Dec. 31, 1917	Services of engineers, draughtsmen, etc. on Flushing generator house floor		9.21		$9.21	
441	April 30, 1918	Services of engineers and superintendence in connection with construction projects, manufacturing and holder plants, 1/1 to 12/31/17		258.91			258.91
465	July 1, 1918	Services rendered in the matter of Douglaston Gas Case	(D)	750.00	(a)$750.00		
465	June 29, 1918	Time spent by J. K. Crowell for April, May and June, 1918, to determine capital investment involved in extension to Douglaston	(A)	252.70	(a) 252.70		
466	July 9, 1918	Levels on Jackson Avenue, Bayside - survey	(B)	25.00	25.00		
V.9718	June 15, 1918 P.C.	Auto trip expense - Douglaston Case	(B)	50.00	50.00		
V.9733	June 20, 1918 P.C.	Expenses - Douglaston Case	(B)	20.00	20.00		
48	Dec. 31, 1918	Services of engineers, draughtsmen, etc., Dec., 1918, on Gas Connections, $106.92; Steam Connections, $15.64 - Flushing works		122.56		122.56	
58	Jan. 31, 1919	P. C. disbursement in connection with gas connections		1.05			1.05
58	Jan. 31, 1919	Services of engineers, draughtsmen, etc., Jan.,1919-New Wire Fence, $4.05;Gas Connection,$123.45 Steam Connections, $20.77; Well Pump, $13.49 - Flushing		161.76		161.76	
69	Feb. 28, 1919	Services of engineers, draughtsmen, etc., Feb.,1919, Photos of works, $15.59; Gas connections, $63.43 - Flushing works		79.02		79.02	
81	April 30, 1919	Services of engineers and superintendence on construction projects Jan. 1 to Dec. 31,1918, manufacturing and holder plant		250.32			250.32
93	April 30, 1919	Services of engineers, draughtsmen,etc., April, 1919, Douglaston matters, $2.91; Flushing appraisal, $111.89; Boiler Feed,W.H.,$31.89		146.69	2.91	111.89	31.89
93	April 30, 1919	Expert services and expenses, Bill of J. B. Klumpp, 4/16/19 as witness in Douglaston Manor Case		371.00	371.00		
93	April 30, 1919	P. C. expenses of Herbert Alrich		5.00			5.00
96	May 23, 1919	Expenses of Crowell, Neth Bradley, Macbeth & Brown on Douglaston extension	(A)	648.89	648.89		
107	May 31, 1919	Survey of electrolytic conditions between Bayside and Douglaston as per bill of N.Y.Edison Co., 5/29/19		193.51	193.51		
107	May 31, 1919	Survey of electrolytic conditions between Bayside and Douglaston as per bill of N.Y.Edison Co., 5/8/19		25.01	25.01		
107	May 31, 1919	Services of engineers, draughtsmen, etc., May,1919, Douglaston Gas Rate Appeal, $429.90; Boiler Feed, W.H., $32.73 - Flushing works		462.63	429.90	32.73	
135	July 31, 1919	Services of engineers, draughtsmen, etc. on well pump - Flushing works		24.95		24.95	
147	Aug. 31, 1919	Services of engineers, draughtsmen, etc. on repairs to meter - Flushing works		19.11		19.11	
151	Aug. 31, 1919	Time and expenses of Crowell & Keller on Douglaston extension	(A)	120.12	120.12		
167	July 17, 1919	Survey of electrolytic conditions between Bayside and Douglaston as per bill of N.Y.Edison Co., 7/1/19		25.82	25.82		
177	Nov. 15, 1919	Gas engineer of Westchester Lighting Co. Services for selection of route for Douglaston mains	(F)	100.00	100.00		
				$12,974.42	$3,014.86	$561.23	$9,398.33

(a) Bill reads "Charge to Douglaston Case."

Defendants' Exhibit A 95

New York & Queens Gas Co.
v Newton et al 1919
Schedule No.15

ANALYSIS OF ACCOUNT "OFFICE DEVELOPMENT , DOUGLASTON EXTENSION"

Date	Amount	Particulars or payee
July 1919	$93.75	Part of salary M. H. Spear, July, 1919
" 1919	22.32	Payrolls
Sept.1, 1919	6.55	Geo. A. Smith - Stationery
" 2, 1919	.75	Flushing Journal - Advertising
Aug. 1919	30.50	F. W. Reynolds - Work at Douglaston paid from petty cash
" 1919	296.29	Payrolls
" 1919 Cr.	74.62	" To correct error in distribution of payroll
Sept.15,1919	40.00	Nado Corporation - Rent
" 30,1919	40.00	" " "
" 30,1919	18.00	" " (Typewriter and stand)
" 25,1919	1.63	N.Y. & Q. Elec.Lt. & Pr.Co.(Electricity for office-Douglaston)
" 1, 1919	11.24	N.Y. Telephone Co.
" 2, 1919	6.00	D. Wiggans paid from petty cash
" 2, 1919	7.80	Petty cash payment to R. Hirshfield
" 30, 1919	268.67	Payrolls
" 30, 1919	40.00	Nado Corporation (correcting entry for rent)
Oct. 1919	7.50	Jno. Beplat - Hardware
" 8, 1919	3.72	B.Farber - Painters' supplies
" 31, 1919	276.50	Payrolls
" 4, 1919	16.50	Flushing Daily Times (contract slips)
" 2, 1919	7.48	N.Y. Telephone Co.
June 27,1919	1.00	N.Y. & Q. Elec.Lt.& Pr.Co.(50 days service @ 2¢)
Nov. 30,1919	40.00	Nado Corporation - Rent
Oct. 31,1919	40.00	" " "
Nov. 25,1919	13.80	Hammacher, Schlemmer & Co. - Wheel casters
" 26,1919	.99	N.Y. & Q. Elec. Lt. & Pr. Co.
" 1,1919	6.63	N.Y.Telephone Co.
" 1919	22.02	Miscellaneous petty cash payments
" 30,1919	335.41	Payroll
" 30,1919	1.04	Jno. Geddes - Glass
Dec. 31,1919	40.00	Nado Corporation - Rent
Jan. 2,1920	12.00	Madsen & Westhoff - Screen door for office
" 1,1920	5.20	F. C. Bangert - Hardware
Dec. 1,1919	8.78	N. Y. Telephone Co.
" 30,1919	.68	N.Y. & Q. Elec.Lt.& Pr.Co.(34 days @ 2¢)
" 1919	48.45	Miscellaneous petty cash payments
" 1919	370.58	Payroll
" 31,1919	25.00	Correcting error in distribution of P.C. Nov. 1919
Total	$2,092.16	

DEFENDANTS' EXHIBITS A96-A112.

DEFTS' A96.

New York & Queens Gas Co.

TABLE 10. *Buildings.*

(Appraisal as of Dec. 31, 1919.)

Item.		Cost.	Depreciation.	Cost, less depreciation.
Installed prior to 8/1/04		$17,500.00	$7,000.00	$10,500.00
New Generator House	(1905, 1911 & 1912)	1,452.75	252.74	1,200.01
Exhauster Room	(1907)	692.28	166.08	526.20
Pump House	(1915)	43.03	3.44	39.59
Coal Bin, 2-story	(1904)	39.51	23.40	16.11
Coal Bin, 1-story	(1905 & 1907)	1,048.34	587.02	461.32
Boiler House	(1914-1917)	9,063.36	779.42	8,283.94
Oil House	(1912)	469.19	65.66	403.53
Outside Coal Bins	(1909)	628.75	251.50	377.25
Governor House	(1916)	4,507.72	315.52	4,192.20
Garage	(1906-1919)	747.06	181.77	565.29
Compressor House	(1910 & 1916)	564.75	98.79	465.96
Pump House & Pipe Shed	(1917)	223.36	8.92	214.44
Corrugated Iron Shed & Pump Foundation	(1919)	98.14	....	98.14
Closet and Basin at Works	(1906)	106.00	29.68	76.32
Fence	(1919)	3,013.71	75.34	2,938.37

DEFENDANTS' EXHIBITS A96-A112.—*Continued.*

Item.		Cost.	Depreciation.	Cost, less depreciation.
Electric Line for Conveyor	(1919)	112.35	2.80	109.55
Flag Pole	(1916)	35.00	4.90	30.10
12 Trees	(1916)	60.00	4.20	55.80
Sewers	(1906-1916)	1,160.17	116.00	1,044.17
Oil Tank Embankment and Wall		4,246.21	360.91	3,885.30
Drip	(1917)	164.62	8.23	156.39
Tar Tank	(1917)	241.21	24.10	217.11
Total		$46,217.51	$10,360.42	$35,857.09

New York & Queens Gas Co.

TABLE 11. *Apparatus & Piping.*

(Appraisal as of Dec. 31, 1919.)

Item.		Cost.	Depreciation.	Cost, less depreciation.
Installed prior to 8/1/04	.....	$64,600.00	$28,036.40	$36,563.60
1 7'-6" Lowe Water Gas Set	(1906)	8,135.21	3,792.60	4,342.61
1 #7 Roots Exhauster and 7"x10" N. Y. Engine	(1907)	1,506.75	542.40	964.35
1 8'-6" Lowe Water Gas Set	(1911)	16,715.69	4,453.04	12,262.65
2 Terry Steam Turbines	(1912)	141.51	49.49	92.02
1 #3 Revivifying Machine	(1917)	40.00	3.20	36.80
1 1¼" Pickering Governor	(1917)	36.00	2.16	33.84
1 6"x5"x10" Davidson Pump	.....	414.83	82.95	331.88
1 6"x4"x6" Worthington Pump	(1919)	102.00	2.04	99.96
1 ¾" Fisher Control Governor	(1916)	19.25	1.71	17.54
1 Tar Washer	(1905)	808.00	452.48	355.52
1 Tar Extractor	(1913)	1,048.47	272.55	775.92
1 Wylie Meter	(1911)	1,172.35	234.40	937.95
1 6' Station Meter	(1905)	1,227.84	429.80	798.04
1 Hoist and Motor	(1919)	162.75	4.07	158.68
1 #7 Roots Exhauster and 7"x10" N. Y. Engine	(1907)	1,506.75	542.40	964.35
1 #3 Revivifying Machine	(1917)	40.00	3.20	36.80
2 B. & W. Boilers	(1916-1919)	8,189.11	818.10	7,371.01
1 Cunningham Boiler	(1919)	5,214.53	130.36	5,084.17
1 Erie City Boiler	(1914)	2,294.50	573.60	1,720.90

DEFTS.' A97.—*Continued*

Item.		Cost.	Depreciation.	Cost, less depreciation.
1 3′x5′-6″ Tank	(1905)	105.00	58.80	46.20
1 Empire Water Meter	(1917)	80.00	6.40	73.60
1 Moore Pump and Fittings	(1918)	22.00	0.44	21.56
1 Feed Water Heater	(1919)	404.36	6.07	398.29
2 6″x4″x6″ Feed Pumps	(1919)	296.89	5.93	290.96
1 10″x12″ N. Y. Safety Engine	(1918)	458.57	20.63	437.94
1 4½x2½x6″ Davidson Pump	(1906)	88.20	45.76	42.44
1 4½″x2½″x6″ Davidson Pump	(1906)	88.20	45.76	42.44
2 Bed Plates	(1907)	11.20	5.28	5.92
1 4½″x2½″x6″ Davidson Pump	(1910)	80.75	29.07	51.68
Forward		$115,010.71	$74,095.62	$40,915.09

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Brought forward		$115,010.71	$74,095.62	$40,915.09
1 6″x4″x8″ Davidson Pump	(1916)	150.00	18.00	132.00
1 6″x4″x8″ Davidson Pump	(1917)	200.00	16.00	184.00
Fittings & Petty Cash		62.84	5.02	57.82
1 Vertical Dial Oil Meter	(1919)	61.00	1.44	59.56
1 12″ Balanced Governor	(1906)	282.41	73.32	209.09
1 16″ Automatic Governor	(1915)	600.00	48.00	552.00
1 16″ Balanced Governor	(1915)	325.00	26.00	299.00
1 12″x16″x12″ Air Compressor	(1910)	2,193.75	789.75	1,404.00
1 8″x12″x8″ Compressor	(1918)	1,303.53	52.14	1,251.39
1 Kennedy Telemetric Gauge	(1918)	301.00	12.04	288.96
1 Hose Cart	(1906)	22.50	14.69	7.81

1 Hose 200′ of 2″	(1906)	84.00	54.60	29.40
1 7½″x7½″x6″ Snow Pump	(1919)	365.95	14.63	351.32
1 Bowser Gasoline Storage	(1912)	174.28	60.97	113.31
1 7″x7″x10″ Davidson Pump	(1915)	394.89	63.16	331.73
1 1,000,000 cu. ft. Holder	(1916)	86,000.26	3,225.00	82,775.26
1 250,000 cu. ft. Holder	(1907)	234.81	35.28	199.53
1 100,000 cu. ft. Holder	(1907)	45.00	6.72	38.28
1 30′x30′ Oil Tank	(1909)	3,017.91	633.68	2,384.23
1 Steel Tar Tank	(1919)	233.96	2.33	231.63
1 Quintard Purifier Box	(1909)	5,219.68	1,043.93	4,175.75
1 Bartlett Hayward Co. Purifier Box	(1911)	3,881.34	620.96	3,260.38
1 Deep Tar Well	(1916)	862.26	51.12	801.14
1 Flight Conveyor	(1919)	701.66	14.03	687.63
Purifier Connections	(1919)	1,923.27	19.23	1,904.04
Miscellaneous items		5,751.15	686.40	5,064.75
Total		$229,393.16	$81,684.06	$147,709.10

DEF'TS' A 98.

TABLE 12.—*Miscellaneous.*

(Appraisal as of Dec. 31, 1919.)

Item.		Cost.	Depreciation	Cost, less depreciation.
Office Equipment:				
Installed prior to 1909	.....	$2,045.00	$1,022.00	$1,023.00
Cabinet, fan and stamp machine	(1910)	73.70	46.74	26.96
Desk	(1911)	20.00	8.50	11.50
Fan	(1912)	6.56	3.30	3.26
Cabinet, desks, chairs, rug, safe, etc.	(1913)	449.57	146.12	303.45
Typewriter, envelope sealer, calculating machine	(1914)	207.01	76.51	130.50
Cabinets, desks, chairs and addresser	(1915)	309.58	69.61	239.97
Typewriter, adding machine, etc.	(1916)	387.96	90.55	297.41
Safe, stools, fans, etc.	(1917)	232.90	29.10	203.80
Fan and book case	(1918)	27.17	2.02	25.15
Underwood duplicator	(1919)	40.00	1.33	38.67
Bryant Boiler	(1919)	133.34	4.45	128.89
Total Office Equipment	.....	$3,932.79	$1,500.23	$2,432.56
Store Equipment:				
Fire extinguishers	(1909)	$29.00	$15.22	$13.78
Shelving and paper holder	(1909)	19.50	10.19	9.31
Fire extinguishers	(1912)	13.50	5.03	8.47
Lamp post and foundation	(1912)	76.32	28.57	[illegible]

Sign	(1912)	27.00	10.13	16.87
Fire extinguishers and cash tube	(1913)	81.75	26.52	55.23
Fitting rack and table	(1915)	121.00	27.23	93.77
Wax figures, sign and sink	(1915)	88.50	19.89	68.61
Stove casters	(1915)	7.70	1.71	5.99
Fire extinguishers	(1915)	8.00	1.80	6.20
Fire extinguishers	(1916)	11.20	1.96	9.24
Heating appliances and fittings	(1916)	15.92	2.77	13.15
Pipe and fittings for furnace	(1917)	6.59	0.80	5.79
Total Store Equipment	.....	$505.98	$151.82	$354.16
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1 Maxwell Roadster	(1914)	$641.25	$352.71	$288.54
1 Maxwell Coupe	(1915)	881.75	396.77	484.98
1 Ford Runabout	(1913)	546.50	355.22	191.28
3 Special body delivery Fords	.....	1,397.02	698.50	698.52
1 250-gallon drip wagon	(1908)	50.00	38.30	11.70
1 Single horse dray	(1907)	50.00	39.96	10.04
1 Dump Cart	(1915)	20.00	5.99	14.01
1 Wagon Jack	(1906)	1.25	1.06	0.19
1 Bay horse	(1912)	165.00	82.50	82.50
1 Fire extinguisher	(1912)	18.30	6.83	11.47
1 Snow plow	(1914)	29.35	9.80	19.55
1 Tire pump	(1916)	40.00	14.00	26.00
1 Decarbonizer	(1919)	28.00	1.40	26.60
1 Maxwell Touring Car	(1919)	973.44	48.67	924.77
1 Convertible Top	(1919)	232.80	11.64	221.16
1 Ford body	(1919)	20.00	1.00	19.00
Total Stable & Garage Equipment	.....	$5,094.66	$2,064.35	$3,030.31

DEF'TS' A 98.—*Continued.*

Item.		Cost.	Depreciation.	Cost, less depreciation.
Laboratory Equipment:				
Pulmotor and mask	(1913)	$160.48	$70.46	$90.02
Adapter & wrenches	(1913)	3.98	1.76	2.22
Junker's Calorimeter	(1916)	220.00	38.50	181.50
Thermometers and tables	(1916)	16.26	2.83	13.43
Syerometers pail and fittings	(1916)	13.73	2.38	11.35
Gauges, box and glass enclosure	(1916)	159.94	27.96	131.98
Governors	(1916)	6.00	1.05	4.95
Calorimeter complete	(1917)	238.70	29.83	208.87
Barometer and recording gauge	(1918)	77.67	5.82	71.85
Gauge	(1918)	29.00	2.17	26.83
Total Laboratory Equipment		$925.76	$182.76	$743.00
Tools & Implements:				
Installed prior to 8/1/04	.....	$400.00	$320.00	$80.00
50′ Tape	(1905)	2.50	1.74	0.76
First aid cabinet	(1906)	5.50	3.65	1.85
Ellicott apparatus	(1906)	20.00	13.50	6.50
60″ Bar Photometer	(1907)	350.00	218.75	131.25
Range Boiling Tank	(1912)	36.00	13.50	22.50
Pipe Locater	(1913)	65.00	21.13	43.87
Respirator	(1916)	40.00	7.00	33.00
Cyclone cleaner	(1916)	117.50	20.54	96.96
Screw bars	(1917)	35.00	4.38	30.62
Hose	(1917)	15.40	1.93	13.47

Service Pumps	(1917)	30.36	3.75	26.61
Stocks and dies	(1919)	7.80	0.19	7.61
Thawing equipment	(1919)	50.00	1.25	48.75
Total Tools & Implements		$1,175.06	$631.31	$543.75
Other Items:				
Art Lamps		$1,698.25	.....	.....
Gas Engine & Appliances		46,473.77	.....	.....
Other Tangible Gas Capital		753.75	.....	.....
Total Other Items		$48,925.77	$12,231.44	$36,694.33
Summary:				
Office Equipment		$3,932.79	$1,500.23	$2,432.56
Store Equipment		505.98	151.82	354.16
Stable & Garage Equipment		5,094.66	2,064.35	3,030.31
Laboratory Equipment		925.76	182.76	743.00
Tools & Implements		1,175.06	631.31	543.75
Other Items		48,925.77	12,231.44	36,694.33
Total		$60,560.02	$16,761.91	$43,798.11

3049 DEF'TS' A 99.

New York & Queens Gas Co.

TABLE 13.—*Buildings and Apparatus—Debits & Credits.* 1

Year.	Debits.
8 1 04-12 31 04	$301.80
1905	15,962.08
1906	10,674.73
1907	4,848.34
1908	6,042.81
1909	7,671.74
1910	3,051.97
1911	22,961.53
1912	901.27
1913	954.24
1914	3,290.31
1915	73,480.49
1916	38,714.15
1917	3,382.29
1918	3,327.68
1919	14,773.99
Total	$210,319.42

NOTE.—The above figures include all charges and cre
following accounts:

Fixed Capital Installed prior to 1 1 09	Real Estate, Bldgs. etc. Construction. 1911 credit to franchise, etc., of purifiers retired.
Fixed Capital Installed since 1 1 09	Works & Station Structures. Holders. Furnaces, Boilers & Accessor Steam Engines. Miscellaneous Power Plant E Water Gas Sets & Accessories Purification Apparatus. Accessory Equipment at Wo

3050 DEF'TS' A 100.

New York & Queens Gas Co.

TABLE 14.—*Miscellaneous—Debits & Credits*, 1904-1919.

Year.	Debits.	Credits.
Aug. 1 to Dec. 31, 1904....	$205.57	$119.75
1905.....	1,199.33	1,200.00
1906.....	3,237.88	24.92
1907.....	6,645.89	2,055.68
1908.....	3,850.69	3,461.16
1909.....	900.78	1,126.90
1910.....	1,695.56	550.00
1911.....	3,268.86	969.16
1912.....	5,820.33	603.25
1913.....	4,460.28	1,506.83
1914.....	18,871.57	.....
1915.....	10,076.10	1,221.51
1916.....	8,895.07	806.50
1917.....	6,737.88	1,762.48
1918.....	220.39	1,036.50
1919.....	3,254.73	3,569.51
Total	$79,340.91	$20,014.15

NOTE.—The above figures include all charges and credits to the following accounts:

Fixed Capital Installed prior to 1/1/09...
- Stable Equipment.
- Office Fixtures.
- Gas Arcs.
- Tools & Equipments.

Fixed Capital Installed since 1/1/09....
- General Equipment.
- Gas Tools & Implements.
- Gas Laboratory Equipment.
- Gas Engines & Appliances.
- Other Tangible Gas Capital.

3051 DEF'TS' A 101.

New York & Queens Gas Co.

TABLE 15.—*Mains—Debits and Credits*, 1904-1919.

Year.	Total debits.	Adjusting credits.	Adjusted debits.	Retirements.
8 1/04-12 31 04	$8,115.79	$72.00	$8,043.79	.....
1905	32,427.15	60.25	32,366.90	.....
1906	22,004.48	1,517.54	20,486.94	.....
1907	14,080.05	.....	14,080.05	.....
1908	16,777.49	1,019.44	15,758.05	.....
1909	16,359.36	208.63	16,150.73	.....
1910	25,501.47	52.63	25,448.84	.....
1911	28,815.19	.....	28,815.19	.....
1912	10,630.62	.....	10,630.62	$313.5
1913	15,311.64	.....	15,311.64	.....
1914	13,423.33	.....	13,423.33	.....
1915	19,238.48	.....	19,238.48	.....
1916	11,920.02	90.58	11,829.44	.....
1917	7,219.51	.....	7,219.51	.....
1918	4,984.06	.....	4,984.06	.....
1919	139,515.84	2,050.50	137,465.34	.....
Total	$386,324.48	$5,071.57	$381,252.91	$313.5
Douglas Extension (*a*)				
1919	$122,975.17	.....	$122,975.17	.....

NOTE.—(*a*) Included in total above for 1919.

52 DEF'TS' A 102.

New York & Queens Gas Co.

TABLE 16.—*Services—Debits and Credits*, 1904-1919.

Year.	Total debits.	Adjusting credits.	Adjusted debits.	Retirements.
8 1/04-12 31/04	$1,110.98	$436.12	$674.86	....
1905	5,482.19	777.66	4,704.53	....
1906	6,148.38	1,149.35	4,999.03	....
1907	6,830.80	842.35	5,988.45	....
1908	5,194.37	758.64	4,435.73	....
1909	6,469.25	817.25	5,652.00	....
1910	5,823.44	622.01	5,201.43	....
1911	7,134.03	887.70	6,246.33	....
1912	6,694.93	773.70	5,921.23	....
1913	6,001.53	724.27	5,277.26	....
1914	6,500.15	501.33	5,998.82	....
1915	5,032.68	355.75	4,676.93	....
1916	5,814.16	675.58	5,138.58	....
1917	4,400.87	1,385.42	3,015.45	....
1918	4,444.19	1,970.36	2,473.85	....
1919	10,278.71	5,518.66	4,760.05	....
Total	$93,360.66	$18,196.15	$75,164.51	....

Douglaston Extension (*a*)				
1919	$2,471.31	.....	$2,471.37	....

NOTE.—(*a*) Included in total above for 1919.

3053 DEF'TS' A 103

New York & Queens Gas Co.

TABLE 17.—*Meters—Debits and Credits*, 1904-1919.

Year.	Total debits.	Adjusting credits.	Adjusted debits.	Retirements.
8/1/04-12/31/04	$647.57	.....	$647.57	$7.50
1905	4,706.75	$7.35	4,699.40	55.28
1906	4,884.73	.....	4,884.73	.....
1907	4,180.94	.....	4,180.94	.....
1908	3,483.32	.....	3,483.32	343.22
1909	4,812.51	.....	4,812.51	574.14
1910	3,884.24	.....	3,884.24	.....
1911	5,934.22	.....	5,934.22	583.44
1912	5,348.61	.....	5,348.61	455.68
1913	4,646.40	.....	4,646.40	41.80
1914	7,661.62	176.41	7,485.21	56.76
1915	5,137.68	.....	5,137.68	546.86
1916	3,768.54	.....	3,768.54	62.57
1917	4,077.59	.....	4,077.59	778.49
1918	1,130.47	.....	1,130.47	4.52
1919	6,935.81	.....	6,935.81	134.25
Total	$71,241.00	$183.76	$71,057.24	$3,644.51

3055 DEF'TS' A105.

New York & Queens Gas Co.

Table 20.

Cost of Fixed Capital, 1904-1919.

(As of Dec. 31st.)

Account.	8/1/04.	1904.	1905.	1906.	1907.	1908.	1909.	1910.
Buildings & Apparatus	$105,818	$106,120	$121,250	$130,376	$135,102	$141,145	$147,265	$150,242
Miscellaneous	2,445	2,446	2,445	4,532	9,122	9,512	9,286	10,432
Mains	117,874	125,918	158,285	178,772	192,852	208,610	224,761	250,210
Services	34,030	34,705	39,410	44,409	50,397	54,833	60,485	65,686
Meters	25,239	25,879	30,523	35,408	39,589	42,729	46,968	50,852
Meter Installation	.....	85	616	1,336	2,635	11,522	12,698	13,790
Total	$285,406	$295,153	$352,529	$394,833	$429,697	$468,351	$501,463	$541,212

Account.	1912.	1913.	1914.	1915.	1916.	1917.	1918.	1919.
Buildings & Apparatus	$163,790	$164,744	$168,034	$241,514	$275,128	$277,014	$267,842	$275,611
Miscellaneous	17,949	20,902	39,774	48,628	56,716	61,692	60,875	60,560
Mains	289,342	304,654	318,077	337,315	349,144	356,364	361,348	375,838
Services	77,853	83,130	89,129	93,806	98,945	101,960	104,434	106,723
Meters	61,096	65,700	73,128	77,719	81,425	84,725	85,850	90,787
Meter Installation	16,571	18,003	19,530	21,052	22,268	23,703	24,731	26,180
Total	$626,601	$657,133	$707,672	$820,034	$883,626	$905,458	$905,080	$935,699
Douglaston Extension:								
Mains	.....	.....	.....	.....	.....	.....	.....	$122,975
Services	.....	.....	.....	.....	.....	.....	.....	2,471
Meters	.....	.....	.....	.....	.....	.....	.....	1,865
Meter Installation	.....	.....	.....	.....	.....	.....	.....	1,359
Total	.....	.....	.....	.....	.....	.....	.....	$128,670

DEF'TS' EX. A106.

New York & Queens Gas Co.

Table 25.

Depreciation, 1904-1919.

(As of Dec. 31st.)

Account.	8/1/04.	1904.	1905.	1906.	1907.	1908.	1909.	1910.	1911.
Buildings & Apparatus	$50,854	$51,827	$53,916	$55,921	$58,775	$61,806	$64,211	$67,437	$65,828
Miscellaneous	1,222	1,223	1,223	2,266	2,542	703	541	824	922
Mains	4,912	6,144	7,629	9,445	11,477	13,695	16,154	18,945	22,136
Services	.....	.....	.....	969	2,155	3,472	4,914	6,492	8,213
Meters	4,253	4,727	5,212	5,871	6,643	7,169	7,558	8,615	9,212
Meter Installation	.....	.....	2	12	31	101	222	355	501
Total	$61,241	$63,921	$67,982	$74,484	$81,623	$86,946	$93,600	$102,668	$106,812

Account.	1912.	1913.	1914.	1915.	1916.	1917.	1918.	1919.
Buildings & Apparatus	$69,411	$73,014	$76,664	$81,155	$84,324	$89,654	$89,513	$92,044
Miscellaneous	1,539	1,785	3,853	5,988	8,996	11,762	15,188	16,762
Mains	25,326	29,038	32,989	37,811	41,670	46,305	51,075	56,011
Services	10,086	12,099	14,253	16,540	18,950	21,462	24,042	26,681
Meters	10,062	11,440	12,954	14,134	15,895	17,037	18,998	20,908
Meter Installation	660	833	1,021	1,224	1,440	1,669	1,910	2,163
Total	$117,084	$128,209	$141,734	$156,252	$171,275	$187,889	$200,726	$214,569

Douglaston Extension:

Mains	.....	.....	.....	.....	.....	.....	.....	.....
Services	.....	.....	.....	.....	.....	.....	.....	.....
Meters	.....	.....	.....	.....	.....	.....	.....	.....
Meter Installation	.....	.....	.....	.....	.....	.....	.....	.....
Total	.....	.....	.....	.....	.....	.....	.....	.....

DEF'TS' A107.

New York & Queens Gas Co.

Table 30.

Cost of Fixed Capital Less Depreciation, 1904-1919.

(As of December 31st.)

Account.	8/1/04.	1904.	1905.	1906.	1907.	1908.	1909.	1910.	1911.
Buildings & Apparatus	$54,964	$54,293	$67,334	$74,455	$76,327	$79,339	$83,054	$82,805	$97,061
Miscellaneous	1,223	1,223	1,222	2,266	6,580	8,809	8,745	9,608	11,810
Mains	112,962	119,774	150,656	169,327	181,375	194,915	208,607	231,265	256,889	
Services	34,030	34,705	39,410	43,440	48,242	51,361	55,571	59,194	63,719
Meters	20,986	21,152	25,311	29,537	32,946	35,560	39,410	42,237	46,991
Meter Installation	.....	85	614	1,324	2,604	11,421	12,476	13,435	14,743
Total	$224,165	$231,232	$284,547	$320,349	$348,074	$381,405	$407,863	$438,544	$491,213

Account.	1912.	1913.	1914.	1915.	1916.	1917.	1918.	1919.
Buildings & Apparatus	$94,379	$91,730	$91,370	$160,359	$190,804	$187,360	$178,329	$183,567
Miscellaneous	16,410	19,117	35,921	42,640	47,720	49,930	45,687	43,798
Mains	264,016	275,616	285,088	300,104	307,474	310,059	310,273	319,827
Services	67,767	71,031	74,876	77,266	79,995	80,498	80,392	80,042
Meters	51,034	54,260	60,174	63,585	65,530	67,688	66,852	69,879
Meter Installation	15,911	17,170	18,509	19,828	20,828	22,034	22,821	24,017
Total	$509,517	$528,924	$565,938	$663,782	$712,351	$717,569	$704,354	$721,130
Douglaston Extension:								
Mains	.....	.....	.....	.....	.....	.....	.....	$122,975
Services	.....	.....	.....	.....	.....	.....	.....	2,471
Meters	.....	.....	.....	.....	.....	.....	.....	1,865
Meter Installation	.....	.....	.....	.....	.....	.....	.....	1,359
Total	.....	.....	.....	.....	.....	.....	.....	$128,670

Douglaston Extension (*a*).

1919.....	$1,865.12	.....	$1,865.12	.....

NOTE.—(*a*) Included in total above for 1919.

3054 DEF'TS' A 104.

New York & Queens Gas Co.

TABLE 18.—*Meter Installation—Debits and Credits,* 1904-1919.

Year.	Total debits.	Adjusting credits.	Adjusted debits.	Retirements.
8 1 04- 12 31 04...	$85.26	.....	$85.26	.....
1905.....	554.33	$23.69	530.64	.....
1906.....	739.57	19.32	720.25	.....
1907.....	1,298.62	.....	1,298.62	.....
1908.....	8,886.94	.....	8,886.94	.....
1909.....	1,202.58	26.70	1,175.88	.....
1910.....	1,092.47	.....	1,092.47	.....
1911.....	1,453.93	.....	1,453.93	.....
1912.....	1,326.57	.....	1,326.57	.....
1913.....	1,432.49	.....	1,432.49	.....
1914.....	1,526.96	.....	1,526.96	.....
1915.....	1,521.82	.....	1,521.82	.....
1916.....	1,215.96	.....	1,215.96	.....
1917.....	1,434.86	.....	1,434.86	.....
1918.....	1,028.14	.....	1,028.14	.....
1919.....	2,807.44	.....	2,807.44	.....
Total ..	$27,607.94	$69.71	$27,538.23	.....

Douglaston Extension (*a*).

1919.....	$1,358.60	.....	$1,358.60	.....

NOTE.—(*a*) Included in total above for 1919.

(Here follow Defendants' Exhibits A 105, A 106, and A 107, marked pages 3055, 3056, and 3057.)

3058 DEF'TS' A 108.

Table 31.

New York & Queens Gas Co.

TABLE 31.—*Fixed Capital, Including Engineering*, 1904-1919 (*Exclusive of Land*), *as of December 31st.*

Year.	Cost.	Depreciation.	Cost, less depreciation.
8/1/04	$297,081	$62,078	$235,003
1904	306,828	64,851	241,977
1905	364,162	69,092	295,070
1906	406,389	75,772	330,617
1907	441,247	83,096	358,152
1908	479,901	88,602	391,299
1909	512,935	95,430	417,505
1910	552,680	104,670	448,010
1911	609,212	108,948	500,264
1912	637,772	119,385	518,387
1913	668,304	130,687	537,617
1914	718,843	144,389	574,454
1915	831,205	159,084	672,121
1916	897,893	174,250	723,643
1917	925,184	191,082	734,102
1918 (a)	924,561	204,010	720,551
1919 (a)	955,641	218,099	737,542
Douglaston Extension:			
1918	$1,098	.....	$1,098
1919 (b)	133,777	.....	133,777

NOTE: (a) Exclusive of Douglaston Extension.
(b) Includes $2,092 for Office Development.

3059

DEF'TS' A 109.

Table 32.

New York & Queens Gas Co.

TABLE 32.—*Average Fixed Capital, Including Engineering, 1904-1919 (Exclusive of Land).*

Year.	Cost.	Depreciation.	Cost, less depreciation.
8 1 04—12 31 04	$301,954	$63,464	$238,490
1905	335,495	66,972	268,523
1906	385,276	72,432	312,844
1907	423,818	79,434	344,384
1908	460,574	85,848	374,726
1909	496,418	92,016	404,402
1910	532,808	100,050	432,758
1911	580,946	106,809	474,137
1912	623,492	114,166	509,326
1913	653,038	125,036	528,002
1914	693,574	137,538	556,036
1915	775,024	151,736	628,288
1916	864,549	166,667	697,882
1917	911,538	182,666	728,872
1918 (a)	924,872	197,546	727,326
1919 (a)	940,101	211,054	729,047
Douglaston Extension:			
1918	$549	.....	$549
1919	67,438	.....	67,438

NOTE: (a) Exclusive of Douglaston Extension.

3060 DEF'TS' A 110.

Table 33.

New York & Queens Gas Co.

TABLE 33.—*Average Fixed Capital, Including Engineering, 1919 (Exclusive of Land).*

	Cost.	Depreciation.	Cost, less depreciation.
Exclusive of Douglaston Extension (Table 32)	$940,101	$211,054	$729,047
Including Douglaston Extension of one-half cost (Table 32)	$973,820	$211,054	$762,766
Including Douglaston Extension at Cost (Table 32)	$1,007,539	$211,054	$796,485

3061 DEF'TS' A 111.

Table 34.

New York & Queens Gas Co.

TABLE 34.—*Average Annual Depreciation Requirement*, 1904-1919.

Year.	Depreciation requirement.	Annual depreciation requirement (cents per M cu. ft. sold).
1904 (5 mo.)	$2,187	6.42
1905	5,808	6.80
1906	6,722	7.00
1907	7,577	6.73
1908	8,324	6.20
1909	8,970	6.12
1910	9,681	5.74
1911	10,638	5.77
1912	11,642	5.57
1913	12,424	5.63
1914	13,756	5.75
1915	16,110	6.74
1916	18,348	7.27
1917	19,601	6.84
1918 (a)	19,974	6.10
1919 (a)	20,282	6.04
1918 (b)	19,977	6.10
1919 (b)	20,754	6.17
1918 (c)	19,980	6.10
1919 (c)	21,225	6.32

NOTES: (a) Exclusive of Douglaston Extension.
(b) Including Douglaston Extension at one-half cost.
(c) Including Douglaston Extension at cost.

3062 DEF'T.' A 112.

Table 40.

New York & Queens Gas Co.

TABLE 40.—*Working and Construction Capital (Average for the Year).*

1904	$18,000
1905	20,000
1906	22,000
1907	22,000
1908	25,000
1909	30,000
1910	35,000
1911	35,000
1912	35,000
1913	35,000
1914	40,000
1915	40,000
1916	45,000
1917	50,000
1918	65,000
1919	80,000
1920	70,000

Endorsed on cover: File No. 28,225. S. New York D. C. U. S. Term No. 296. Charles D. Newton, as attorney general of the State of New York, and Alfred M. Barrett, constituting the Public Service Commission of the State of New York for the first district, appellants, vs. New York & Queens Gas Company. Filed April 11, 1921. File No. 28,225.

No. 296

APR 12 192

JAMES D. MA

94300

The Supreme Court of the United States

CHARLES D. NEWTON, as Attorney-General of the State of New York; ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, for the First District, and DANA WALLACE, District Attorney of Queens County,

Defendants-Appellants,

vs.

NEW YORK AND QUEENS GAS COMPANY,

Complainant-Respondent.

Motion to Advance

WILBER W. CHAMBERS,
Solicitor for Defendant-Appellant Newton,
Attorney-General,
Capitol, Albany.

TERENCE FARLEY,
Solicitor for Defendant-Appellant Barrett,
49 Lafayette Street,
New York City.

JOHN P. O'BRIEN,
Corporation Counsel,
Solicitor for Wallace,
Municipal Bldg., New York City.

WILBER W. CHAMBERS,
CLARENCE R. CUMMINGS,
ELY NEUMANN,
JAMES A. DONNELLY,
Of Counsel.

M. B. Brown Printing & Binding Co., New York

The Supreme Court of the United States.

CHARLES D. NEWTON, as Attorney-General of the State of New York; ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, for the First District; and DANA WALLACE, as District Attorney of Queens County,

Defendants-Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY,

Complainant-Respondent.

Sirs,

PLEASE TAKE NOTICE that we will move the Supreme Court of the United States at Washington, District of Columbia, pursuant to Rule 26 of the Rules of the Supreme Court of the United States, on Tuesday, April 12, 1921, at twelve o'clock noon at the opening of said court for motions, or as soon thereafter as counsel can be heard, for an order advancing the above entitled appeal on the docket of said court for argument at the earliest particular

date during the October Term, 1921, convenient to the court.

Dated, New York, April 4, 1921.

Yours, &c.,

WILBER W. CHAMBERS,
Solicitor for Deft.-Appllt. Newton,
Office and P. O. Address:
Capitol, Albany, N. Y.

TERENCE FARLEY,
Solicitor for Deft.-Appllt. Barrett,
Office and P. O. Address:
No. 49 Lafayette Street,
New York City.

JOHN P. O'BRIEN,
Corporation Counsel,
Solicitor for Deft.-Appllt. Lewis,
Office and P. O. Address:
Municipal Building,
New York City.

To:

SHEARMAN & STERLING,
Solicitors for Complainant-Respondent,
55 Wall St., Borough of Manhattan,
New York City.

THE SUPREME COURT OF THE UNITED STATES.

CHARLES D. NEWTON, as Attorney-General of the State of New York; ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, for the First District; and DANA WALLACE, as District Attorney of Queens County,
Defendants-Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY,
Complainant-Respondent.

To the Honorable the Supreme Court of the United States:

1. The appellants above named respectfully move to advance this cause on the docket of this Honorable Court pursuant to Rule 26 of the Rules of the Supreme Court of the United States.

2. The above entitled appeal was brought by the appellants to review the final decree of the District Court of the United States for the Southern District of New York, dated the 19th day of November, 1920, adjudging chapter 125 of the Laws of 1906 of the State of New York confiscatory and unconstitutional in that it deprives complainant-respondent of its property without due process of law, contrary to the Fourteenth Amendment of the United States Constitution. The laws of the State of New York referred to, provided, among other things, that the complainant company shall not charge or receive for gas manufactured, furnished

or sold by it a sum in excess of one dollar ($1.00) per thousand cubic feet.

3. The final decree appealed from contains a provision that the appellants perfect their appeal with "all convenient speed" and apply to the Supreme Court of the United States to advance the said appeal as follows:

> "XI. The plaintiff shall be required to do the acts and things specified in Paragraphs VI, VII, VIII and IX hereof only in case an appeal from this decree is taken by the defendants, or any of them, within thirty (30) days from the entry of this decree, and that the defendants so appealing, and each of them, shall perfect and prosecute any such appeal and print and file the record and all necessary papers to that end, promptly and without delay, and shall, with all convenient speed thereafter, serve a notice of application to the United States Supreme Court to advance the said appeal upon the calendar of the said Court."

4. The complainant company is now charging and collecting the sum of $1.25 per thousand cubic feet and has been charging and collecting this rate from its consumers since shortly after the entry of the final decree hereinbefore referred to, and in addition the said complainant company is charging and collecting a service charge in the amount of $.75 per month from each consumer.

5. The final decree appealed from further provided as follows:

> "III. Chapter 125 of the laws of 1906 of the State of New York, in so far as it prohibits the plaintiff from charging or receiving more than at the rate of One Dollar ($1.00) per thousand cubic feet for the sale of gas in the Third Ward of the Borough of Queens, has been, since at

least January 1, 1919, and now is, confiscatory, and deprives the plaintiff of its property without due process of law, contrary to Section 10 of Article 1 of the Constitution of the United States and to the Fourteenth Amendment thereof.

"IV. The said statute has been since at least January 1, 1919, and now is, invalid as violative of the said provisions of the Constitution of the United States; except by injunction the plaintiff has no adequate remedy, at law or otherwise, for any injury resulting from the enforcement of said statute; and the plaintiff is entitled to the relief hereinafter prescribed.

"V. The defendants Charles D. Newton as Attorney-General of the State of New York, Dennis O'Leary as District Attorney of the County of Queens, State of New York, and Lewis Nixon constituting the Public Service Commission of the State of New York for the First District, and each of them, and their, and each of their successors in office, their deputies and attorneys, and their, and each of their successors, servants, and employees, and any and every person acting or purporting to act under and by virtue of the authority of Chapter 125 of the Laws of 1906 of the State of New York or any other provision of law, be, and each of them is, hereby restrained and enjoined from enforcing, and from attempting to enforce, against the plaintiff the provisions of Chapter 125 of the Laws of 1906 or any of them, with respect to the rates which the plaintiff may charge or receive for gas manufactured or sold by it in the Third Ward of the Borough of Queens, or from bringing any action or proceedings in mandamus or by injunction or otherwise for the purpose of compelling compliance by the plaintiff with the said Act, in so far as it fixes or prescribes a rate for gas manufactured or sold by the plaintiff, or from doing any act or thing interfering with the

right or authority of the plaintiff forthwith to charge, bill, collect and receive for such gas any rate which it might lawfully charge or receive if the provisions of the said Act relative to the rate to be charged or received by the plaintiff were not operative.

"VI. In the event that an appeal from this decree is taken by the defendants, or any of them, within the time hereinafter prescribed, the plaintiff shall thereafter and until the bond provided for in Paragraph VIII hereof shall have been cancelled and annulled by order of this Court, keep true and correct accounts and records of all gas sold by it and of all moneys received by it for gas sold by it, so as accurately and completely to show the moneys received by it, for gas sold by it from and after this date, in excess of the sums which would have been received for such gas if the same had been sold at the rate of One Dollar ($1.00) per thousand cubic feet of gas sold, together with the names and addresses of the consumers from whom such moneys are so collected in so far as such names or addresses are known to the plaintiff or appear upon its books and records; and such accounts and records shall, upon application to this Court, be at all reasonable times open to the inspection and audit of the defendants, their employees, or their successors or representatives.

"VII. If, within the time hereinafter prescribed, an appeal from this decree is taken by the defendants, or any of them, the plaintiff, shall, on the 15th day of December, 1920, and on the 15th day of each month thereafter, until the bond provided for in Paragraph VIII hereof shall have been cancelled and annulled or until this Court shall order otherwise, file in the office of the Clerk of this Court a statement, sworn to by its vice-president, secretary or treasurer, showing the money received by it during the preceding month, for gas sold by

it, in excess of the sums which would have been received for such gas if the same had been sold at the rate of One Dollar ($1.00) per thousand cubic feet, such verified statement also to certify that the sum so shown is all that has been so collected during the preceding month.

"VIII. If, within the time hereinafter prescribed, an appeal from this decree is taken by the defendants, or any of them, within ten days thereafter, the plaintiff shall file with the Clerk of this Court, in form and tenor first approved by this Court, its bond or undertaking, with the Consolidated Gas Company of New York as surety, in the sum hereinafter prescribed, conditioned for the repayment to the consumers of the plaintiff, in the event that this decree is reversed on appeal and it is ultimately decided that the plaintiff is not entitled to judgment in this action, of the respective sums of money received and collected by the plaintiff from such consumers in excess of the sums which would have been received if such gas had been sold and billed at the rate of One Dollar ($1.00) per thousand cubic feet, together with interest at the rate of six (6) per cent., upon any such excess so collected and repaid, the obligation of such surety upon and under such bond or undertaking to be in the sum of Two Hundred Thousand Dollars ($200,000).

"IX. Upon filing such bond and thereafter, unless and until this Court shall otherwise direct, the plaintiff shall be entitled to and may retain and use any and all moneys received and collected by it in excess of the sums which would have been received and collected at the said rate of One Dollar ($1.00) per thousand cubic feet of gas sold. When the excess moneys so received and collected shall aggregate the sum of Two Hundred Thousand Dollars ($200,000) the defendants, or any of them, may make application to this Court, on three days' notice,

for an additional bond or security and in such form and manner as this Court may direct.

"X. If an appeal from this decree is taken by the defendants, or any of them, and the final judgment entered herein sustains the invalidity of Chapter 125 of the Laws of 1906 as to the plaintiff, the said bond or undertaking shall thereupon and thereby be cancelled or annulled, and the plaintiff and the said Consolidated Gas Company of New York shall thereupon and thereby be relieved from any and all liability thereunder, and appropriate directions accordingly shall be made by this Court."

6. The complainant company serves approximately 11,000 individual consumers in the Borough of Queens, State of New York. There is no adequate remedy for the individual consumer who must pay $1.25 rate, plus the $.75 service charge, or submit to having his gas supply cut off. Litigation by an individual consumer with the complainant company can be prosecuted only at so great expense as to become prohibitive. The number of citizens interested in this litigation as well as the amount involved is unusually large.

7. This is the third case in which an appeal has been taken to this Honorable Court from a final decree adjudging gas rates fixed by the legislature of the State of New York confiscatory and unconstitutional. This Honorable Court granted a motion made on behalf of the appellants to advance the Consolidated Gas Company case and set the said case down for argument on the 10th of October, 1921. In the case of Charles D. Newton, as Attorney-General of the State of New York, *et al.*, against The Kings County Lighting Company, the appellants are moving to advance the said case upon the docket of this Honorable Court. Practi-

cally all of the reasons given for the advancement of the Consolidated Gas Company case and the Kings County Lighting Company case are equally applicable to the instant application.

WHEREFORE, your petitioners ask this Honorable Court for an order or direction advancing the above-entitled appeal on the docket of the said court for argument at some date convenient to this court during the October Term, 1921.

Dated, April 4, 1921.

WILBER W. CHAMBERS,
Solicitor for Defendant Newton,

TERENCE FARLEY,
Solicitor for Defendant Barrett,

JOHN P. O'BRIEN,
Corporation Counsel and Solicitor for Defendant Wallace.

WILBER W. CHAMBERS,
CLARENCE R. CUMMINGS,
ELY NEUMANN,
JAMES A. DONNELLY,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. [illegible]

CHARLES S. HOUSTON, as Executive Director of the Public Service Commission of the State of New York, Petitioner,

vs.

NEW YORK AND QUEENS GAS COMPANY, Respondent.

MOTION FOR REASSIGNMENT AND AFFIDAVIT

JOHN J. CARVIN,
Counsel for Petitioner,
61 Broadway,
New York City.

Supreme Court of the United States,

OCTOBER TERM, 1921.

CHARLES D. NEWTON, as Attorney General of the State of New York, and ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, First District, Appellants, AGAINST NEW YORK AND QUEENS GAS COMPANY, Respondent.	No. 296.

TAKE NOTICE, that on October 4, 1921, at the opening of court on that day, in the Supreme Court Room, Washington, D. C., the respondent will move this Court, on the records of the above named case, the annexed affidavit of Charles A. Vilas and on all the proceedings had in said case, for an order reassigning said case for argument upon November 14, 1921, or such other date as may suit the convenience of the court, for the reason that appellants have failed to serve their brief upon

the Appellee as required by Rule 22 of the rules of this court and to enable the case to be heard with other cases involving the same principle; and for such other and further relief as to the Court shall seem just and proper.

New York, September 24, 1921.

JOHN A. GARVER,
Counsel for Respondent,
55 Wall Street,
New York City.

To:

WILBER W. CHAMBERS, Esq.,
Counsel for Appellant Newton.

JOHN P. O'BRIEN, Esq., Corporation Counsel,
Counsel for Appellant Wallace.

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1921.

CHARLES D. NEWTON, Attorney-General of the State of New York and ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York for the First District,

Appellants,

AGAINST

NEW YORK AND QUEENS GAS COMPANY,

Respondent.

No. 296.

Affidavit of Charles A. Vilas.

STATE OF NEW YORK }
County of New York } :

CHARLES A. VILAS, being duly sworn says:

1. I am an attorney-at-law, associated with the firm of Shearman & Sterling, solicitors for the respondent in the above entitled cause, and I am familiar with all the proceedings which have been had in this suit.

2. This appeal is by the defendants from a decree of the District Court of the United States for the Southern District of New York, dated November 19, 1920, adjudging confiscatory and void Chapter 125 of the Laws of New York for 1906, which limited the rate to be charged for gas in the third ward of the Borough of Queens, City of New York, to $1.00 per thousand cubic feet.

3. This case was advanced for argument and set for October 10, 1921, by order of this Court made April 18, 1921, upon motion of the appellants. The case is the sixteenth case on the call of this Court for that day. The record in this case is in four volumes, and comprises 1,880 pages. The issues involved are similar to those involved in case No. 257, Newton, Attorney-General, *et al. v.* Consolidated Gas Company, and case No. 295, Newton, Attorney-General, *et al. v.* Kings County Lighting Company; all of said cases involving the provisions of the statute of the State of New York, limiting the rate to be charged for gas in various portions of the City of New York. A motion to consolidate cases 257, 258 and 259 and to reset said cases for another date, is presented concurrently herewith.

4. I am informed and believe that it is the intention of the solicitor for the appellant Attorney-General and of the solicitor for the appellant Dana Wallace, who has been substituted as District Attorney of the County of Queens as a defendant, to file separate briefs in this suit. Neither of said parties has served any brief on behalf of either of the appellants in this case upon the solicitors for the respondent. The appellants have filed sixty-five assignments of error in this suit; and it is impossible for solicitors for respondent to determine in advance of receipt of appellants' brief what assignments of error appellants intend to rely upon, or to prepare a brief on behalf of respondent. In view of the size of the record and the probable size of the briefs to be filed by appellants, and the magnitude and importance of the questions involved, counsel for appellee will require the full time

allowed by the rules of this Court in which to serve briefs in reply to the points to be made the appellants.

WHEREFORE, the respondent moves the Court to reassign this case for argument on November 14, or on such day as the court shall set for the argument of Nos. 257, 258 and 288; and for such other and further relief as to the court shall seem just and proper.

Sworn to before me this 24th day of September, 1921.

Charles A. Vilas

Arthur C. Power

NOTARY PUBLIC, KINGS COUNTY
CERT. NO. 127 REGISTER NO. 3708
N. Y. CO. CLERK'S NO. 9 REG. NO. 301
KINGS CO. CLERK'S NO. 7 REG. NO. 22
TERM EXPIRES MARCH 30, 1923

Office Supreme Court, U. S.
FILED
OCT 24 1921
WM. R. STANSBURY
CLERK

Supreme Court of the United States

October Term, 1921

No. 296

CHARLES D. NEWTON, as Attorney-General of the State of New York; ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, for the First District; and DENIS O'LEARY, as District Attorney of Queens County,

Appellants,

against

NEW YORK AND QUEENS GAS COMPANY,

Respondent.

BRIEF ON BEHALF OF APPELLANT CHARLES D. NEWTON, AS ATTORNEY-GENERAL

CHARLES D. NEWTON,
Attorney-General
of the State of New York
Capitol, Albany, N. Y.

WILBER W. CHAMBERS,
Solicitor for
Appellant Newton,
Capitol, Albany, N. Y.

WILBER W. CHAMBERS
CLARENCE R. CUMMINGS,
of Counsel.

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SUPREME COURT OF THE UNITED STATES

CHARLES D. NEWTON, as Attorney-General of the State of New York; DENIS O'LEARY, as District Attorney of the County of Queens, State of New York; ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York, for the First District, *Appellants*, *against* NEW YORK AND QUEENS GAS COMPANY, *Respondent*.	296 October Term, 1921	2 3 4

BRIEF ON BEHALF OF APPELLANT, CHARLES D. NEWTON AS ATTORNEY-GENERAL OF THE STATE OF NEW YORK.

This is an appeal by the above named appellants from a decree of the United States District Court, Southern District of New York (Hon. Julius M. Mayer, District Judge, presiding), entered in the office of the said Court on November 19, 1920, 5

6 which decree enjoined and restrained the appellants, public officials of the State of New York, from enforcing the provisions of chapter 125 of the laws of 1906, which fixed the price of gas at $1.00 sold to the inhabitants of the Third ward of the Borough of Queens, commonly known as Flushing and its environs.

7 The issues in this case were by order dated May 23, 1919, made by Hon. Julius M. Mayer, District Judge of the United States, Southern District of New York, referred to Abraham S. Gilbert, Esq., of New York city, to take the testimony and report to the Court (p. 25).

The Special Master rendered his report on
8 July 16, 1920 (p. 45).

The report of the Master came before Hon. Julius M. Mayer for review.

The opinion of the learned Judge is reported in *New York and Queens Gas Co.* v. *McCall et al.*, 269 Federal Reporter 277. By reference to the opinion it will be seen that the Court found that
9 it cost the respondent, during the year 1919, $1,0129, or 1.29 cents in excess of the statutory rate, to make and deliver gas to the consumer (p. 112).

The Court below also found that "the actual cost of the tangible property aggregates $1,130,497.08 (p. 115) and then found that sum of $1,130,-
10 497.08 "as the smallest amount upon which a return should be figured." The Court below thus accepted as a valuation the actual cost of the tangible property as shown by the books of respondent, *without any deduction for depreciation.*

THE ISSUES IN THE CASE

This action was brought on April 7, 1919, to have declared unconstitutional and void *chapter 125 of the Laws of 1906*, upon the ground that said statute was in contravention of *section 10, article 1, of the constitution of the United States* and the Fourteenth Amendment thereof.

The bill of complaint alleges (paragraph XIV, p. 6):

> "During no year since its organization in 1904, have the earnings of your orator been sufficient to provide a return of as much as six per cent upon the reasonable value of its property devoted to the public use."

It further alleges (paragraph XVI, p. 7):

> "The maximum price of one dollar per thousand cubic feet for gas, fixed by the said Act of 1906, has been, is and will continue to be wholly inadequate, in that it does not permit your orator to earn a reasonable return upon the fair value of its property devoted to the public use; and in fixing the said maximum price the said Act of 1906 has impaired, now impairs, and will continue to impair the obligation of your orator's contract with the State of New York, in violation of Section 10, Article 1, of the Constitution of the United States, and has deprived, now deprives and will continue to deprive your orator of its property without due process of law, and has denied, now denies and will continue to deny it the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the said Constitution."

It will be noted from the quotation above that respondent in its bill of complaint, which was never amended, that in no year since 1904 have

16 the earnings been sufficient to provide a return of 6 per cent.

The answer of the Attorney-General and other appellants denied all the material allegations in the bill of complaint.

HISTORY OF THE RESPONDENT

17 The respondent is a domestic corporation, organized under the Transportation Corporations Law, State of New York, on July 12, 1904, for the purpose, among other things of manufacturing and supplying gas for lighting the streets, public places and private buildings in the city of New York. It operates a water gas plant located in the former village of Flushing, in the third ward
18 of the Borough of Queens, city of New York, where it supplies gas to about 11,000 consumers. It is the only company furnishing gas within the territory described.

All of the stock of respondent, except qualifying shares, is owned by the Consolidated Gas Company of the city of New York.

19 The facts will be discussed under the various points.

We shall ask the court to reverse the decree appealed from and dismiss the bill of complaint upon the following grounds:

1. Respondent earned more than a fair return while operating under the statutory rate from the
20 time of its enactment in 1906 to 1918, inclusive.

2. The statute in question should not be tested upon the financial results obtained in the abnormal year of 1919, but the court should take into consideration the period from the time the statute

was enacted in 1906 to 1919, inclusive, for re- 21
spondent alleged in its bill of complaint confiscation during this period.

3. Respondent has accumulated a fund amounting to $101,149.66, as a contingency reserve. This was built up from payments made by consumers for gas furnished them in prior years. The statute should not be declared confiscatory until 22
this fund is exhausted. Temporary losses due to abnormal conditions like any other hazards of business, should be debited against it.

4. Respondent earned a fair return for the year 1919.

5. Working and construction capital, organization and structural items, generally called "overhead" are less than $100,000. 23

6. The court below erred in failing to follow the rule laid down by this court in determining the fair value of respondent's property, depreciation should be deducted.

7. The fair value of respondent's property devoted to making and distributing gas does not exceed $898,545 for 1919, and does not exceed the 24
amounts set forth in Point —, for the years 1906 to 1918, inclusive.

8. The Master committed reversible errors in the admission and exclusion of evidence which errors were not corrected in the court below.

9. The rate of return which a public utility is entitled to enjoy as determined by the courts in 25
normal pre-war times is not decisive or controlling in the abnormal war period.

26

POINT I

RESPONDENT EARNED MORE THAN A FAIR RETURN WHILE OPERATING UNDER THE STATUTORY RATE FROM THE TIME OF ITS ENACTMENT IN 1906 TO 1918 INCLUSIVE.

27 Appellants contend that when a State statute is attacked on the ground that it is confiscatory, as in the instant case, that the earnings, as shown by the practical experience of the company, of all the years, or a period of reasonable length, should be reviewed by the Court and that a fair average return should thus be determined and is decisive of the question in this case.

28 In accordance with this contention, the appellants on the trial offered in evidence Exhibit A11 (p. 2810) and Exhibit A12 (p. 2811), showing the revenues and expenses of the respondent from August 1, 1904, the time of its organization to December 1, 1919.

29 The exhibits above referred to show the operating income, or excess of revenue over expenses, for the period as follows:

Year ended	Operating income
July 31, 1906	$38,411 13
July 31, 1907	33,733 45
July 31, 1908	50,464 03
Five months ending Dec. 31, 1908	27,462 65
30 December 31, 1909	59,370 88
December 31, 1910	66,537 04
December 31, 1911	60,162 14
December 31, 1912	70,187 60
December 31, 1913	64,385 62
December 31, 1914	62,475 00
December 31, 1915	76,467 96

Year ended	Operating income
December 31, 1916.....	$80,884 26
December 31, 1917.....	56,736 70
December 31, 1918.....	33,350 56

(Ex. A11, p. 2810; A12, p. 2811).

The exhibits above referred to were compiled from the books of respondent by Mr. Cohen, a statistician of the Public Service Commission of the State of New York (p. 995-6).

The operating expenses as shown on these exhibits include for all these years many items properly deductible in a confiscatory case, as interest on unpaid taxes, Federal income tax, tax on bondholders income, rate case expense and others.

These items have been found by the Court below to be properly deductible for the year 1919, the only year reviewed by the Court in the instant case.

The learned Court below found no rate base or valuation of respondent's property, other than for the year 1919. The rate base so found was $1,130,497.08 (p. 115).

The appellants, however, introduced proof of a fair valuation of respondent's tangible and intangible property, for the period from July 31, 1906, to December 31, 1909. This valuation was determined by Willard F. Hine, a public utility engineer of wide experience and formerly the chief gas engineer of the Public Service Commission of the State of New York, First District.

While in the employ of that Commission, Mr. Hine made most of the valuations for that well known and important Commission for use in the rate inquiries and other matters coming before it.

36 Mr. Hine showed that the fair value of respondent's property does not exceed the following average amounts for these years.

December 31, 1906.....	$402,711
December 31, 1907.....	434,253
December 31, 1908.....	467,593
December 31, 1909.....	503,170
37 December 31, 1910.....	536,825
December 31, 1911.....	581,825
December 31, 1912.....	615,422
December 31, 1913.....	639,099
December 31, 1914.....	672,432
December 31, 1915.....	751,775
December 31, 1916.....	831,868
38 December 31, 1917.....	867,872
December 31, 1918.....	871,875

How the foregoing table is made up is fully discussed under a later point. Suffice it to say here that the average fixed capital, including engineering and exclusive of land, is taken from defend-
39 ant's Exhibit A109, p. 1877, corrected by deducting for each year the sum of $33,444, a typographical error made in addition on the aforesaid table. (See pp. 1332 and 1333.) That is to say instead of correcting the table as printed in the record, it is corrected by the testimony above referred to the extent indicated.

The foregoing fair value of respondent's prop-
40 erty for each of the years beginning in 1906, to December 31, 1918, stands uncontradicted, and there is no evidence save this, of any fair value of respondent's property during those years.

The following table sets forth the operating income, as shown by the company's books and

above referred to and the average rate base as 41
determined by Mr. Hine also referred to above,
during these years.

It shows clearly that the respondent enjoyed a return of 9½ per cent on the fair value of its property during the years 1906 to 1918, inclusive, and in addition thereto set aside out of these earnings a "contingency" fund amounting to 42
$101,149.66 (Ex. A9, p. 2808). This contingency fund is discussed under a separate point.

In this table we have included all the land used and useful at cost. This cost of the real estate is fully discussed in a later point. It amounts to the following:

43
1906 to 1908, inclusive, $19,423;
1909–1910, inclusive, $20,623;
1911, $26,524.25;
1912, 1913 and 1914, $27,652.25;
1915–1916, inclusive, $40,049.64; and in
1917–1918, $40,053.90. (Exhibit 96, 1606–1607.)

It will readily be seen, therefore, that the alle- 44
gation in the complaint of confiscation during this period was disapproved, and in addition it is manifest from this proof that respondent made considerable more than a fair return and created in addition thereto a tidy sum with which to take care of emergency or lean years when earnings might fall off.

We have already called attention above to the 45
fact that there has been no attempt in this table to exclude improper items, such as (a) interest on unpaid taxes, (b) federal income tax, (c) tax on bondholders' income, (d) rate case expenses, and many others. When these are deducted the re-

turn during this period will be increased accordingly.

We contend that this lucrative period in the company's business under the rate complained of should be considered with the year of 1919, and that with such a showing as this the statute ought not to be declared confiscatory, even though the earnings in 1919 decreased. And accordingly, in the following point we argue fully that the proper period to take would be 1906 to the end of 1919.

Table showing return enjoyed by respondent in years 1906–1918 inclusive without deducting improper items.

YEAR	Operating income	Average rate base	Six per cent on average rate base	Excess of respondent's income over 6 per cent on average rate base	Per cent of return of respondent's income on average rate base
Ju'y 31, 1906	$38,411 13	$402,711 00	$24,162 66	$14,248 47	9.5
July 31, 1907	33,733 45	434,253 00	26,055 18	7,678 27	7.8
December 31, 1908 (*a*)	77,926 68	467,593 00	28,055 58	49,871 10	16.7
December 31 1909	59,370 88	503,470 00	30,208 20	29,162,68	11.7
December 31, 1910	66,537 04	536,825 00	32,209 50	34,327 54	12.4
December 31, 1911	60,162 14	584,825 00	35,089 50	25,072 64	10.3
December 31, 1912	70,187 60	615,422 00	36,925 32	33,261 28	11.4
December 31, 1913	64,385 62	639,099 00	38,345 94	26,039 68	10.1
December 31, 1914	62,475 00	672,132 00	40,327 92	22,147 08	9.3
December 31 1915	76,467 96	751,773 00	45,106 38	31,361 58	10.1
December 31, 1916	80,884 26	831,868 00	49,912 08	30,972 18	9.7
December 31, 1917	56,736 70	867,872 00	52,072 32	4,664 38	6.5
December 31, 1918	33,350 56	871,875 00	52,312 50	*b*18,961 94	3.8
	$780,629 02	$8,179,718 00	$490,783 08	$289 845 94	9.5

(*a*) From August 1, 1907, to December 31, 1908. (Ex. a11, p. 2810; a12, p. 2811)
(*b*) This year return less than 6 per cent, but same includes improper items.

POINT II

THE STATUTE IN QUESTION SHOULD NOT BE TESTED UPON THE FINANCIAL RESULTS OBTAINED IN THE ABNORMAL YEAR OF 1919, BUT THE COURT SHOULD TAKE INTO CONSIDERATION THE PERIOD FROM THE TIME THE STATUTE WAS ENACTED IN 1906 TO 1919, INCLUSIVE, FOR RESPONDENT ALLEGED IN ITS BILL OF COMPLAINT CONFISCATION DURING THIS PERIOD.

The Master and Court have given little attention to the period to be considered here. As a basis for his decision the Master has taken into consideration only the year 1919 and the first five months of 1920. His findings that the statute is confiscatory, however, seem to have been based upon the abnormal and unprecedented conditions of the year 1919, for he says in his findings No. 43:

> "During * * * the twelve months ended December 31, 1919, and during the portion of 1920, covered by the proofs before me, the said net operating revenue did not and does not as of the present time provide any return whatever upon the said fair present value of any of the property so owned and used by the complainant company as hereinbefore found" (p. 43).

In the opinion, he says (p. 48):

> "If, therefore, the actual results of operations for the year 1919 show the rate to be confiscatory, it follows that the net result of operations for the year 1920, which can only be determined in definite figures when the year has ended and the books for 1920 have

been closed, will show a larger deficiency than 61
appeared as the result of operations in the
year 1919. *I have therefore concluded to base my findings as to the cost of making and distributing gas especially upon the operations and costs established for the year* 1919, those figures being taken, of course, in the light of what I have just said, that the cost of making and distributing gas in the year 1920 62
will be in excess of the figures I reach for the year 1919."

In the bill of complaint, respondent company alleges:

"During *no year since its organization in* 1904 have the earnings of your orator 63
been sufficient to provide a return of as much as 6 per cent upon the reasonable value of its property devoted to the public use" (par. XIV, p. 6).

And again:

"The maximum price of one dollar per thousand cubic feet for gas, fixed by the said 64
act of 1906, *has been*, is and will continue to be wholly inadequate, in that it does not permit your orator to earn a reasonable return upon the fair value of its property devoted to the public use; (par. XVI, p. 7).

This was the period, 1904 to 1919 selected by respondent when it drew its bill of complaint. During the course of the trial the complaint was not modified or amended in this particular.

Appellants contend that the inquiry in this case should cover the time during which the

statutory rate complained of has been in force, viz.: 1906 to 1919, inclusive, and the statute should not be declared confiscatory merely by considering the cost of making and distributing gas during one or two abnormal years.

Respondent made no effort by suit or otherwise to have the statute declared confiscatory until the present abnormal conditions prevailed. It had twelve years available in which to bring the matter into court, for the results had been known for each year, and year by year, from 1906 to 1918. These years as to price of labor, materials and supplies and weather were normal and a fair test of the operation of the statute could have been obtained.

Beginning with about the year 1917, due to the World War, prices began to increase and conditions foretold that we were likely to enter into abnormal times. The years of 1918 and 1919 will go down in history as a time of great inflation of prices. They were abnormal years.

It was not until the beginning of the year 1919 that respondent filed its bill of complaint. The appellants contend that respondent deliberately selected this period of abnormal, unusual and unprecedented conditions to strike down the statute in question, and that it is taking advantage of a world-wide calamity to raise its rates.

Most of the witnesses admitted that the year 1919 was abnormal. Throughout the case the Master made frequent references to the fact that the year was abnormal.

In *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 71
19, Mr. Justice Peckham writing for the Court (page 54), said:

> "It may possibly be, however, that a practical experience of the effect of the Acts by actual operation under them might prevent the claimant from obtaining a fair return, as already described, and in any event complain- 72
> ant ought to have the opportunity of again presenting its case to the court."

It is quite apparent that this Court did not have in mind that such a statute was to be put to a test on evidence for one or two abnormal years alone, *but during the whole period in which the statute was in force and until such time as respondent complained of it.* The inquiry should 73
have been directed to the whole time the statute has been in operation and a full and complete inquiry should have been made. The inquiry covering one or two years is not only unfair, unjust and inadequate, but manifestly will lead 74
to an attack of the statute for every temporary change in valuations, prices of labor, materials or supplies.

There is ample authority to sustain our contention that the statute should not be so considered.

Respondent's contention is virtually that this 75
Court should set aside an act of the Legislature which may have permitted the company an excessive rate of return for the many years in which this act has been operative, with the possible exception of 1919; the year being unprecedented and a year in which multitudes of individuals were making great sacrifices; a year in

76 which many companies as well as individuals were content with a greatly diminished return.

In the recent case of the *Municipal Gas Company v. Public Service Commission et al.*, the Court of Appeals said (225 N. Y. 89, p. 98):

> "There was no need to go back to 1917 and disclose the earnings of earlier years.
77 *The significance that they have is solely as evidence.* They have no place in the complaint."

The above case was before the Court of Appeals upon a demurrer and there was nothing before the Court to show that the year 1918 was abnormal.

78 The Court of Appeals distinctly said that the earnings of earlier years were relevant. The Trial Court should consider this evidence. It goes without saying that if the case were to be decided upon the results of one year or one or two abnormal years it would be wholly unnecessary and futile to receive evidence relating to
79 prior years. Consequently, the Court of Appeals must have expected that the evidence of the earnings of earlier years would receive some weight. Furthermore, the intention of the Legislature must be given some consideration. The Legislature has not attempted to fix the gas rate year by year. It did not reduce the rate for gas
80 years prior to the war when this company was making a large profit, or considerable more than a fair return.

We have shown in another place in this brief that this company enjoyed a return in excess of 6 per cent. on an average.

Is it reasonable that the large profit in all these 81
years should be absolutely disregarded and that the legality or illegality of the Act should hinge upon the return for 1919 alone, particularly so when it clearly appears that these were abnormal and unusual times?

If the Master's finding be correct that the stat- 82
ute should be destroyed upon the returns made in a year or a part of a year during an abnormal period, it would mean that the Legislature would be obliged to change the rate from year to year, in order to adjust that rate to the profits shown by the company. If the Legislature were to attempt to change the rate year by year, would it not be met with the assertion that in years to 83
come respondent might encounter conditions which would not give it a reasonable return? Would it not also be claimed that the Legislature should not be continually modifying rates? Further, the results for any year would not be known to the Legislature in time for action to be taken until another year had passed, and by 84
that time the conditions might have changed.

If it be contended that the entire function of rate making should be turned over to the Public Service Commission and the Commission should be required to fix a rate immediately without reference to the statute, we desire to point out that such a plan would impose upon the Commis- 85
sion such an enormous burden and such a host of rate cases every year that it would be entirely impracticable, and that many rates would go unregulated for lack of time to investigate the facts and render fitting decisions. It would become the duty of the Public Service Commission, at

86 the close of every fiscal year to review the financial condition of every utility to make or correct its findings as to the value of the property, and to decide whether to initiate a rate case, for no binding and legal decision could be rendered without giving each company an opportunity to be heard. This Court knows from experience the
87 large amount of time and expense involved in such a proceeding.

We call the Court's attention to the confusion which would result from a constant changing of rates and the difficulties which would arise in the adjustments of complaints. Every public utility would find its affairs in chaos and would
88 protest against constant revisions. Many have already insisted that when a rate is fixed it should be allowed to remain in effect for a period of years so that they may adjust themselves to the new conditions, and conduct their affairs without the turmoil of never ending rate cases.

In the *Lincoln Gas & Electric Co.* v. *The City*
89 *of Lincoln*, (250 U. S. 256), it appeared that the action was instituted in 1906, before the $1.00 rate, fixed by the city of Lincoln, had been tested. In the Trial Court the bill was dismissed without prejudice to the commencement of a new action. An appeal was taken to the United States Supreme Court where the decree was re-
90 versed and the cause remanded to the District Court with direction to refer it to a Master with leave to submit additional evidence (223 U. S. 349). Accordingly, a Master was appointed and he made a report in September, 1914, finding that the rate ordinance was not confiscatory. Upon the rehearing before the Master, he considered a

period from 1906 to substantially the time of his 91
report, which was in 1914, approximately *eight* years. Mr. Justice Pitney, in writing for this Court in that case said (p. 268):

> "Without going into details, we content ourselves with announcing our general conclusion, that, having regard to the entire period under investigation, we are unable to 92
> say that the Master erred in holding that the ordinance was not shown to have been confiscatory in its effect. It is probable that in the years 1907 and 1912, the net return was close to the line, if not below it; but that in other years examined it was at least 7 per cent.; and there are too many doubtful items for us to adjudge the ordinance void, in the absence of an actual and timely test." 93

The United States Supreme Court dismissed the bill, but without prejudice to the commencement of a new action to restrain the enforcement of the ordinance in question, if it should result after a practical test of $1.00 rate since May 1, 1915, that complainant did not obtain a return 94
which was compensatory.

The case of *Boyle* v. *St. Louis S. F. R. R. Co.*, 222 Fed. Rep. 539, p. 557, was a confiscatory case and the Court there investigated a rate for passenger fares of two cents a mile, fixed by the State Railroad Commission of the State of Arkansas. The opinion was written by District 95
Judge Trieber, and in the course of which he said:

> "By adopting the *four-year* period for averaging the earnings and expenses, we are able to get a fairer result than by merely selecting one year which may be affected by

96 peculiar conditions then prevailing. A four-year period when the years are fairly normal will reflect more accurately the traffic and cost" (p. 557).

In the case of *Darnell* v. *Edwards*, 244 U. S. 564, the Supreme Court had under consideration maximum rates on logs fixed by the Mississippi
97 Railroad Commission. The attack upon rates fixed by the Commission was that they were so low as to be confiscatory. In the course of the opinion of the Court, Mr. Justice Pitney said (p. 569):

"It is well established that in a question
98 of rate making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing. Besides this there was affirmative evidence before the district court to the effect that the rates were reasonable. The evidence for complainant tending to show that they were non-remunerative, while
99 based upon actual experience in the operation of the road, *not relates to only a brief period when conditions were abnormal* * * *."

And in concluding his opinion, he further said:

"But it is sufficient for the present to say that the experimental period was too brief
100 * * * and conditions during the entire period covered by the testimony have been too abnormal to enable us to say that the Commission's rates are confiscatory."

The period under consideration in the above case was from September 10, 1913, *to March* 31, 1914.

In the case of *Stevenson* v *Great Northern* 101
Railway Co., 72 N. W. Repr. 713, 721, the Court said:

> "If the Great Northern Company has made such large profits in the past that it was able to pay over large dividends and still accumulate such large amounts of surplus to invest in its properties or to carry 102
> along for several years, it should be content to go along with smaller profits in such times of financial stringency as existed in *1894*."

In the often quoted case of *Smyth* v. *Ames*, 169 U. S. 466, 546, this Court said:

> "As said in the case last cited, 'Each case must depend upon its special facts and when 103
> a court without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are as an entirety so unjust as to destroy the value of its property for all the purposes for which it was required, its duty is to take into consideration the interest both of the public and 104
> of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has under the guise of regulating rates exceeded its constitutional authority and practically deprived the owner of property without due process of law. * * * The utmost that any corporation, operating a 105
> public highway, can rightfully demand at the hands of the legislature when exerting its general powers is that it receive *what, under all the circumstances*, is such compensation for the use of its property as will be just both to it and to the public."

106 The first case to arise in the State Courts of the State of New York, in which the abnormal years caused by the world war were considered was the case of *Kings County Lighting Company* v. *Lewis*, 110 Misc. Rep. 204.

As was said by Mr. Justice Greenbaum in that case (p. 242):

107 "It is clear that confiscation may not be predicated upon the operations of the plaintiff for 1916 and 1917. As to the years 1917 and 1918, it must at the outset be said that those years were abnormal owing to the war conditions then existing. Notwithstanding this abnormality the year 1917 showed a fair return at an eighty-cent rate. * * *

108 As to the year 1918, the question that confronts one is whether confiscation should be based upon such a year, even if it be established with reasonable certainty that the plaintiff's income was thereby reduced to a point which concededly would not be ordinarily deemed an adequate return upon the capital invested. * * *

109 The operations of a fiscal year which was as abnormal as was the year 1918, lack the value of a normal year in determining the future.

In this connection it will be instructive to study the opinions of the courts as to what is meant by a fair return and what period of time should be taken into account in determining the fair return and to what extent
110 abnormal conditions may affect the question of the adequacy of return."

A recent case to arise in the District Court Southern District of the State of New York was the case of the *Consolidated Gas Co.* v. *Newton*

et al., 267 Fed. Rep. 231. The opinion of Judge 111
Hand in that case was written in August, 1920. He states:

> "The master has taken complete evidence over a period of twenty months, from January first, nineteen hundred and eighteen, to August thirty-first, nineteen nineteen. Since that time eleven months have passed, during 112
> which there has been no fall in price levels. The record has some evidence of this down to a later day, but, of course, not down to the date of this opinion. But evidence is not necessary in the face of so patent and obtrusive a fact of daily life, and it is quite fair to say that the conditions which the master found as of August thirty-one, nine- 113
> teen hundred nineteen, has been aggravated during the succeeding year. The period despite its unusual character, I find to be a sufficient basis for the calculation of the cost of production, and the 'rate base' for a future time long enough to call for some judicial action" (p. 236).

The reason for adopting this period as a test 114
of the statute is clearly set forth by the learned Judge, for he states (p. 234):

> "either the evidence of the last 3 years is sufficient basis for a *forecast*, or it is not. If not, ante-bellum values should be used merely for the lack of any better; *if so, the average of the last 3 years is the proper* 115
> *basis.*"

Here we have an expression of opinion by the Court that the average over a period of three years is the proper test, where such a period indicates the future trend of prices.

Again he says:

> "It is quite true that if these prices could fairly be regarded as such temporary aberrations as the rate was meant to cover, this would not be so. Persons who embark their money in such enterprises must take the bitter with the sweet, and the lean years with the fat. Rates, when established, are not intended to make a nice adjustment to all ensuing conditions; they are too long and costly to fix, especially in court" (p. 234).

It is clear from a careful reading of the decision that the learned Judge had the impression, as had Special Master Gilbert, that we had entered into a period of permanent high prices, for he says:

> "Several reasons lead me to believe that present price levels are not merely transitory, though I recognize the danger of any prophecy" (p. 234).

He then proceeds to point out certain reasons which to his mind justifies his conclusions in this regard.

At the time of the decision of Judge Hand, there had been no marked fall in price levels apparent to him, while in the instant case, a precipitate decline in price levels has taken place of which this Court will undoubtedly take judicial notice.

The period of time proper for a test of the statute might be different in a case where price levels are not falling, but advancing, during a normal period, from a case where the price levels

were declining precipitately. In any case but in 121
this case in particular a much longer period
should be selected to make a proper test, and not
simply a short period during an unusual up-
heaval of prices.

There is an abundance of evidence in our every-
day life aside from the sworn testimony that com-
modity prices are on the downward trend and 122
have been so since the fall of 1920, and as Judge
Hand remarked:

> "Evidence is not necessary in the face of so patent and obtrusive a fact of daily life" (p. 236).

The price trend of the two well-known mercan- 123
tile houses of world-wide reputation, Dun's and
Bradstreet's, show in graphic form what every
man learns when purchasing commodities for his
home. A recent report shows that the price levels
of general commodities have declined about 48 per
cent from the high mark of February 1, 1920.
The descent in prices, like their rise, has been the 124
greatest, in the given time, that the world has
ever known.

The next case to arise in this same Federal
Judicial District was the case of *Kings County
Lighting Co.* v. *Nixon et al.*, 268 Fed. Rep. 143,
decided by Judge Hough on October 13, 1920.

The learned Judge did not follow the rule laid 125
down by Judge Hand in the Consolidated Gas
case that "the average of the last three years is
the proper basis" where "the evidence of the last
three years is a sufficient basis for a forecast,"

126 but disregarding the question of an average over a period of years, remarks:

> "The point is that the 80-cent rate is confiscatory not because it does not yield a sufficient percentage on capital, but because to produce it at that price, consumes capital. Neither the Willcox case nor any other decision can be cited to show that any definite or
127 fixed period of experimentation is a necessary prerequisite to a suit of that kind. If plaintiff were getting any return at all another question might be presented, but it is to me a matter of no doubt whatever that a year and a half is a long enough time to experiment with proved capital losses before applying for relief."

128 Thus, the rule stated by Judge Hand that an average of three years is the proper test, was held not to apply in a case where capital is actually consumed during a year and a half, and no return at all enjoyed.

It should be noted in this connection that the
129 Kings County Lighting Company, never having operated under the rate, never experienced proved capital losses thereunder and that is here on appeal.

When the Master's report in the instant case came before Judge Mayer for review on this important point (p. 110), the learned Judge said:

130 "The year, 1919, is, in this case, 'a sufficient basis for the calculation of the cost of production and the "rate base" for a future long enough to call for some judicial action.' "*Municipal Gas Co.* v. *Public Service Com.*, 225 N. Y. 89; *Consolidated Gas Co.* v. *Newton et al.*, 267 Fed. Rep. 231; *Kings County Lighting Co.* v. *Nixon et al.*, 268 Fed. Rep. 143.

"The opinions of Judge Cardoza, Judge Learned Hand and Judge Hough, in the cases just cited, fully set forth the reason for this conclusion and with those reasons on this point I am in full accord." 131

In this case, Judge Mayer found that in 1919 the net cost of gas delivered was 1.29 cents per M. in excess of the statutory rate. 132

This decision, likewise, does not follow the rule laid down by Judge Hand that an average of three years is the proper test, but holds that the rate is confiscatory where a slight loss occurs during one year.

The application of the rule of Judge Hand in the Consolidated Gas Co. case — an average of three years — if applied in the instant case would have shown a fair return on the Court's own figures, but the decision was based on one year alone. 133

The prediction that the trend of prices of all commodities was sharply upward, contrary to the actual fact of a precipitate decline, which has actually happened, probably influenced the court in all the cases just cited. 134

In the case of the *Municipal Gas Co.* v. *Public Service Commission*, 225 N. Y. 89, which case arose on demurrer and consequently the only question before the court was the adequacy of a pleading, Judge Cardoza remarked: 135

> "That dearth does not signify confiscation unless unreasonably prolonged, may be assumed to be true (citing *Darnell* v. *Edwards*, 244 U. S. 564). The difficult thing is to determine where the line is to be drawn" (p. 98).

136 In the *Kings County Lighting Company* case (supra) and in the instant case, the Court seems to adopt the rule that where a deficit resulted under the statutory rate, for a year and a half or even a year, such a period was sufficient and the statute confiscatory.

This rule does not seem to us to be sound. The
137 statute might be declared confiscatory where an inadequate return is had, as well as where no return or a deficit results. The period of experimentation is not affected by this fact and the proper period is alike in both instances.

Imagine a test for a five-year period with an inadequate return on capital each year, and an-
138 other five-year period with a deficit for two years, but an average of 8 per cent return for the full five-year period. The Court would surely be more inclined to hold the rate confiscatory during the first case, than during the latter.

As Judge Cardozo remarks in the case of *Municipal Gas Co.* v. *Public Service Commission*,
139 225 N. Y. 89:

> "Fleeting losses may be suffered, and yet the balance sheet may show a profit."

On the other hand, substantial profits may be made for a large part of any period and the bal-
ance sheet may show a slight deficit. Is it sound
140 to hold that a dearth shown by a balance sheet at the end of one year but not unreasonably prolonged, is confiscation?

The question of a proper period for a test has not been presented to the Court of Appeals, but the decision in the Municipal Gas Company and

other cases would indicate that when the question 141
is presented for decision the rule will be adopted
that an average over a period of years is the
proper test. Many decisions indicate that this
will be the rule.

In the case of *People* ex rel. *Kings County Lighting Co.* v. *Willcox*, 210 N. Y. 479, Judge Miller says (page 487): 142

> "The investors in a new enterprise have to be satisfied as a rule with meagre or no returns, while the business is being built up. In a business subject only to the natural laws of trade, they expect to make up for the early lean years, by large profits later. *In a business, classified among public callings, the rate making power must allow for the losses during the lean years, or their rate will be confiscatory*, and of course will drive investors from the field. In the former class the value of the established business is a part of the 'good will' and may be determined by taking a given number of years purchase of the profits, or exchange value may be considered. In the latter case a different rule must be adopted." 143 144

Judge Miller, by the above language, could have meant but one thing; that is, that the rate should be so fixed that the returns in fat years would care for the losses during the lean years. There is no way to accomplish this, but by averaging the returns over a period of years or by taking into consideration the reserves or accumulations of the company. 145

While this Court has not decided this issue squarely in a confiscatory case, the trend of the

146 decisions in kindred cases, leads to our view upon this important point.

Boyle v. *St. Louis R. R. Co.*, 222 Fed. Rep. 539.

Darnell v. *Edwards*, 244 U. S. 564.

Stevenson v. *Great Northern Ry. Co.*, 72 N. W. Rep. 745.

147 *Lincoln Gas & Electric Co.* v. *City of Lincoln*, 250 U. S. 256.

Columbus Railway Power & L. Co. v. *City of Columbus*, 249 U. S. 399.

It is well settled that had the respondent entered into a contract in the year 1906 with the 148 City of Flushing to deliver gas for $1.00 per thousand cubic feet, the proper period to test the constitutionality of such a contract would be the whole term of the contract.

Columbus Railway Power & L. Co. v. *City of Columbus* (supra).

City of Knoxville Gas Co. v. *Knox-* 149 *ville Water Co.*, 261 Fed. Rep. 283.

Is there such a marked distinction between a contract fixing rates and a statute fixing rates, that in the one case the whole term of the contract is the proper period for a test, while in the other, a test taken during one or two abnormal 150 years suffices? We believe the period of experimentation is alike in both cases and that this Court will adopt such a rule.

In the case of *Bronx Gas and Electric Co.* v. *City of New York*, 195 App. Div. 554, where the Appellate Division, First Department, had before

it the question as to whether it was proper to 151
order a reference in a gas confiscatory case, Mr. Justice Page said (p. 3):

> "The acts which it is sought to have declared unconstitutional were passed 15 and 16 years ago. *The practical experience of the company under these acts up to January 1st, 1917, taking into consideration the* 152
> *changes that would be occasioned by the increase in the cost of materials and labor will be the determining factors in the case.*"

In the light of these authorities we submit that under the circumstances of this case, the shortest period which will reflect with any reasonable accuracy the return respondent has enjoyed under 153
the statutory rate is not less than the period during which the statute was in operation, viz: 1906 to 1919, inclusive.

POINT III

RESPONDENT HAS ACCUMULATED A FUND AMOUNTING TO $101,149.66 AS A CONTINGENCY 154
RESERVE. THE STATUTE SHOULD NOT BE DECLARED CONFISCATORY UNTIL THIS FUND IS EXHAUSTED. TEMPORARY LOSSES DUE TO ABNORMAL CONDITIONS, LIKE ANY OTHER HAZARDS OF BUSINESS, SHOULD BE DEBITED AGAINST IT.

The respondent prior to November 16, 1915, 155
carried a reserve account designated as "Accrued Amortization." The balance in the last named account amounting to $62,254.82 was then transferred to a new account called "Contingency." (Ex. A9, p. 2808.)

156 This transfer was done in pursuance to a resolution passed by the board of directors of respondent at their meeting on Tuesday, November 16, 1915.

It reads:

"On motion, duly seconded, it was

Resolved: That the title of the account
157 heretofore designated as Accrued Amortization, be from and after December 13, 1914, designated as Contingency, and that, for each month thereafter, there shall be credited thereto and charged to operating expenses an amount equal to five (5c) cents per thousand cubic feet of gas sold during said month, for the purpose of providing for con-
158 tingencies or casualties, such as those caused by fire, flood, earthquake, insurrection or riot, or *any other hazards;* no charge against said Contingency Account nor any appropriations therefrom to be made, except by authority of the board of directors. . . ."
(p. 719.)

159 During the years 1915, 1916 and 1917 when the account was active, respondent charged its consumers 5 cents per thousand cubic feet of gas sold to produce this contingency reserve. (p. 777.)

On December 31, 1919, the balance sheet of the respondent shows that the amount in the so-called "contingency" account was $101,149.66. (Ex.
160 A9, p. 2808.)

Mr. Raynor, the secretary of respondent, testified as follows, regarding this fund:

"Q. Is it fair to say of your testimony, Mr. Raynor, that the company now has on hand to the credit of Reserve Contingency the sum of $101,000 odd? A. It is.

"Q. And that is on hand? A. Yes. 161
"Q. And to be accounted for by the company? A. Yes" (p. 778).

"Contingency" is defined in Bouvier's Law Dictionary, Rawles Edition (p. 421) as

> "The quality of being contingent or casual; the possibility of coming to pass: an 162
> event which may occur (Webster). It is a fortuitous event which comes without design, foresight or expectation (39 Barb. 272)."

A contingent fund is an amount reserved or set aside with which to meet specific exigencies and unforeseen events which may or may not happen. 163
The purpose as disclosed by the company of the fund was to provide "for contingencies or casualties such as those caused by fire, flood and earthquake, insurrections or riot, or *any other hazard.*" Whether the account is now in cash or whatever form, it does not appear, nor does it matter. If it is to be used for the purposes 164
set forth in the resolution it must be in some available form. Such a large fund should be kept invested and not be allowed to remain idle. If invested in the plant, such betterments could be capitalized when necessary.

The sole question to determine is whether the temporary losses due to abnormal conditions is properly chargeable against this contingent fund 165
the same as any other hazard of respondent's business.

The appellants contend that this is one of the objects of this reserve. The resolution of the board of trustees is broad and sweeping and covers unusual happenings, some extremely

improbable, such as flood, fire, earthquake, insurrections and riots and any other hazard, other than those defined, are intended to be covered and to be taken care of by this reserve. Surely the consequences resulting from the Great War followed by the enormous inflation, labor disorders, and unsettled conditions are hazards encountered by every business and are provided for, as every unforeseen event by suitable reserve or by contingent reserve funds.

When the fund was being accumulated, of course, the respondent did not know that the World War would take place, but, as we have stated, it is obvious that the fund was amassed for the purpose of taking care of unforeseen events and exigencies not then fairly contemplated. There is no evidence that the fund has ever been drawn upon by the company to take care of any of the contingencies specifically mentioned in the resolution. A similar contingent fund was considered by Special Master Graham in the case of the *Brooklyn Union Gas Company* v. *Nixon, et al.*, and the contention here made by the appellants was advanced in that case. The Special Master did not express an opinion on this question, but charged the contingent fund with the sum of $150,000, being a portion of an extraordinary expense due to a strike at the plant of the Brooklyn Union Gas Company.

When the report of Special Master Graham came before Judge Mayer for review the point was again urged upon the court. The court said

> "3. Contingent Fund. There is much argument upon this point. If there were an actual cash contingent fund on hand, it migh

be well contended that it should now be utilized to carry complainant over a confiscatory period. This so-called fund, however, does not exist as cash. It has gone into the property in one form or another. That dividends have been paid in the past does not produce a cash fund in the present." 171

Brooklyn Union Gas Co. v. *Nixon et al.*, (not reported). 172

It would seem, therefore, that the learned Judge adopted the contention made by the appellants that it was proper that this fund be now utilized to carry respondent over a confiscatory period but failed to apply the rule because it was not shown that the fund existed in actual cash. We 173 submit that this was immaterial and was not a reason for the nonapplication of the rule for the fund must be in some available form to carry out the intended purposes, as shown by the resolution of the board of trustees.

It is not clear why the learned Judge should approve the action of the Special Master in drawing upon this fund for the expense occasioned by the strike and still refuse to charge against this fund the temporary losses due to the abnormal conditions. He said it could not be used to take care of abnormal conditions, because not in cash — yet he draws upon it for a strike — the inconsistency of his position is apparent. 175

As we have already stated, there is no evidence whatever that this sum has been spent for capital purposes, extensions, betterments or anything else; but for the purpose of argument assume that it has been so spent for one of the above purposes mentioned.

176 One of two things must be true — either:

(a) The property in existence before the accumulation of this fund was actually worth the value of the capital issued against it and was kept up out of the earnings in accordance with law, in which case the betterments now representing the contingent fund would have no capital issued
177 against them but the same should now be capitalized and the moneys used for contingencies; or

(b) The property in existence before the accumulation of this fund was not worth the capital issued against it, in which case $101,149.66 of betterments representing this fund would readily go to drive out watered capital, and there would be nothing to capitalize.

178 In either case the consumers should not be made to suffer for the over-capitalization of respondent prior to the accumulation of the fund.

The claim is made that the statutory rate fell short during the year 1919 of affording respondent a fair return on the fair value of its property
179 used in the gas business. Our contention is that the stockholders have, through their constituted officers, accumulated this fund for the purpose of taking care of exigencies and abnormal situations such as this. Consequently, as soon as it appeared that the return fell short of what the company considered a fair return, then the company should have treated this fund as a means of
180 making up the loss, and in no event could the statute be declared confiscatory until it was shown that the fund was exhausted in making up such losses.

The fund was in the nature of insurance, created out of the rate charged the consumer,

to be used in any emergency, and so long as the 181
consumers provided the company with this insurance, it is improper to make them pay again for the losses. In other words, if the rule for which we are contending is not adopted then the consumers would be made to pay twice for the failure of a declared return during the abnormal periods prevailing in 1919. 182

Such a condition condemns itself and is contrary to fair dealing. The company may not thus enrich itself at the expense of the consumers. The only burden which the consumers must bear is to see to it that they pay a rate which will give the company a fair return; and if they pay more than is necessary in fat years, and the difference 183
is accumulated in an insurance fund, such as here, then they have discharged their full duty to the company and the fund must respond to make up any inadequacy of return. Otherwise, the amount paid by the company to consumers in prior years when the fund was accumulating, was too large to the extent of the amount taken out to create 184
this fund. What we mean to say is that the rate at that time was grossly exorbitant unless the consumers were engaged in setting aside a reserve or insurance fund to take care of the day when the company might meet a condition such as confronted it in 1919.

Assuming for the purpose of argument only 185
that the fair value of the company's property and the rate of return it was entitled to enjoy was correctly set forth by the learned Judge below, it will be readily seen that this fund was large enough to carry the company over a period

186 of several years without changing the statutory rate and without any income for making and selling gas for such period.

But aside and apart from this we have shown that respondent enjoyed a fair return throughout.

187

POINT IV

RESPONDENT EARNED A FAIR RETURN IN THE YEAR 1919.

The Court below found the cost of production and distribution of gas in this year to be $1.0129 or 1.29 cents in excess of the statutory rate (p. 112).

188

The items making up this cost found by the Court are as follows:

Cost of production per M	63.45 cents (p. 111)	
Unaccounted for gas per M	7.45 cents (p. 111)	
Total per M		70.90 cents
Cost of distribution per M	27.07 cents (p. 112)	
189 Replacements per M	3.00 cents (p. 112)	
Taxes per M	7.07 cents (p. 112)	
Total per M		37.14 cents
		108.04 cents
Misc. revenue per M (p. 112)		6.75 cents
Net cost per M found by Court (p. 112)		101.29 cents

190

It will be seen that the Court below, accepted the figures given for the cost of production in Complainant's Exhibit No. 64 (pp. 1569, 1570). This exhibit shows the cost of production as 63.45 cents per thousand cubic feet.

(A.) *The Court and the Master erred in not crediting to cost of operation at least 5.88 cents per thousand cubic feet or $19,770.01 because of excessive "repairs at works."* 191

The Court below, as we have stated, accepted the figures given by respondent for the year 1919 alone for cost of production (Ex. 64, pp. 1569-1570). 192

Both the Court and the Master overlooked the fact that repairs at the works was abnormal and unusual as compared with other years.

On this Exhibit there appears two items:

	Amount	Cost per M cubic feet
Repair labor	$10,101 99	.0266 cents
Repair material ...	17,843 55	.0469 cents
		.0735 cents

193

These amounts expended are unusually large for the year 1919 as compared with earlier years and far more than a normal cost for such items. This is conclusively shown by Complainant's Exhibit 77 (p. 1596) and testimony relating to it given by respondent's Engineer Mr. Woods. 194

This Exhibit, introduced by Respondent, shows the following:

	Total cost per million	Cost in cents per M cubic feet
Repair labor	$23 00	2.30
Repair material ...	30 00	3.00
Total	$63 00	5.30 (p. 1596)

195

196 In other words, Mr. Woods expressed the opinion, that for a fair operating condition, .0530 cents ought to be sufficient, instead of .0735 cents, as shown by said Exhibit 64.

Mr. Woods' testimony condemns such a large amount for repairs as excessive.

He stated:

197

> "The Master: Or, putting it another way, you believe the cost of repair labor should show as a matter of actual operation about $23 a thousand?
>
> The Witness: $23 a day, or 2.3 cents a thousand" (p. 420).

198 And again:

> "Q. First as to repair materials, have you figured what in your judgment the repair material required for such a plant would cost per thousand? A. Yes, 3 cents per thousand" (p. 421).

199 The Court below, though he concluded that "the estimate of an expert like Mr. Woods is valuable" (p. 111) and accepted his judgment as to unaccounted for gas, failed to accept his estimate on the above items. Had the Court done so, he would have found, that the cost of production should have been reduced by .0205 cents (.0735 — .0530) or that the cost of production in-
200 stead of being 63.45 cents should be according to respondent's engineer 61.40 cents.

The Master, upon the trial however, thought that 3 cents for the repair material item was too liberal as will be seen (pp. 450, 451) for upon cross-examination Mr. Woods was confronted with

his testimony in the Consolidated case wherein he 201
allowed for this item 1½ cents per thousand cubic feet (p. 449). In fact, the Master stated that he thought that figure of 3 cents should be cut down (pp. 450-451). The difference there was accounted for by the witness Wood by stating that it was due to capacity. Here again the court's attention should be called to the fact that Ex- 202
hibit 11-z (p. 1727) produced by the respondent of its gas manufactured and sold in the year 1920 shows an actual increase for the same period in 1919 about 28%.

The Master evidently was impressed that the figure of 3 cents was too high and he took the witness Wood in hand and the following examina- 203
tion by the Master appears (pp. 450-451).

"By the Master:

"Q. Is it possible, Mr. Woods, that this repair material for 1919 included material put in stock, that would make that difference in your estimate of 3 cents in the actual cost of 4.69, according to the record? A. Well, I 204
would not say. They may have bought material charged to repair account, and it may be in stock pending the use of it.

"Q. Yes? A. I would not say, that might be so.

"Q. In arriving at what the fair cost of production would be for one year I ought to have that in mind. A. I do not know that 205
that is the case.

"Q. That is, taking into consideration your statement that you think 3 cents is right, and your testimony in the other case or your statement today that 1¾ would be right for the Consolidated, for a larger plant, as compared with 4.69, it would indicate put-

206 ting in an additional supply, would it not, or a reckless expenditure of money, either one? A. Their cost may have been somewhat lower the year before, or there may have been more extensive repairs in 1918 than in 1919."

" * * * The Master * * * I think I have got to shave this. You have iron mass, and repair material that seemed to be higher
207 and would indicate putting in of stock."

The master as usual failed to adjust this item as he indicated he would do on the trial.

The books of the company indicate that in the year 1919 the increase of repairs over the year 1918 is about 300%. This shows either one of two things: that the repairs were unusual or ab-
208 normal by reason of the fact that they had allowed repairs of previous years to accumulate and had made them all in the year 1919, or that they had deliberately padded this item. The testimony of Mr. Spear on that point is quite interesting and he in part concedes that the repairs for the year 1919 were unusual (pp. 694-695).

209 "Q. Mr. Spear, was the year 1919 one unusual with reference to repairs, so far as your company is concerned? In other words, did you do a lot of repairing in the year 1919? A. We did considerable repairing in 1919.

"Q. More so than in any previous year? A. I wouldn't say that.

"Q. Well, comparing it with 1918? A. We
210 may not have done so much in 1918 on account of war conditions, not being able to get materials, and had to make up for it in 1919.

"Q. How about 1917? A. That same condition existed.

"Q. How about 1916? A. Well, I can't recall what work we did as far back as that.

"Q. It is fair to say, is it not, that you left a number of repairs to accumulate and that you made them in 1919, which you contend is the first year you were able to make them in? A. No; I say it might have been that way. 211

"Q. Let me call your attention to some of the items here, perhaps this may refresh your recollection: In the year 1918, repairs of works and station structures, labor $200.56; 1919, $656.52. Do you recall any of those figures? A. I don't recall the exact figures; no. You want to realize this condition, too, Mr. Neumann, that we paint our holders about every three years. In the meantime it might be necessary to paint part of it so that it might come heavier in one year than in another. You can't take repairs—*you can't take an average in any one year.* 212 213

"Q. That is, repairs taken for one year would not be a criterion of the general average of repairs over a period of years? A. Not necessarily.

"Q. That is what I am trying to get at. Take, for instance, the item of repairs to gas apparatus, under materials, in the year 1918, there was $4,020.81 spent; and in the year 1919 $12,891.89. How do you account for that? A. Well, I can't recall the details because I haven't gone into it; some of that might be due to increase in cost of materials. 214

"Q. But the increase in cost wouldn't be 300 per cent? A. Oh, no.

"Q. So that it can only be explained upon the ground that there were more repairs to gas apparatus in the year 1919 than in the previous years by about 300 per cent? A. I would say that is part of the explanation; 215

216 part of it is more repairs, and the other part would be increase in cost.

"Q. Take repairs to gas apparatus and labor, the amount in 1918 is $3,528.06; and in 1919, $6,527.79. A. That same condition would apply there, due to increase in labor as well as materials.

"Q. And finally going to the totals of re-
217 pairs of all kinds, in the year 1918 it was $14,326.84; and in the year 1919, $33,642.56; how do you account for that? A. Only in two ways, that the work done in 1919 was more than in 1918, and also in the increase in cost of labor and materials.

"Q. By reason of the fact that repairs were allowed to accumulate? A. Well, I wouldn't say that.

218 "The Master: Well, do you mean the repairs were allowed to accumulate or that they might not have been necessary?

"Mr. Newmann: Either one.

"The Witness: Yes, or it might not have been necessary to make repairs in 1918, but I would say that there was some accumulation there, in my recollection of it."

219

The following table will show at a glance the amount expended according to the books by resondent for various items comprising repairs at works, 1914, to 1919, inclusive.

Appellants contend that because of the abnormality of 1919 and the apparent excessive
220 repairs for that year the expenditures for this work, should be averaged over a period of years, and in this case such period should be at least five years. Accordingly, in the second half of the table which follows we have averaged such repairs for the years of 1914 to 1918, inclusive.

and also for the purpose of comparison averaged 221
same for the period 1914 to 1919, inclusive. We
have then showed by figures the saving in dollars
to respondent in 1919 had the court adopted an
average for these repairs over the five year
period. There would therefore have been a sav-
ing, as shown by the table, of 5.88 cents per
thousand for gas sold had the court adopted the 222
average five year of 1914 to 1918, inclusive, or
4.90 cents per thousand cubic feet had the court
adopted the six year period which included the
unusual year of 1919.

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225

Table Showing Repairs at Works

	1914	*1915*	*1916*	*1917*	*1918*	*1919*
Repairs of works and station structures	$2,538 82	$2,477 57	$981 19	$1,208 15	$1,254 69	$2,671 18
Repairs of power plant	1,425 43	549 92	1,590 76	2,025 77	3,352 88	5,667 71
Repairs gas apparatus	2,348 00	3,099 72	4,328 86	4,823 91	7,748 87	10,219 68
Repairs works tools	95 44	193 62	229 53	211 84	469 75	383 97
Total	$6,407 69	$6,320 83	$7,133 34	$8,299 67	$12,426 19	$27,945 54

	Average 1914-1918	Average 1914-1919	Saving in 1919 by using the average for 1914-1918	Saving in 1919 by using the average for 1914-1919
Repairs of works and station structures	$1,692 68	$1,870 26	$981 50	$817 92
Repairs of power plant	1,788 95	2,435 41	3,878 76	3,232 30
Repairs of gas apparatus	4,429 87	6,894 84	14,789 81	12,324 84
Repairs of works tools	264 03	269 02	119 94	114 95
Total	$8,175 53	$11,469 53	$19,770 01	$16,490 01
Cents per thousand cubic feet of gas sold			5 88	4 90

(Def. Ex. A 15, p. 1760.)

There was no explanation offered by the 231
respondent of this unusual increase in the year 1919 over other years, and here again we say that in that respect, at least, the year for this company was abnormal. It must have either made repairs neglected in previous years or it must have inflated its works repair account for that year, because the increase is over 100 per 232
cent and the record is quite replete with statements that the increase in price was nowhere near that amount over the previous year.

There should be deducted for this item 5.88 cents per M, or $19,770.01.

(*B.*) *The court and the master erred in not crediting the cost of distribution at least 1.47* 233
cents per M cubic feet, or $4,962.54, because of excessive repairs in the transmission and distribution system.

The appellants contend that cost of repairs of all kinds should be averaged over a period of years.

The reasoning of District Judge Tavier in the 234
case of *Boyle* v. *St. Louis S. F. R. R. Co., supra,* that

> "By adopting the *four-year* period for averaging the earnings and expenses, we are able to get a fairer result than by merely selecting one year which may be affected by peculiar conditions then prevailing"

applies with special force to the expenditures for 235
all repair items, for these items are variable depending upon many conditions, such as weather, care, extent of use and others.

During a severe winter such as the winter of 1919–1920, the operating expenses are largely

increased because of the excessive amounts of coal used, the additional expense attending the many calls from consumers having trouble with their appliances and an increased unaccounted for gas due to the greater condensation.

Repairs to mains, services and meters vary considerably from year to year; one year due to some unusual and abnormal condition, the item will be unduly large and the following year, the same item will be comparatively smaller. The repairs are expensive and when once made do not recur for a period of years.

The following table gives the amount expended, according to the books, by respondent for repairs in the transmission and distribution system. What we have said in regard to the averaging of repair at the works applies to those repairs, and same should be averaged over a period of at least five years. The table below shows the average of such repairs for the years of 1914 to 1918, inclusive, and the same for the period of 1914 to 1919, inclusive. The table further shows a saving in dollars to respondent in 1919, had the court adopted for this item, an average period of five years. Thus there is a saving, as shown by the table, of 1.47 cents per M for gas sold for the five year period of 1914 to 1918, and a saving of 1.23 cents per thousand had the court adopted the six year period, from 1914 to 1919, inclusive.

Repairs of Transmission and Distribution System

	1914	*1915*	*1916*	*1917*	*1918*	*1919*
Repairs of gas mains	$3,744 97	$1,548 42	$1,053 28	$1,800 49	$1,539 65	$5,697 02
Repairs services	340 71	167 89	175 95	180 54	952 88	809 35
Repairs meters	2,862 46	3,536 82	1,435 32	5,763 91	3,952 42	4,571 28
Total	$6,948 14	$5,253 13	$3,064 55	$6,104 84	$6,604 95	$11,077 65

	Average 1914-1918	Average 1914-1919	Saving in 1919 by using the average for 1914-1918	Saving in 1919 by using the average for 1914-1919
Repairs of gas mains	$1,981 36	$2,639 63	$3,715 66	$3,096 39
Repairs services	423 57	486 87	385 78	322 48
Repairs meters	3,710 18	3,853 87	861 10	717 41
Total	$6,115 11	$6,911 37	$4,962 54	$4,136 28
Cents per thousand cubic feet of gas sold			1 47	1 23

(Def. Ex. A 15, p. 1769.)

245 244 243 242 241

There should be deducted for this item 1.47 cents per M, or $4,962.54, or a like credit to the cost of distribution.

(C) *The Court should have found that 7% or 5.71 cents per thousand cubic feet was a reasonable allowance for unaccounted for gas. This would be a credit to cost of operation of $5,749.53.*

The Special Master allowed 11.03% for the year 1919 or 8.28 cents per thousand cubic feet (p. 51) while the court reduced it to 10%, or 7.45 cents per thousand cubic feet (p. 111).

The loss of gas, called unaccounted for gas, is a variable quantity depending to a great extent upon the weather conditions, care and attention of the management. It is impossible to determine what the loss will be in advance of its disappearance. One year it may be surprisingly large, and the next comparatively small. There is no question however, but what long cold and severe winters such as the winters of 1917–1918 and 1919–1920, affects the condensation of the gas and causes a greater loss than usual; and on the other hand, the mild winter of 1920–1921, which we have just experienced, will undoubtedly result in a much smaller loss.

The Master states

> "there is ample evidence in the case indicating that it is practically impossible to regulate the amount of 'unaccounted-for' gas and that factors were operative in 1919 which tended to increase the percentage. Weather and other conditions affect the gas in such manner and form that it is impossible to say that 'unaccounted-for' gas should be kept below a certain percentage.

Some years it seems to run very high, and in other years it seems to run quite low. This variance is caused by a number of changing conditions" (p. 51).

The Master accepted the actual loss as shown on the books of respondent for that one unusual and abnormal year, viz., 11.03% (p. 51).

Appellants contended on the trial and we make the contention now, that a fairer and more just method of determining the amount of this loss is by taking the average loss over a period of years, for surely what the loss will be is best determined by what it has been in the past.

The unaccounted for gas, of respondent expressed in cents per thousand feet, according to its books, is as follows:

Year.	
1909	5.67
1910	6.62
1911	6.03
1912	6.25
1913	6.79
1914	5.97
1915	6.32
1916	4.40
1917	4.11
1918	5.27
1919	8.27

(Defts. Ex. A 13, p. 2812.)

The increase in 1919 over the year 1918 will be seen to be 3 cents per thousand, and in the record there is no satisfactory explanation of this large increase.

256 The average for a ten year period, 1909 to 1918, inclusive, is 5.74 cents, and this appellants contend, should be the amount allowed, instead of 7.45 cents allowed by the Court below.

When the report of the Master came before Judge Mayer in the Court below for review, he stated

257 "The 'unaccounted for' gas, so called, for 1919, was 11.03 per cent. This percentage varies. Some years it may be more, others less. Therefore, the estimate of an expert like Mr. Woods is valuable. This plant in his opinion should show a loss of about 10 per cent and I accept that figure, for the purposes of this case, instead of 11.03 per cent"

258 (p. 111).

* * * * * * *

"My figure of 10% instead of the Master's 11.03% changes the 8.28 cents to 7.45 cents" (p. 111).

Mr. Woods is the Assistant Engineer of manufacture of the Consolidated Gas Company, and

259 Consulting Engineer of the respondent and was a witness much interested in the success of this litigation.

The Court below should, in all fairness have adopted the figure showing the average loss of gas as experienced by the Company in its operations, rather than the opinion of respondent's

260 engineer. It is far more reliable for surely the past experience of respondent is a much better guide than the opinion of an expert.

Judge Hand in the case of the *Consolidated Gas Co.* v. *Newton* took an average over a period of 13 years.

here should therefore be a credit to cost of 261
ration for this item of $5,749.73.

(b) The item of uncollectible bills should be included as an operating expense of respondent.

The amount of uncollectible bills allowed be- amounts to $1,249.02 or .0040 cents per M ic feet sold (Ex. 64, p. 1572). This is the hibit used by the Master and Court. 262
The appellants contend that this item should excluded in a confiscatory case of this kind.
The Transportation Corporations Law of New ork (section 65) authorizes respondent to equire:

"* * * every person to whom such cor- 263
poration shall supply gas * * * for lighting any building, room or premises, to deposit with such corporation a reasonable sum of money according to the number and size of lights used or required or proposed to be used, for two calendar months by such person and the quantity of gas * * * necessary to supply the same as security for 264
the payment of the gas * * * or compensation for gas consumed * * * to become due to the corporation, * * *"

The respondent, unless the deposit is made as required by the above section, might cut off the supply of gas to the consumer, or refuse to serve him. 265

Section 65 of the Transportation Corporations Law.

The courts have even gone so far as to hold that a gas company may cut off the supply of gas to

a consumer who neglects to pay, although he may have made a deposit as security.

Hearsey v. *Queens Borough Gas Co. & Elec. Co.*, 47 Misc. (N. Y.) 375.

Here the company is authorized by statute to obtain in advance a deposit to cover gas to be thereafter sold to the consumer. In other words, it may have its money in advance. It is a protection not ordinarily afforded other business. At least with this safeguard the burden was upon respondent on showing that it used more than ordinary diligence in its effort to collect its gas bills, and this ought to appear before any allowance is made for such item.

All that we have here is the inclusion of a sum for uncollectible bills without any competent proof showing diligence on the part of the respondent to collect the amount from its consumers. There is a lack of proof sufficient to warrant the court in allowing any sum for this item. While, on the contrary, we think, in view of the statute quoted, and the safeguards surrounding respondent in the sale of its gas, there ought not to be any allowance in any case for uncollectible gas bills.

Respondent has something better than a cash business. It may obtain its cash in advance and place it on deposit to await the day when it furnishes gas. It may then reimburse itself out of the consumers' money. There ought not to be any loss to the company by failure of a consumer to pay.

We submit that this item should be disallowed entirely and the exception sustained.

271

terest on consumers' deposits should be as an operating expense of respondent. mounts to $1,521.10 or .004 cents per M

nsportation Corporations Law of New ection 63) provides that gas companies 272
ect from the consumers prior to use of a sum equal to two months' consumption

law, undoubtedly enacted at the request as companies, including respondent, is a right bestowed upon the company. This obtained in advance from the consumers 273
ited in the general funds of the company sed for all its corporate purposes.
aw above referred to, also provides that on this money belonging to the consumers paid by the company. And so we find l in the operating expenses, the sum of 0 (Compts. Ex. 64, p. 1572).
we find that the company has charged 274
ith these amounts, as interest to be paid consumers on this fund, still nowhere do that the company has given the consumer n any manner for the use of these monies d with it pursuant to law. The company ne bank at least 6% for the use of other 's money, and surely it ought to be as lib- 275
ien using the money of its consumers de- with it. We submit that this item is not er operating expense and should be elim-

question of the propriety of including this a rate litigation was before Judge Hand

276 in the case of the *Consolidated Gas Company of New York* v. *Newton, et al., supra*, and he said as follows:

> "*Interest on Consumers' Deposits.* In whatever way figured, it seems clear that this is in no sense a proper item in the cost of distributing gas to the consumer. I am
277 not trying to learn what were the revenues of the company in the past, but to establish a basis for the cost of distribution in the period to be covered by a decree. I disallow this item, forty thousand nine hundred and five dollars for 1918, and thirty three thousand and six hundred and one dollars for 1919."

278

We do not find this question was passed on by the Special Master, A. S. Gilbert, nor by Judge Mayer in his review of the Master's report.

The learned Judge however, has excluded this item in the cases of *Central Union Gas Company* v. *Newton* and *Northern Union Gas Company*,
279 which subsequently came before him for review. It should be excluded here.

(F) The respondent used an excessive amount of boiler fuel in 1919 which should be deducted from operating expenses. The value at the excess is $5,307.21, or 1.1 cents per M made.

Appellants make the same contention in regard
280 to boiler fuel as is made in regard to repairs, that is to say: The quantity used should not be based upon the abnormal amount claimed to be consumed in this year, but should be the amount shown to have been used by the company by taking an average for a period of years. We have averaged it over the years 1913 to 1918, inclusive

The Master took as the basis for his figures 22 pounds of boiler fuel per M cubic feet of gas made (see p. 38, wherein he sets forth cost of production 63.45 per M); this checks with complainant's Exhibit 64 where the cost is the same amount. He said in his report (p. 37), that approximately 19 lbs. of boiler fuel is necessary. He apparently failed to adopt this figure in his cost of production because he accepted the figures in complainant's Ex. 64, p. 2496, and this exhibit is based on the amount of boiler fuel shown by complainant's books for year 1919. The testimony is illuminating. 281 282

> "The Master: I see by the exhibit that in the year ending 1919, December 31st, they use 16 lbs of coal and seven tenths of a gallon of tar. That would make it over 25 lbs. 283
>
> "The Witness: Yes.
>
> "The Master: That is pretty high, isn't it?
>
> "The Witness: That is what they use." (p. 431.)

284

This testimony throws some doubt on the question whether exhibit 64 does not have the equivalent of 25 lbs. of boiler fuel used. We, however, have assumed for the figures below, that only 22 lbs. were used. If 25 lbs. were used, then the saving would be even greater than we contend.

In the case of *Consolidated Gas Co.* v. *Newton, et al.*, Engineer Wood testified for that company that 14 lbs. per M were sufficient. Here, while testifying for respondent, he stated that 22 lbs. were necessary (p. 429). He was confronted with his testimony in the Consolidated Gas Company 285

Net Earnings in Year 1919 as Claimed by Appellants 291

	Cents per M cubic feet gas sold	Amount	
Repairs at works.....	5.88	$19,770 01	
Transmission and distribution repairs	1.47	4,962 54	292
Unaccounted for gas.....	1.71	5,749 73	
Uncollectible bills	0.40	1,349 02	
Interest on consumers' deposits	0.48	1,621 10	
Saving in boiler fuel.....	1.41	5,367 20	
Total	11.35	$38,819 60	
Court's findings (pp. 112, 114)	1.0129		293
Adjusted cost per M.....	.8994		
Revenue from sale of gas (p. 112)	1.0000		294
Miscellaneous revenue (Ex. 64, p. 2496)	.0675		
Total revenue	1.0675		
Adjusted net income	.1681	$56,522 18	
Rate of return on appellant's rate-base in 1919 of $895,545	6.3%		295

296

POINT V

THE COURT BELOW ERRED IN FAILING TO FOLLOW THE RULES LAID DOWN BY THIS COURT THAT IN DETERMINING THE FAIR VALUE OF RESPONDENT'S PROPERTY, DEPRECIATION SHOULD BE DEDUCTED.

297 The Court below has accepted the book figures of respondent showing actual cost as the fair value of respondent's property. The Court below makes no deduction for the decrease in the worth of the property due to such well known causes as wear and tear, obsolescence and in-

298 adequacy.

This is in direct conflict with common experience as well as the decisions of this Court for the depreciation of property is a fact, and its decline in value starts, as this Court has said, from the very moment it is put into use and continues until it is finally withdrawn from service.

299 Such depreciation is due to causes which have nothing to do with the cost of the property or book entries, or where the money comes from. Depreciation is a physical fact brought about largely by physical conditions, but also by changes in the art, changes in operating conditions and by the growth of cities. Whether

300 the item cost $50,000 when new, or would cost now $100,000, or whether the money was provided out of earnings or invested by the bondholders is wholly immaterial; the property depreciates regardless of these factors. They may influence the amount of depreciation, it is

true, but they do not have anything to do with 301
the question of whether depreciation should be
deducted in determining fair value.

The appellants contend that a deduction should
be made in determining fair value, not because
the property has been in existence for some
years, but because its value has decreased, due
to causes that are real, and that the amount of 302
decrease is generally measured by the relation of
the period for which each item or class of sim-
ilar items have been in use to the total useful life
of the property. In other words, as Mr. Maltbie
said when on the witness stand, age is a measure
of depreciation and not necessarily a cause. Upon
the other hand, respondents contend, and appar- 303
ently the Court so finds, that no matter how long
a thing remains in use, its value is its cost up to
the very moment that it passes out of use. In
other words, in one moment, the instant when
property is finally withdrawn from service, its
value passes from 100 per cent. to zero.

The falsity of the Court's conclusion, that a 304
company is entitled to a return upon its "invest-
ment" without deducting anything for depreciation,
even the needed repairs and renewals, may
be shown in another way. Assume that the stock
and bondholders of a company did invest $10,-
000,000 in cash in physical property, does it fol-
low that the security holders are entitled to a 305
return upon $10,000,000 as long as the company
operates, without regard to the condition of the
property, the probable remaining useful life of
this property or the amount required for the re-

pairs and renewals which would be necessary to place it in what the company contends would be 100 per cent. operating condition.

The rule of law is clearly established that a company is not entitled to a return upon the actual cost of the property or upon the reproduction cost or upon any other measure of the cost of property WHEN NEW.

The rule in the Federal courts and in the courts of this State is the same — namely, that consideration must be given to the condition of the property and that deduction must be made from cost for the accrued depreciation.

The principal recent case upon this point in New York State is *People ex rel. Kings County Lighting Co.* v. *Willcox, et al.*, 156 App. Div. 603, modified in 210 New York, 479. This case is not only important from the standpoint of the rule laid down that accrued depreciation must be deducted, but because of the strenuousness with which it was contended that there should be no deduction for any depreciation and because of the fact that the decision, which the Kings County Lighting Company undertook to overturn, held positively that the straight line method should be followed in determining accrued depreciation, and that depreciation due to every cause, including inadequacy and obsolescence, as well as wear and tear and other causes, should be deducted. This is the very method used by Mr. Hine in this case.

In that case, the Appellate Division upheld the Commission ruling that accrued depreciation

should be deducted from cost new in determining 311
fair value. The Court said (pp. 610–612):

> "The Commission said 'cost of reproduction new is not necessarily an indication of present value. Depreciation and deferred maintenance are important factors. It held that the proper method to ascertain the value of the tangible property was to take the amount obtained by subtracting from the cost of reproduction its accrued depreciation, and therefore from its estimate of reproduction cost new, subtracted $415,198 for depreciation.
>
> "The relator contends that this method is fundamentally unsound; that said sum should not be deducted, but that the true rule is that the company is entitled to earn a return on the full 100 per cent. service value of its investment; that the fair value for rate-making purposes is equal to the total cost of reproduction less scrap value, without any deduction whatever for accrued depreciation; that, therefore, the Commission's total valuation is in error to the extent of the difference between said amount and Mr. Connette's total of scrap value $183,150, or making in round numbers an amount of $230,000, which would be added to the total valuation."

The Court did not agree with this proposition, but pointed out that there must be a deduction for accrued depreciation and that such an allowance had been made in various cases of this kind. The Court approved the amount of accrued depreciation deducted by the Commission on the

straight line basis and said that this was proper.

To the same effect is the *Knoxville Water Co.* v. *Knoxville*, 212 U. S. 1. In that case Justice Moody delivered the opinion of the Court. He said (p. 10):

> "The cost of reproduction is not always a fair measure of the present value of a plant which has been in use for many years. The items composing the plant depreciate in value from year to year in a varying degree [illegible] the mains, the service pipes, structures upon real estate, stand pipes, pumps, boilers, meters, tools and appliances of every kind begin to depreciate with more or less rapidity from the moment of their first use. It is not easy to fix at any given time the amount of depreciation of a plant whose component parts are of different ages with different expectations of life. But it is clear that some substantial allowance for depreciation ought to have been made in this case."

In the case of *Spring Valley Water Works* v. *City & County of San Francisco*, 192 Fed. Rep. 137, pp. 184, 186, Judge Farrington said:

> "Depreciation may be delayed, but it cannot be prevented. Ultimately every structure in complainant's plant will be worn out by use, wasted by action of the elements, broken by accident, abandoned in the development of the system, or displaced by newer and more efficient contrivances. In view of this fact, it was held in the 1908 case that complainant was entitled to an annual allowance to cover such loss. The highest

courts have repeatedly declared this fact 321
cannot be ignored in determining the value of property in rate cases.

In *Knoxville Water Co.* v. *City of Knoxville*, 212 U. S. 1, * * * and more recently in *Contra Costa Water Co.* v. *City of Oakland* (Cal.), 113 Pac. 668, the lower court found the present cost of reproducing the plant, but failed to take into account the fact 322
that an old plant is worth less than a new one. In each, the result was a reversal.

It is impossible to measure accurately such loss until it has matured. When a machine is worn out, we know its original value is gone; but while the machine is in use the amount of deterioration is largely a matter of opinion. Here the difficulties of the problem 323
are increased by the fact that a very large portion of the most valuable construction, such as pipes, masonry and concrete work, are concealed in the ground or under water. * * *

I find the annual depreciation of this plant to be 1 per cent. per annum for cast-iron pipe, 2 per cent. for wrought-iron pipe, 2.5 per cent. for pump engines, flumes and wooden structures, and 5 per cent. for boilers. Thus I have ascertained the annual depreciation to be $212,983. 324

The total depreciation to be deducted from the reproduction cost of structure is $2,929,538. This I have ascertained by multiplying the annual depreciation of each structure for the number of years it has been 325
in use, using original cost as the basis of calculation."

Mr. Maltbie and Mr. Hine testified as to accrued depreciation or the amount that should be

326 deducted in determining the fair value of the property due to the decrease of the useful life of such property. Mr. Mahlbie testified as to the general principles according to which depreciation should be computed (pp. 1227, 1232). Mr. Hine gave detailed testimony explaining fully the methods which he used (pp. 1180-1182). Both
327 defined depreciation as the term is generally used and as used, by them, to be decrease in worth or value due to all causes, such as wear and tear, decay, inadequacy and obsolescence.

The method which Mr. Hine used to measure depreciation as thus defined was as follows: In the first place, the age of each item of property
328 was determined, or, if the age could not be determined, the probable remaining life was estimated. Next, an estimate was made of the probable useful life in service of each class of property, and the annual allowance for depreciation was then computed on the straight line basis. Thus, if an item of property had an estimated life of ten years and was five years old, the annual depre-
329 ciation would be taken as one tenth of the normal reproduction cost and the accrued depreciation would be five times the annual depreciation, or fifty per centum of the normal reproduction cost, assuming there is no salvage value.

Respondent contends that Mr. Hine's method is theoretical and does not take into account actual conditions, and the Master seemed to labor
330 under somewhat the same delusion. As a matter of fact, Mr. Hine's estimates of accrued depreciation were based upon actual conditions and in order to determine the probable useful life of

each item of property he had studied the experi 331
ence of the respondent, of all other gas companies within the city of New York and of many gas companies elsewhere. He testified that the property was maintained in fairly good operating condition and that his estimates are based upon the assumption that the practice will be continued.

We again call attention to the decision of the 332
Appellate Division in *The People ex rel. Kings County Lighting Co.* v. *Willcox, et al.*, case (quoted above), particularly to the brief submitted by counsel in that case, and to the record itself.

Mr. Maltbie, as a member of the Public Service Commission for the First District, wrote the opin- 333
ion of the Commission in that case from which an appeal was taken to the Appellate Division. The method followed for determining accrued depreciation by the experts of the Public Service Commission when the case was before that body, and the method used by the Public Service Commission in its decision, were the same as that followed by Mr. Hine in this case — namely, the 334
straight line method based upon the relation of age to probable total life.

The decision of the Commission was attacked by counsel for the *Kings County Lighting Company* before the Appellate Division as to the reasonableness of the method and the correctness of the findings of fact. Counsel for other utility 335
companies submitted a long brief upon this subject, contending that no deduction should be made for depreciation beyond deferred mainte-

336 nance. The decision of the Appellate Division was eleanent and conclusive. The court repudiated the theories of counsel for the utility companies and sustained the decision of the Commission both upon points of law and of fact. It is significant that although an appeal was taken from the decision of the Appellate
337 Division to the Court of Appeals upon certain of the conclusions of law reached by the Appellate Division, there was no appeal from the rulings as to depreciation and they stand as the law of the State of New York.

As Mr. Maltbie pointed out in his testimony, the value of a thing depends upon the amount of
338 useful service which it will render. This decreases as time passes, and consequently its value must likewise decrease and is at 100 per cent only at the moment it is put into use.

Mr. Justice Moody, in the case of *City of Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 10, calls attention to this fact in the following language:

339 "The items composing the plant depreciate in value from year to year in a varying degree. Some pieces of property, like real estate for instance, depreciate not at all, and sometimes, on the other hand, appreciate in value. But the reservoirs, the mains, the service pipes, structures upon real estate, standpipes, pumps, boilers, meters, tools and
340 appliances of every kind begin to depreciate with more or less rapidity from the moment of their first use. It is not easy to fix at any given time the amount of depreciation of a plant whose component parts are of different ages with different expectations of life.

But it is clear that some substantial allowance for depreciation ought to have been made in this case. The officers of the company, *alio intuitu*, estimated what they called 'incomplete depreciation' of this plant (which we understand to be the depreciation of the surviving parts of it still in use) at $77,000, which is 14 per cent of the master's appraisement of the tangible property. A witness called by the city placed the reproduction value of the tangible property at $3,703,983, and estimated the allowance that should be made for depreciation at $118,000, or 32 per cent. In the view we take of the case it is not necessary that we should undertake the difficult task of determining exactly how much the Master's valuation of the tangible property ought to have been diminished by the depreciation which that property had undergone. It is enough to say that there should have been a considerable diminution, sufficient at least to raise the net income found by the court above 6 per cent upon the whole valuation thus diminished." 341 342 343 344

The court in the decision of *Brooklyn Heights R. R. Co.* v. *State Board of Tax Commissioners*, 69 Misc. 646 (page 656 says):

"As surely as humanity travels to the grave, the machinery and equipment of a public service corporation travels toward the scrap pile. The plant and structures depreciate in less degree but as certainly. This is ordinary depreciation. 345

But another form of depreciation in the case of properties here being valued takes place. The machinery or equipment, while still capable of years of service, becomes in-

346 adequate to do the work demanded — not only by the corporation, but by the law itself. In the case particularly of electrical machinery the type becomes obsolete by reason of invention, and increasing public demands frequently require in aid of safe and adequate service that the obsolete appliance or equipment give way to the new. Property which in itself may be almost indestructible
347 in the hands of a public service corporation may be required to be replaced by the requirements of the public which the corporation serves. These requirements for change of plant, structure and equipment and their replacement, can be and are made by the State itself. Some of these changes are
348 capable of definite ascertainment. Others are not so readily ascertainable. Many of them, however, may be provided against for the future by setting apart from gross earnings a reasonable sum to create a reserve against the day when they shall come."

In the recent decision by ex-Justice Hughes as
349 referee in the *Brooklyn Borough Gas Company v. Public Service Commission*, 17 N. Y. State Department Reports, 81, the expert for the company testified as to observed depreciation and allowed a small amount comparable with the amount estimated by Mr. Miller in the present case. Mr. Justice Hughes was asked to limit the amount of depreciation deducted to observed de-
350 preciation. This he refused to do, saying:

> "As was said by the Court of Appeals in the case last cited (Kings County Lighting Company): 'The cost of reproduction less accrued depreciation rule seems to be the one generally employed in rate cases. But

it is merely a rule of convenience and must 351
be applied with reason. ' ' The only
evidence apart from the plaintiff's books is
the testimony of Mr. Shattuck, the plaintiff's
expert' but this relates only to the depreciation he observed. He conceded that there was depreciation or deterioration of the property not covered by ordinary repairs and that he had not given consideration to 352
it in his appraisal. In the absence of any counter vailing evidence, the depreciation in the plant may fairly be taken at the amount shown in the books, and if the attacked rate permitted an adequate return after making such allowance, there would be no ground for asserting confiscation; and whether the rate is confiscatory is the question here. ' 353

The attention of the Court is also called to the fact that the accrued depreciation allowed in that case was based originally upon the findings made by the Public Service Commission, Commissioner Mathbie writing the opinion, which in turn were based upon an appraisal made by Mr. Hine in a 354
rate case. The record before the Public Service Commission shows that accrued depreciation was estimated by Mr. Hine by the same method followed by him here. Ex-Justice Hughes' opinion, when read in the light of these facts, is a decision strongly supporting the claim made by appellants and repudiating the claim made by respondent.

The court below failed to deduct anything for 355
depreciation and in this, we claim he committed reversible error.

Assuming that our interpretation of the law is correct, and that depreciation due to all causes should be deducted in determining the fair value

of property, we call attention to the fact that there is no testimony except that of Mr. Hine as to the reasonableness of the amount of such depreciation, and appellants contend that the figures given should be taken as the proper amount of depreciation to be deducted. The figures given represent the value of the property after accrued depreciation has been deducted, and appellants contend that the decree should be set aside and that the evidence given by witnesses for appellants should be taken as determining the fair value of the property.

POINT VI.

WORKING AND CONSTRUCTION CAPITAL, ORGANIZATION, AND UNDISTRIBUTABLE STRUCTURAL ITEMS, GENERALLY CALLED "OVERHEADS" ARE LESS THAN $100,000.

Working and Construction Capital

The company has a right to have included in the value of the property which it gives to the public service a certain sum which shall be adequate for its working and construction capital.

This represents moneys advanced by the utility, other than fixed capital defined in the Uniform System of Accounts as property with a probable service life of more than one year, for which it is reimbursed when revenue is collected.

In his opinion, the Master states:

> "Taking into consideration the various elements which are and must be provided for in arriving at the necessary amount of working capital, I have reached the conclusion that $125,000 would be a fair sum to be allowed for working capital" (p. 56).

The Court below, in reviewing the Master's report, did not pass upon the reasonableness of this allowance, but determined the value of the property in a lump sum, saying: 361

> "All other findings touching the rate base have become immaterial to this case" (p. 115).

362

And again:

> "All exceptions filed by the defendants and not herein before referred to are not passed upon because immaterial to this decision" (p. 118).

The Master's report therefore, respecting this item, was not affirmed by the Court below. 363

Witness Malthie testified the sum of $70,000 was ample (pp. 1214-1219).

He was subjected to severe cross-examination (pp. 1261-1285), but his result was unshaken. His experience, knowledge and fair dealing with public utilities covering a long period of time 364 should be accepted in preference to witness Miller who testified on this item for the respondent.

It must be kept in mind that his item of $70,000 includes construction capital as well as working capital. The phrase is intended to mean the amount of money or its equivalent in property 365 which the company must provide in advance of the time when it will be reimbursed by the consumers of the gas company either in the way of payments for gas or in payments for the rental of appliances.

366 The respondent's witness Miller estimates $165,000 as the requirement for working capital, made up as follows:

Materials and supplies	$60,000
Cash in office and banks	50,000
Accounts receivable	35,000
367 Gas furnished to consumers, but not yet billed	20,000

(p. 567.)

Respondent's witness Miller must have felt uncertain about these figures, for after stating
368 the same he qualifies them by this statement (p. 567):

> "*This amount is more of working capital than the company has had* but it is no more than the company needs and should have in view of the present prices of materials, supplies, labor etc. The fact that in other years the company has struggled along under the
369 present statutory rate with an amount less from time to time that without the amount now shown should not control the amount proper to be allowed in view of the present level of prices."

There is no evidence whatever either in the record or in the books of the company that the
370 amount set forth for materials and supplies, cash, accounts receivable and gas furnished, averaged or equaled Mr. Miller's figures. An examination of defendants' Exhibit A-8, from 1906 to 1919, inclusive, indicates that at no time have any of these items equaled or nearly

equaled the amount now demanded by the respondent company as proper sums to make up the working capital allowance. 371

Respondent's witness Miller endeavors to sustain his amount for working capital in the sum of $165,000 to the effect that the company require or should have fifty cents a thousand cubic feet for working capital. 372

The Master very well stated how preposterous and ridiculous was such a requirement (p. 917):

> "The Master: Well, I never ran a gas company but it does seem high to me that a concern doing a business of $330,000 to $340,000 a year should have $150,000 working capital." 373

The Master has neither in his findings or opinion given any indication as to how he arrives at the amount of $135,000. There is no evidence to sustain an amount beyond that testified to by appellant's witness Maltbie.

A consideration of the foregoing figures and the evidence confirm the fact that the $70,000 as testified to by witness Maltbie is correct and fair. 374

Organization — Legal, General and Preliminary Expenses

We contend that for organization, legal, general and preliminary expenses prior to August 1, 1904, and on the basis of what the books themselves show for expenses incurred since that time, there should be allowed a maximum amount of $10,000. 375

376 In respondent's witness Miller's exhibit (No. 66, p. 5861), there is set out $135,000 " for organization and development expenses prior to construction."

This item includes numerous other expenditures and there is no separation whatever as to any value for " franchises," or of the cost of

377 the same.

We refer to his testimony (pp. 847-849):

" Q. Your item for organization and development expense prior to construction is an estimate on your part? A. Yes, an estimate based on my experience.

" Q. How did you make up that sum of

378 $135,000?

" Mr. Ransom: Objected to on the ground that the notes fully show.

" Mr. Chambers: The notes do not do anything of the kind.

" Mr. Ransom: It states the basis, and the detail of the things that go into it.

379 " Mr. Chambers: I want to know what the details are. I think we are entitled to have it. If the Master rules it out, all right.

" The Master: Are the details set forth on that exhibit, Mr. Miller?

" The Witness: In general description. There is a general description of that here.

380 " Q. There is nothing but the lump sum of $135,000, is there?

" The Master: Let us see it. I sustain the objection to the question as put. You can ask him any more details that you want.

" Q. You have put something in for services of sponsors. What do you mean by that? A. I mean the people who stand behind the

enterprise. You may call them the pro- 381
moters or such persons as get up the enterprise.

"Q. How much did you allow for those fellows? A. I have not subdivided it. I have had items of this kind run all the way from five to fifteen per cent of the whole enterprise. In this case the amount is something less than five per cent. I have not attempted 382
to subdivide it.

"Q. You allow something for local consents—how much for that? A. I have not subdivided it at all.

"Q. How much did you allow for franchises? A. The same answer.

"Q. Supposing they did not pay anything for their franchises, you would allow some- 383
thing anyway?

"The Master: Who is 'they'?

"Mr. Chambers: Any of the companies.

"Q. If nothing was paid for these franchises you would still have allowed something, would you? A. *Nothing has been allowed to any amount in this case.* If I had 384
put in anything actually for franchises I should have put in a considerably higher amount. The franchise had a greater value.

"Q. You say the $135,000 includes franchises? A. I do not say any actual payment.

"Q. You don't know anything about whether they made any or not? A. I do not. I think in all human probability they paid 385
more than this amount in the case of this company.

"Q. What is this amount? A. $135,000.

"Q. For franchises? A. No, *for everything*, for the amount which I have allowed and which I say I have not subdivided.

386 "Q. Does it include anything for franchises or not? A. If anything was paid it is intended to include it.

"Q. Mr. Miller, you made this up? A. I made it up.

"Q. And you said amount the items was franchise? Did you allow, or did you not allow, anything for franchises? A. I have stated that I have allowed about five per cent

387 *to cover the preliminary expense*, and which in my opinion carries anything that was probably actually paid to the local authorities. I don't know whether they paid anything or not.

"Q. Did you make any investigation to determine what they paid the local authorities?

388 "Mr. Ransom: I object to this line of inquiry.

"The Master: Objection overruled.

"Mr. Ransom: Exception.

"Q. Did you? A. Not to the local authorities. The books show a very large payment

389 for franchises.

"To whom? A. To the predecessor company.

"And you treated that as a payment for franchises? A. I did not. That was an amount of something like a million dollars, and we are discussing a figure of $135,000.

390 "Mr. Ransom: Counsel is failing to distinguish between the expenses incurred in the obtaining of a franchise, and payment for a franchise.

"By the Master:

"Q. You say the books show a payment of a million dollars for franchises? A. The

books opened with a million dollar item for 391
franchise.

"Q. Do the books show a payment for franchises? A. They do not show any cash payment, but they open with an item of a million dollars and something for franchises, and against that stocks and bonds were issued.

"Q. There were only $600,000 of stock 392
and $800,000 of bonds altogether? A. The opening entry shows a very large item on franchises and property.

"The Master: Is that opening entry here?

"Mr. Ransom: No, the original book is not here.

"Q. Is it your testimony that anything 393
you found on the books justifies you in the statement that they paid a million dollars for franchises? A. No, I don't believe they paid that. I know there was a great deal of real property in that account, from my own investigation.

"By Mr. Chambers:

"Q. That was an opening balance, was it, 394
that is all? A. That is all.

"Q. Or a balancing entry? A. Well, it was an opening entry.

"Q. Wasn't it a balancing entry? A. It probably was. They probably lumped the whole plant in it."

As was testified by defendants' witness Malt- 395
bie (p. 1212), and undisputed in the record, there has been no items charged since 1902 to the fixed capital account for "organization, legal and general expenses" and as further testified to by the witness Malthie if the legal expenses were incurred they were charged as an operating expense and the operating expenses so show.

Franchises

396 The company is not entitled to any return on "franchises." The weight of authority is to the effect that the "franchise" value should be excluded from the property upon which the company is entitled to a return.

397 *Springfield Valley Water Works Co.* v. *City of San Francisco*, 192 Fed. Rep. 137.
Cumberland T. & T. Co. v. *City of Louisville*, 187 Fed. Rep. 657.
Home Tel. Co. v. *City of Carthage*, 159 So. West. 547.

398 Treating the question generally as to whether the value of "franchises" should be included or excluded from the property upon which the company is entitled to a return, we have but to recall the opinion of Judge Hough in the Consolidated Gas Company case, wherein he says in answer to the company's contention that the
399 franchise value should be included:

> "As a general proposition I believe this claim unsound." *Consolidated Gas Co.* v. *City of N. Y.*, 157 Fed. Rep. 849, at p. 873.)

Respondent rests its contention as to the inclusion of the franchises upon the opinion of the
400 Supreme Court in the first Consolidated Gas Company case, but as concerns such a proposal we respectfully ask that the entire opinion be read and special attention given to the following language in said opinion:

> "What has been said herein regarding the

value of the franchises in this case has been necessarily founded upon its own peculiar facts and the decision therein can form no precedent in regard to the valuation of franchises generally, where the facts are not similar to those in the case before us. We simply accept the sum named as the value under the circumstances stated." (*Willcox v. Consolidated Gas. Co.*, 212 U. S. p. 48.) 401 402

The case of *Lincoln Gas and Electric Co. v. The City of Lincoln*, 182 Fed. Rep. 926, follows the general rule, excluding franchise value.

District Judge W. H. Munger, in explaining the exclusion of franchise value, says (p. 928):

"I do not allow anything as the value of complainant's franchise; it does not appear from the allegations of the bill or proofs that anything was paid to the city for the franchise; the city simply granted to complainant, without compensation, the right to use the public streets and the alleys for the purpose of constructing and operating its plant. This was a mere right and privilege to complainant and did not involve the expenditure of money; while it is true a franchise is a property right, which will protect complainant in its use of the streets and alleys for the purposes expressed, yet it involves no investment of money, complainant's investment being in its tangible property under authority of the franchise, and the public ought not to be taxed for a privilege which it has voluntarily granted. I do not think that there is anything in the case of *Willcox v. Consolidated Gas Company*, 212 U. S. 19, which conflicts with this view." 403 404 405

Likewise there is the *absolute prohibition* against the capitalization of franchises as found

406 in Section 69 of the Public Service Commissions Law of New York:

> "§ 69. *Approval of issues, stock, bonds and other forms of indebtedness.* * * * Provided, however, that the Commission shall have no power to authorize the capitalization of any franchise to be a corporation
407 or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right * * *."

408 In the recent case of *Bronx Gas and Electric Company* v. *Public Service Commission*, 190 App. Div. 13, at page 25, Mr. Justice Page says:

> "We observe also that the plaintiff seeks to have its franchise included in its property upon the value of which an adequate return is to be estimated. It has been repeat-
409 edly held, and is now settled, that the franchise which is obtained from the State is not property devoted to the public use, upon the value of which it is entitled to a return from the rate charged for its service."

410 There is no proof whatsoever in the record as to the cost or value of the franchises *or of any sums paid or required to be paid to the local authority where the respondent operates.* This is very clearly shown (pp. 846-849, 818) when respondent's witness Miller was on the stand under cross-examination pertaining to complainant's Exhibit No. 66.

"The Master.—What proof is there in 411
the record as to franchises?

"Mr. Ransom.—The books.

"The Master.—Only that.

"Mr. Ransom.—So far, and the franchise documents.

"Mr. Neumann.—What do the franchise 412
documents show, the price?

"Mr. Ransom.—They speak for themselves."

And again (p. 1236):

"The Master.—Was there proof offered of the cost to reproduce the franchises? 413

"Mr. Ransom.—Well, of course, the Miller exhibit in that respect related to the tangible property and the so-called non-distributed structural cost in connection with the tangible property.

"Mr. Neumann.—I understood Mr. Miller especially excluded franchises from repro- 414
duction cost.

"The Master.—What I am trying to get at is, what basis have I for valuing franchises?

"Mr. Neumann.—None at all.

"The Master.—I am asking Judge Ransom something, Mr. Neumann. 415

"Mr. Ransom.—I take it that from all of the evidence in this case, the testimony of Col. Miller which related to that point, the evidence shown by the books the evidence as to the acquisition of the property in 1904 and what was paid therefor, the judgment of the

416 Board of Directors as to the value to be put upon those so-called intangibles — it is not a simple question, it is not a matter which has been adjudicated it was the situation as to the value of the franchises and rights in the Consolidated case.

"The Master — That is what bothers me.

417 "Mr. Ransom. — I am fully aware that it is a difficult question."

Interest and Taxes During Construction

The amount for interest and taxes during construction cannot exceed $6,700. As testified to by appellants' witness Maltbie there were no charges for interest and taxes during construc-
418 tion as shown by the books of the company from 1904 to near the end of 1915. Near the end of 1915 there is an item as shown by defendants' exhibit A-92 of $402.97. It was an estimate based upon the amount of fixed capital in 1904, there should be allowed the sum of $5,000, to which should be added the item found in the books near
419 the end of 1915, and an item found in the books in 1919, which is a charge of $1,152.32, all as shown in complainant's exhibit A-93, for interest on money borrowed from Consolidated Gas Company, which amounts in round figures to a total sum as of December 31, 1919, of $6,700 (p. 1219).

Omissions and Contingencies

420 We contend that there should be no specific amount allowed for omissions and contingencies, and refer to the testimony of defendants' witness Maltbie (p. 1220):

"The Master.— * * * In arriving at a figure for reproducing property new in 1904,

or any other time, would you allow or should there be in your opinion included an item for omissions and contingencies? 421

* * * * * * *

"The Witness.—Whether there is anything to be allowed for an omission depends on the carefulness with which the inventory has been prepared. 422

"The Master.—Precisely."

And (p. 1221):

"By the Master:

"Q. * * * I will permit you to answer whether if you were making up a statement of this kind you would include omissions and contingencies." 423

And again (p. 1221):

"A. Not in cost, because the cost is shown by the books. You have everything in it.

"Q. No, but in estimating reproduction cost? A. In estimating reproduction cost it would depend upon the care with which the 424
inventory had been made. *In some inventories I should make a deduction for duplications rather than an addition for omissions.*

"Q. And in some other instances, it might be proper to allow for omissions and contingencies? A. Well, in some other cases, your Honor, some allowance might properly 425
be made for omissions. Now, contingency item is usually covered in the unit prices which are allowed and not as a separate item, and it would depend upon the character of the work.

"The Master: Well, we have had enough of that. Take the next one."

426 POINT VII.

THE FAIR VALUE OF RESPONDENTS' PROPERTY DEVOTED TO THE MAKING AND DISTRIBUTING GAS AND UPON WHICH IT IS ENTITLED TO A FAIR RETURN, DOES NOT EXCEED THE FOLLOWING AMOUNTS FOR THE RESPECTIVE YEARS.

427

December 31, 1906.....	$402,711
December 31, 1907.....	434,253
December 31, 1908.....	467,593
December 31, 1909.....	503,470
December 31, 1910.....	536,825
December 31, 1911.....	584,825
December 31, 1912.....	615,422
December 31, 1913.....	639,099
December 31, 1914.....	672,132
December 31, 1915.....	751,772
December 31, 1916.....	831,867
December 31, 1917.....	867,871
December 31, 1918.....	871,874
December 31, 1919.....	898,545

428

429

As of January 1, 1920, and the present time the Master found (Finding 34, p. 41) that the fair value of the property on which the respondent company was entitled to have a fair return exclusive of working capital to be at least the sum of $1,220,873 34, composed of the following items:

430

1. "Tangible and intangible property acquired at the end of July, 1903, and still owned and used by it on January 1, 1920, exclusive of working capital". $670,488 86

431

2— " Additional land, plant, apparatus, mains and other property, less withdrawals, since August 1st, 1904, and exclusive of working capital " $850,389 08

Total $1,520,877 94

432

When the case came on before the District Court, appellants successfully convinced the court that this finding of the Master was erroneous. Since respondents have filed no assignment of error nor taken an appeal from the decree of the lower court, modifying the Master's finding, we shall not further discuss what the Master found on the question of valuation. 433

The District Court said in modifying the Master's report:

> " The actual cost of the tangible property aggregates $1,130,497.08 (p. 115) * * * Thus, the sum of $1,130,497.08 is the absolute minimum of actual investment and I hold also, on the evidence in the case, that it is the minimum of reproduction value " (p. 115). 434

Appellants have shown that the Court below was in error in finding that there was not a sufficient return in the year 1919. Hence it is necessary to determine a rate base or valuation for the whole period. For convenience we have divided the above point into two subdivisions; (a) the fair value for the years 1906 1918; and (b) the fair value for the year 1919. 435

(a) *Fair value of respondent's property used and useful and upon which it is entitled to a return for years 1906 1918 inclusive.*

Since the appellants contend that the whole

436 period should be adopted for the purposes of this case, it is necessary to determine a rate base or valuation for the same period so as to properly find the return enjoyed year by year.

REAL ESTATE.

The actual cost of the land as appearing on
437 respondent's books is shown by respondent's Exhibit 96 (p. 1605-1606). This exhibit shows the cost of land, plant, etc., acquired by the respondent on August 1, 1904 (estimated as of that date), land, $19,423.00.

The exhibit further shows the "cost of additions to real estate, 1904-1920" as follows:

438

Description	Date of Acquisition	Cost
Plot "A"	1909	$1,200 00
Plots "B" "C" and "D"	1911	5,901 25
Plots "E" and "F"	1912	1,128 00
Plots "G" and "H"	1915	12,388 39
Sundry	1917	13 26

439

$20,630 90

Thus the actual cost of the land as shown on the books of the company totals $40,053.90 and includes attorney's fees, expenses for title examination (p. 1120) and all other expenses in connection with the acquisition of land.

440 The Court below, in adopting the actual cost from the books of respondent undoubtedly found the cost as its present value.

Appellants sought to introduce testimony from qualified witnesses, deputy tax commissioners, showing the fair market value of the land during the years 1904-1920 inclusive.

Appellants' witness, Mr. Walsh, was not allowed to testify as to the value of the land in early years, the Master saying 441

> " I do not think we need any more testimony of deputy tax commissioners as to values in this case (p. 1119).

This we contend was error on the part of the Master. 442

The evidence of appellants' witnesses allowed by the Master shows the fair market value of the land is as follows:

1909.....	$6,650.....	(p. 1082)
1910.....	6,650.....	(p. 1082)
1911.....	12,200.....	(p. 1083)
1912.....	12,600.....	(p. 1083) 443
1913.....	12,600.....	(p. 1083)
1914.....	12,600.....	(p. 1083)
1915.....	12,600.....	(p. 1083)
1916.....	13,300.....	(p. 1096)
1917.....	13,600.....	(p. 1096)
1918.....	13,600.....	(p. 1096)
1919.....	13,600.....	(p. 1096) 444
1920.....	13,600.....	(p. 1096)

Respondent introduced testimony respecting the value of its land by Mr. Thomas Halloren, who placed a valuation of $55,000 on the various parcels (p. 301).

The Master said regarding the value of the land

> " In my opinion it is worth less than Halloren says it is * * * (p. 1114). 445

We point out these facts which conclusively show that in adopting the book figure of actual cost of land, the Court below has been very liberal to respondent, and unquestionably adopted an excessive valuation for the land of the respondent.

446 FIXED CAPITAL, OTHER THAN LAND.

The evidence as to the fixed capital, other than land, for the period 1906 to 1918 inclusive, of former Chief Gas Engineer of the Public Service Commission Willard F. Hine, witness for appellant, stands uncontradicted. The respondent offered no evidence of the value of its prop-
447 erty prior to the year 1919, relying upon a valuation placed upon its property of that year alone.

Mr. Hine, after making a careful examination and study of the books, vouchers and other data of respondent, found the uncontradicted average valuation of the tangible property of respondent,
448 excluding land, for the years 1906 1918 as follows:

Year	
1906	$346,288
1907	377,830
1908	408,170
1909	437,847
449 1910	466,202
1911	507,582
1912	542,770
1913	561,447
1914	589,480
1915	656,732
1916	731,327
450 1917	762,318
1918—including Douglas extension	761,321

(Exhibit A109 corrected upon the trial by deducting $33,444 typographical error—p. 1877.)

The foregoing figures are taken from Exhibit A109, p. 1877, corrected upon the trial by deducting for each year the sum of $33,444, occasioned by a typographical error made in addition when the tables were made up (pp. 1332, 1333). 451

For the convenience of the Court we set forth below appellants' rate base for the years 1906–1918, inclusive: 452

453

454

455

460 459 458 457 456

AVERAGE RATE BASE, 1906–1918

	1906	1907	1908	1909	1910	1911	1912
Land, cost per compt's Ex. No. 96 pp. 1606-1607	$19,423 00	$19,423 00	$19,423 00	$20,623 00	$20,623 00	$26,524 25	$27,652 25
Other fixed capital, Ex. "A" 109 (corrected), p. 1877	346,288 00	377,830 00	408,170 00	437,847 00	466,202 00	507,582 00	542,770 00
Working capital, Ex. "A" 112, p. 1880	22,000 00	22 000 00	25,000 00	30,000 00	35,000 00	35,000 00	35,000 00
Organization	10,000 00	10,000 00	10,000 00	10,000 00	10,000 00	10,000 00	10,000 00
Interest and taxes	5,000 00	5,000 00	5,000 00	5,000 00	5,000 00	5,000 00	50,000 00
Franchises	Actual cost unknown. Books of original companies not produced. Nothing further should be allowed.						
Going value							
Total	$402,711 00	$434,253 00	$467,593 00	$503,470 00	$536,825 00	$584,825 25	$615,422 25

	1913	1914	1915	1916	1917	1918
Land, cost per compt's Ex. No. 96 (pp. 1606-1607)	$27 652 25	$27,652 25	$40,040 64	$40,040 64	$40,053 90	$40,053 90
Other fixed capital, Ex. "A" 109 (corrected), p. 1877	561,447 00	589,180 00	656,732 00	731,327 00	762,318 00	760,772 00
Working capital, Ex. "A" 112, p. 1880	35,000 00	40,000 00	40,000 00	45,000 00	50,000 00	650,000 00
Organization	10,000 00	10,000 00	10,000 00	10,000 00	10,000 00	10 000 00
Interest and taxes	5,000 00	5,000 00	5,000 00	5,500 00	5,500 00	5,500 00
Franchises						
Going v lue						
Total	639,099 25	$672,132 25	$751,772 64	$831,867 64	$867,871 90	$871,325 90
Douglaston extension						$549 00

(b) The fair value of respondent's property used and useful and upon which it is entitled to a return for the year 1919, does not exceed the sum of $898,545.90. 461

The Court below states

> "The actual cost of the tangible property aggregates $1,130,497.08" (p. 115).
>
> "Thus, the sum of $1,130,497.08 is the absolute minimum of actual investment, and I hold also, on the evidence in the case, that it is the minimum of reproduction value" (p. 115). 462

It will be seen therefore that the Court below accepted the actual cost of respondent's property as shown by the books of the company, as the fair value of its property. 463

The Court made no allowance for decrease in worth due to depreciation, which we firmly believe is contrary to the decision of this Court.

Further, in adopting these book figures, the Court includes in its rate base, the total cost of the Douglaston extension, so called. This extension was made pursuant to an order of the Public Service Commission of the State of New York for the First District on March 19, 1915, and required the respondent to extend its mains and services to the settlement known as Douglaston, about six miles from the respondent's plant. 464

Respondent strenuously opposed this order and took the necessary steps to review it successively in the following courts: Appellate Division of the First Department (171 App. Div. 580); Court of Appeals (219 N. Y. 84), and in this Court (245 U. S. 345). 465

The building of this extension was finally begun
466 in the year 1919 and put in operation in November, 1919.

Instead of costing, as originally estimated, about $80,000 to build the extension, the respondent resisted the lawful order of the Commission, until the cost of construction arose to about $1[illegible],000 in 1919 (Deft's Ex. A108, p. 1876), and $1[illegible],
467 000 up to May, 1920.

This enormous cost of constructing this extension at war prices so long resisted, has been accepted by the Court below, in the actual cost as shown by the books of the company, and the present consumers are made to pay an adequate return upon this costly extension, without waiting
468 a reasonable time for the company to develop the increased business resulting from the extension.

An indication of the new business, resulting in a large degree from this extension, is seen in the fact that the increase in gas sales in 1920 amounted to at least 15 per cent in excess of the sales during 1919.

469 The injustice of allowing, as against the present consumers, the full value of this unusually large and costly extension, without awaiting ample time to develop the business caused by it, is apparent. It is unfair to thrust upon the present consumers, the burden of paying a fair rate upon a large extension, soon to earn in itself a favorable return
470 and no doubt sufficient to forego a few lean months while the business is being annexed.

The appellants contend that the Court below erred in accepting the total book figure showing actual cost of this extension for the rate base in the year 1919. It would have been more equitable

to have spread such expense over a period of five years, and include only that portion of the gross expenditure in each of the years following 1919. 471

Mr. Hine, the former chief gas engineer of the Public Service Commission, after an exhaustive study of the books and other records of respondents, determined that the company's fixed capital, other than land, cost on December 1, 1919, the sum of $1,122,862 (Defts' Ex. A108 (corrected) p. 1876). This includes the cost of the Douglas extension made during the year. 472

The above figure is comparable with the figure found by the Court below of $1,130,497.08.

Mr. Hine then determined the average fixed capital of respondent as follows: 473

AVERAGE FIXED CAPITAL, INCLUDING ENGINEERING, 1919 (EXCLUSIVE OF LAND)

	Cost	Depreciation	Cost, less depreciation
Exclusive of Douglas extension	$973,546	$211,054	$762,492
Including Douglas extension of one-half cost	1,007,261	211,054	796,210
Including Douglas extension at cost	1,040,984	211,054	829,930

474

The above figures are taken from respondent's Ex. A116 (p. 1878), corrected upon the trial by deducting for each year the sum of $33,444, occasioned by a typographical error made in addition when Mr. Hine's table was made up. 475

It will be noted that the point of difference in the figures found by Mr. Hine and the figures found by the Court below lies in the fact that Mr. Hine has determined the *average* fixed capital

476 for the year, and deducted the sum of $211,054 for the accrued depreciation, while the Court below accepted the book figures as cost as of December 31, 1919, without any allowance for depreciation and applied that figure for the entire year of 1919. The method followed by the Court lacks the merit and the more equitable basis of Mr.
477 Hine's determination.

The foregoing figure of average fixed capital including engineering, 1919, should have added to it, the land $40,053.90, working and construction capital $80,000, organization $10,000, and taxes during construction $6,000. The figures will be as shown in the following table:

478 Rate base for year 1919.

Land	$40,053 90
Average fixed capital, etc.	762,492 00
Working and construction capital	80,000 00
Organization	10,000 00
Interest and taxes	6,000 00
479 Total	$898,545 90

and if the Douglaston extension is included at $67,438, making a total of $965,983.90.

POINT VIII.

480 **THE MASTER ERRED REPEATEDLY IN THE ADMISSION AND EXCLUSION OF EVIDENCE WHICH ERRORS WERE NOT CORRECTED IN THE COURT BELOW.**

It would be quite impossible for the appellants to point out all the errors committed by the Master in the admission and exclusion of evidence,

but we shall confine our remarks under this head- 481
ing to the most serious ones.

(1) *One of the important questions in the case was that of the delay in building of the so-called "Douglaston Extension," the additional cost occasioned by the delay and the exclusion from the rate base of the expenditure for such improvement.* 482

The Public Service Commission, one of the defendants in this action, offered an opinion of the Commission (Exhibit P, p. 1730), and the opinion of the Commission denying a second application of respondent for a rehearing (Exhibit U, p. 1748), in this matter which were excluded upon the Master's own motion. Yet at the same time 483
the Master allowed the petition and order in the second certiorari proceeding to be admitted in evidence (Complainant's Exhibits 110 and 111).

The exclusion of Exhibits P and U by the Master was arbitrary and upon his own motion (pp. 1280-1288).

484

"Mr. Neuman: I must object to striking it out at this time, after it has been received and now that he cannot get in what papers he wants, you cannot strike out our exhibit from the record.

"The Master: But I will, and allow you an exception. I will strike out Exhibit P. I think I was in error in allowing it in. 485

"Mr. Neuman: Exception.

"Mr. Cummings: Exception.

"The Master: I shall also reconsider my ruling as to Exhibit U.

"Mr. Neuman: I call to the Master's attention, that at this time there has been no

486 application of this kind made by the complainant, this is solely on the Master's own motion.

"The Master: Yes. Opinion denying the second application, in other words I am striking out opinions as distinguished from orders directing things to be done, and I
487 strike out this Exhibit U. I think I probably went too far in allowing P and U in, which are opinions of the Commission.

"Mr. Cummings: You are just letting in another one.

"The Master: Yes, I am letting that in because it contains the statement of a fact.

488 "Mr. Neuman: Well, those contain statements of fact.

"The Master: No.

"Mr. Neuman: Why, those contain the statements of fact as to what this Company was doing there, making a hippodrome out of the courts.

489 "The Master: Very well, I may be in error about it, but that is going to be my ruling.

"Mr. Neuman: There is no doubt about it that you are in error" (pp. 1325–1326).

(2) *Appellants were not permitted to introduce the evidence of Deputy Tax Commissioner*
490 *of the city of New York, concerning the value of real property for the years* 1906–1909 *unimproved.*

The appellants endeavored to show the value of the real property, land and buildings, as fixed by the tax officials of the city of New York.

The master *himself* interposed the objection to

the evidence without any request from the com- 491
plainant (p. 1119).

Also the testimony of Frederick A. Dede, a Deputy Tax Commissioner, was excluded (p. 1070).

The master made his conclusions concerning testimony of Deputy Tax Commissioner Patrick J. Cronin while on the stand: 492

> "The Master: I have said all along that this kind of testimony is valueless in this kind of a case.
>
> "Mr. Neuman: Yet you take it from Halleran.
>
> "The Master: I took it from them as I take it from you, but I am going to find out 493
> what this company has invested in this business and I am going to throw expert testimony out of the window" (p. 1103).

(3) *At times the master was unfair in the characterization of the testimony of appellant's witnesses.* 494

This is particularly true in the following instance (p. 1109):

> "The Master: Cohen's testimony was perfectly useless. It was simply a recapitulation of the books; there was no necessity for it.
>
> "Mr. Neuman: I must object to the Master's characterization of it at this time." 495

Yet the master accepted in *compact form* the testimony of the respondent's witness Miller, over the objection of the appellants as follows:

> "The Master: I think we all found in the Consolidated case that when we had a wit-

ness like Mr. Miller on the stand, who had
496 a speech to make, that it was quicker to take
his speech as he had prepared it than to ask
him questions and bring out the speech by
question and answer. The net result of an
examination of an hour or two will be that
this witness will testify to the matters stated
in these pages from two down to the ques-
tion of working capital, which this question
497 does not comprehend" (p 258).

Likewise, the master under objection of appel-
lants took over entirely the direct examination
of the defendants' witness Miller on a most im-
portant case, "values."

"The Master: And if you were asked par-
498 ticular questions relating to the particular
items would your answers be as set forth in
these pages?

"The Witness: Yes.

"The Master: In other words, are the
statements made in these pages now made
499 by you under oath, without repeating them
all?

"The Witness: Yes.

"The Master: So that you are swearing
to it?

"The Witness: Yes.

"Mr. Neuman: My objection goes, of
500 course, to all the Master's questions.

"The Master: I am asking him in the
same manner and to the same extent as I
would ask if particular questions were asked
to bring out these particular answers.

" Q. If interrogated by me regarding each 501
of these items of undistributed structural costs would you testify regarding each such item to the substantial effect shown in the corresponding note annexed to your summary statement?

" Mr. Neuman: That is already covered by the Master's questions, and our objection 502
and exception " (p. 259).

(4) *The master even went so far as to absolutely cut off the examination of witnesses:*

This was particularly true of appellant's witness Hine, who testified along the same line as that of respondent's witness Miller.

503

" Redirect examination by Mr. Tobin:

" Q. Mr. Hine, were you employed in the Public Service Commission at the same time that Judge Ransom was counsel to that Commission?

" Mr. Ransom: Objected to as immaterial.

" The Master: Objection sustained. 504

" Mr. Tobin: I do not know, I think you have given great freedom, if the Master please, to counsel on the other side to go into every phase and situation that might possibly exist here as to this witness' testimony, and immediately when we start to ask this question we are shut off.

505

" The Master: You can take your exception.

" Mr. Cummings: Well, we will. Ask another one.

" Q. Are you acquainted with the different gas-making machines, Mr. Hines?

506 "Mr. Ransom: Objected to as not redirect.

"The Master: Sustained.

"Mr. Cummings: Exception.

"Q. Do you know from your experience, study and knowledge of the situation exactly
507 how water gas is made?

"Mr. Ransom: Objected to.

"The Master: Objection sustained.

"Mr. Cummings: Exception.

"Q. Can you make it yourself if you have the machinery, the oil and the apparatus?

508 "Mr. Ransom: Objected to as not redirect examination.

"The Master: Objection sustained.

"Mr. Tobin: Exception.

"Q. Could you step into a gas plant that was properly equipped and take charge and operate the gas machines to make water gas?
509

"Mr. Ransom: Same objection.

"The Master: Same ruling.

"Mr. Tobin: Exception.

"Q. Are you familiar with all the apparatus used in making water gas?

510 "Mr. Ransom: Same objection.

"The Master: Same ruling.

"Mr. Tobin: Exception.

"Q. You have made a study, have you, of the latest designs for making water gas—kept abreast of the times, have you, and of the machines for making water gas?

"Mr. Ransom: Same objection. 511

"The Master: Same ruling.

"Mr. Tobin: Exception" (p. 1372).

(5) *When Mr. Willard F. Hine was again on the stand on direct examination, the following occurred:*

512

"By the Master:

"Q. Did you make an appraisal of the buildings?

"A. I made an appraisal of the cost of these buildings.

"Q. Of the cost? What do you mean by an appraisal of the cost of the buildings; 513
what kind of an appraisal is that?

"A. That is an appraisal of the cost.

"Q. You mean the cost to reproduce?

"A. No, sir.

"Q. Of the original cost?

"A. Of the original cost.

"Q. You mean your estimate of what it 514
cost them originally to build?

"A. No, I set up figures. I can explain probably better by telling just what I did.

"Mr. Chambers: I think if we can go on, we will show what it is.

"The Master: We are going on right now, 515
my way.

"The Witness: The cost as shown by the books of the company.

"The Master: Then I do not want your appraisal of that — next question. How else did you determine the cost?

516 "Mr. Chambers: I object. I think you ought to let me develop this like you did Mr. Miller.

"The Master: I am going to develop all that I want." (pp. 1850, 1178).

517 (6) *The Master refused to admit in evidence the reports of the predecessor company, Newtown and Flushing Gas Company, for the years 1901, 1902 and 1903, notwithstanding the fact that the contents of those reports would disclose some evidence as to the extent and cost of property acquired by the present company when it was merged into and with the Newtown and Flushing Company* (p. 1129).

518 (7) *The Master excluded the evidence of respondent's witness Raynor as to the contents of reports made by the respondent to the State Board of Tax Commissioners, more particularly as to mains and services laid in the year* 1919 (pp. 791-794).

519 (8) *The Master erred in the admission of the books of account of the respondent company (complainant's Exhibits 52, 53, 54, 55 and 56), it having been shown that the books were incorrectly kept and that the underlying data on which the books were based was incorrect and that there existed errors in the underlying data which had found their way in the books.*

520 (9) *The Master likewise erred in the admission of complainant's Exhibit 77, in that the facts therein were susceptible of actual proof from the operations of the company, the introduction of this exhibit based entirely on hypothetics was erroneous, incompetent and greatly prejudiced*

the appellants. The said exhibit should not have 521
been received in evidence because the facts them-
selves were easily ascertainable and susceptible
of proof by witnesses now or heretofore con-
nected with the company. The Master thereby
dispensing with the degree of proof required by
the decisions in rate cases for the proving of one
of the vital and essential elements in a rate 522
making case.

The master who tried this case is the same master about whom we contend in the case of *Newton* v. *Consolidated Gas Co.*, No. 257 present Calendar, that he did not accord the appellants a fair trial. We claim here, as we did in that case, the master, by cutting off examination and 523
unfairly characterizing the testimony of witnesses, did not give appellants a fair trial.

POINT IX.

THE RATE OF RETURN WHICH A PUBLIC UTILITY IS ENTITLED TO ENJOY, AS DETERMINED BY THE COURTS IN NORMAL PRE-WAR 524
TIMES, IS NOT DECISIVE OR CONTROLLING IN THE ABNORMAL WAR PERIOD.

We have discussed the question of the rate of return which a public utility is entitled to enjoy fully in our brief submitted to this court in the case of the *Newton et al.* v. *Consolidated Gas Company*, (No. 257 on the present calendar). We will 525
not repeat our argument in full again. There we argued that so long as the respondent enjoyed a 6% return over a reasonable period of time, the statute should not be condemned, even though such return fell off in some years, so long as the average was maintained throughout.

526 We cited the *General Business Law* of the State of New York (Sec. 370); which provides for a rate of return of 6%. The decision of this court in the case of *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, held that a rate of return of substantially 5½% was ample in normal years.

We submit that either one of the following
527 propositions is sound:

(a) The utility is entitled to enjoy a return of no more than 6% average over a reasonable period, even though in some of the years the return might be less than that; or

(b) If a shorter period is taken, then the return, because of the present abnormal conditions,
528 might be lower than the rate allowed in normal times, and the statute would not be condemned because of a falling off in the return.

There is authority to sustain our proposition that during the war time period (and the year of 1919 considered by the court below was within such period) a rate below 6% is ample.

529 In the case of *Kings County Lighting Co.* v. *Lewis*, 110 Misc. p. 204, the court found

> "That during a war time period in the city of New York 4¾ per cent. was a fair return upon the value of the property, including the land of plaintiff used in the public service."

530 We submit that a rate which yields in these temporarily abnormal, unusual and unprecedented times to respondent a rate of as much as 3% will not require a declaration on the part of the court that the statute is thereby unconstitutional.

We have argued fully in the case of *Newton et al.* v. *Consolidated Gas Company of New York*, (No. 257 on present calendar), the question that the burden of proof in these cases is on the respondent and that the party assailing the statute must establish "beyond any just or fair doubt" that the act of the Legislature is confiscatory.

Willcox v. *Consolidated Gas Co.*, 212 U. S. 19.
Sinking Fund Cases, 99 U. S. 700, p. 718.
Des Moines Gas Co. v. *Des Moines*, 238 U. S. 153, p. 163.

We shall not repeat the argument here.

POINT X.

FOR THE REASONS ASSIGNED IN THE FOREGOING POINTS THE DECREE APPEALED FROM SHOULD BE REVERSED AND THE BILL OF COMPLAINT DISMISSED, WITH COSTS.

Dated, New York, October 10, 1921.

CHARLES D. NEWTON,
Attorney-General of the State of New York,
Capitol, Albany, N. Y.

WILBER W. CHAMBERS,
Solicitor for Appellant NEWTON, *as Attorney-General of the State of New York*,
Capitol, Albany, N. Y.

WILBER W. CHAMBERS,
CLARENCE R. CUMMINGS,
of Counsel.

Office Supreme Court, U. S.
FILED
OCT 26 1921
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

October Term—1921

Calendar No. 296

CHARLES D. NEWTON, as Attorney-General of the State of New York, and ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York for the First District,

Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY, *Respondent.*

BRIEF ON BEHALF OF APPELLANT DANA WALLACE, AS DISTRICT ATTORNEY OF THE COUNTY OF QUEENS.

JOHN P. O'BRIEN,
Corporation Counsel,
Solicitor for Appellant, Dana Wallace, District Attorney of the County of Queens,
Municipal Building,
New York City.

JAMES A. DONNELLY,
J. MALDWIN FERTIG,
of Counsel.

(18625) M. B. Brown Printing & Binding Co., New York

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Suit to declare void Chapter 125, Laws of 1906 1

Respondent claims rate fixed by act of 1906 has been and is inadequate; that earnings have never been sufficient to provide 6% return; no dividends to stockholders, but devoted income to expansion of business; has 10,000 customers; in 1918 used 327,585,600 cubic feet of gas; alleges no adequate remedy at law; complaint verified April 7, 1919..... 2

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Supreme Court of the United States,

(OCTOBER TERM, 1921)

CHARLES D. NEWTON, as Attorney General of the State of New York, and ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York for the First District, Appellants, *vs.* NEW YORK & QUEENS GAS COMPANY, Respondent.	No. 296. Appeal from the District Court of the United States for the Southern District of New York.

Brief on Behalf of Appellant Dana Wallace, as District Attorney of the County of Queens.

Statement.

This is a suit in equity, instituted by the above-named respondent against the appellants herein, to have declared unconstitutional and void, as to respondent, Chapter 125 of the Laws of 1906, upon the ground that the rate of one dollar ($1.00) per thousand cubic feet required by said statute, at which gas shall be supplied to private consumers in the territory served by respondent, is in contravention of Section 10 of Article I of the Constitution of the United States and of the Fourteenth Amendment to the said Constitution.

In its bill of complaint, respondent claims (XVI) that "the maximum price of one dollar ($1.00) per thousand cubic feet for gas, fixed by the said Act of 1906, has been, is, and will continue to be wholly inadequate, in that it does not permit your orator to earn a reasonable return upon the fair value of its property devoted to the public use." Furthermore, it specifically claims (XIV) that during no year since its organization, in 1904, have the earnings been sufficient to provide a return of as much as six per cent, upon the reasonable value of its property; although in paragraph IX. thereof, it alleges that "since its organization in 1904, it has managed the business prudently but has paid no dividends to its stockholders, has devoted to the development and expansion of the businesss certain income which might have been used for dividends." In a general way, it also claims that the reasonable value of its property, one million, four hundred ninety-two thousand, nine hundred seventy-six dollars ($1,492,976) should have added thereto for going value an aggregate deficiency in earnings below seven and one-half per cent. upon the value of the said property, in the sum of at least $300,858.41 (X).

Respondent asserts (XVIII) that it has more than ten thousand customers to whom it is daily selling gas, the amount distributed and sold during the year ended December 31, 1918, being 327,585,600 cubic feet.

Respondent alleges (XIX) that it has no adequate remedy at law for the injury which would result from the further enforcement of the said Act, and that such injury would be irreparable.

The bill of complaint was verified April 7, 1919; and after several adjournments, from July 15, 1919,

to April 15, 1920, the taking of testimony was begun before the Special Master, April 26, 1920, and continued to June 28, 1920, being spread upon 2373 printed pages.

The Master took evidence of operating cost for the year 1919 and the first five months of the year 1920. There was also submitted, testimony as to the cost of oil, coal and other materials from 1906 down to June, 1920.

No evidence was offered by respondent in support of its claim that the statute had been confiscatory as to it since the date of organization, but, to the contrary, it objected to such proof (R. 1018, et seq.), while appellants submitted data showing the operating results, the unit quantities of materials used, the unit costs thereof, and other information as to the revenues and expenses of respondent during the years from 1906 to 1920 (R. 47 [79]).

The report of the Master was submitted to the Hon. Julius M. Mayer, District Judge, July 16, 1920, and the opinion of the Court below is dated November 3, 1920.

The Master concluded to base his findings as to the cost of making and distributing gas especially upon the operations and alleged cost for the year 1919, in the belief that the cost in the year 1920 will be in excess of the figures he reaches for the year 1919 (R. 48, [79½]). The learned Judge approves of the finding and states:

> "The year 1919 is in this case a sufficient basis for the calculation of the cost of production and the rate base for a future long enough to call for some judicial action."
> (R. 110 [193]).

The constitutionality of Chapter 125 of the Laws of 1906 was upheld by this Court in a suit instituted by the Consolidated Gas Company of New York to have such statute declared confiscatory. The decree of the Circuit Court restraining the public officials from enforcing the provisions of the Act was reversed without prejudice to the bringing of a new suit "when practical experience of the effect of the Act by actual operation might prevent the plaintiff's obtaining a fair return * * *."

Willcox *v.* Consolidated Gas Co. of N. Y., 212 U. S., 19.

In the suit commenced in the Court below the appellants herein, the Attorney-General of the State of New York, the District Attorney of the County of Queens, and the Public Service Commission of the State of New York for the First District, who are charged with the prosecution of violations of the statute, were made defendants. The Special Master was appointed by order of Mayer, J., dated the 23d day of May, 1919, to take all of the testimony and evidence with respect to the issues, make all needed computations, fully find the facts and report to the Court below all the testimony and evidence received by him, together with the findings of fact and his recommendations as to the facts and the law. Exceptions to the Master's reports and opinion were filed both by appellants and respondent, and, thereafter, on the 3d day of November, 1920, an opinion was filed by the Hon. Julius M. Mayer, District Judge, this being amended in certain particulars on November 16, 1920. Judgment was entered by the Court below November 19, 1920 (R. 117 [208]), wherein and

whereby it is provided that appellants, their successors, etc., be restrained from attempting to enforce Chapter 125 of the Laws of 1906, or from doing any act or thing interfering with the right or authority of respondent forthwith to charge, bill, collect and receive for gas any rate which it might lawfully charge or receive if the provisions of the said act relative to the rate were not operative.

The judgment further provides, in the event that an appeal from the decree is taken by defendants, the plaintiff shall keep true and correct accounts and records of all gas sold by it and of all moneys received by it for gas sold by it, so as accurately and completely to show the moneys received by it for gas sold by it from and after the date of the decree, in excess of the sums which would have been received for such gas if the same had been sold at the rate of one dollar ($1.00) per thousand cubic feet of gas sold, together with the names and addresses of the consumers from whom such moneys are so collected, in so far as such names or addresses are known to the respondent or appear upon its books and records; "and such accounts and records shall, upon application to this Court, be at all reasonable times open to the inspection and audit of the defendants" (VI) (R. 119 [209]). The judgment further provides that if, within the time prescribed, an appeal from the decree is taken by defendant, the plaintiff shall, on the 15th day of December, 1920, and on the 15th day of each month thereafter, file in the office of the Clerk of the Court below a sworn statement showing the moneys received by it during the preceding month, for gas sold by it, in excess of the sums which would have been received for such gas if the same

had been sold at the rate of One Dollar ($1.00) per thousand cubic feet.

It is further provided that a bond shall be filed with the Clerk of the Court, conditioned for the repayment to the consumers, in the event that the decree is reversed on appeal and it is ultimately decided that respondent is not entitled to judgment, of the respective sums of money collected in excess of the One Dollar ($1.00) rate, together with interest at the rate of six (6) per cent., the obligation of such surety upon and under such bond to be in the sum of Two Hundred Thousand Dollars ($200,000), and when the excess moneys so collected shall aggregate said amount the appellants may make application to the Court for an additional bond or security.

It is provided in the judgment that plaintiff shall be required to observe these provisions of the decree only in case an appeal is taken by the defendants, or any of them, within thirty (30) days from the entry of the decree, and that the defendants shall perfect and prosecute any such appeal and print and file the record and all necessary papers to that end, promptly and without delay, and shall, with all convenient speed thereafter, serve a notice of application to this Court to advance the said appeal upon the calendar. Defendants' appeal was taken within thirty (30) days after the entry of the decree herein and said appeal has been perfected (R.124).

Exceptions to the Special Master's Report were taken by the defendants and were filed in the office of the Clerk of the Court below on the 6th day of August, 1920 (R. 60-102). Complainant also filed exceptions to the Master's Report and Opin-

ion, in the office of the Clerk, on the 9th day of August, 1920 (R. pp. 104-106).

History of Respondent.

Respondent is a corporation, duly incorporated (Complainant's Ex. 1) on or about July 7th, 1904 (R. 1721), for the purpose of manufacturing and supplying gas for lighting the streets and public and private buildings of cities, villages and towns in the State of New York and particularly within the Borough of Queens, City of Greater New York. The amount of capital stock was at that time fixed at Six Hundred Thousand Dollars ($600,000) of the par value of One Hundred Dollars ($100) each.

On or about July 18th, 1904, respondent acquired, by the purchase of stocks and bonds, and now operates, a gas production property with a system of distribution mains located in and serving the former village of Flushing in the third ward of the Borough of Queens in the City of New York.

Respondent is the immediate successor to the Newtown and Flushing Gas Company which in turn was the successor to a number of companies that had supplied gas in various parts of the Borough of Queens. (R. 155-162 [15-25].) The manufacturing plant of one of said predecessor companies has been located at the same point in the village or town of Flushing since about the year 1859. (R. 163 [26].)

On the 12th day of July, 1904, and theretofore, the Newtown and Flushing Gas Company owned and used certain lands, buildings and other real and personal property for, and was actually engaged in, the manufacture, sale and distribution of gas in the Borough of Queens, City of New York;

and in addition it owned franchises and rights to be a corporation and to lay mains in certain specified districts for the purpose of supplying gas to the inhabitants thereof. It had at that time developed the gas business in the Third Ward of the Borough of Queens, and had secured customers sufficient in number to constitute a going concern with a business attached.

Respondent acquired all the capital stock and all of the outstanding bonds of said Newtown and Flushing Gas Company, as the result of a proposition by Henry R. Wilson who offered to sell and deliver the entire outstanding stock (to wit: $300,000 common and $50,057 14/100 preferred) with the entire outstanding bonds (to wit: $300,000) for $1,250,000, payable in $600,000 par value capital stock of the purchaser and $650,000 par value of its corporate five per cent. bonds. The said H. R. Wilson in the aforesaid proposition also made the following provision: "that said bonds should be secured by your first mortgage, and shall be of an issue of not exceeding $1,000,000 secured by such mortgage; all other details of said bond and mortgage to be as approved by you." (R. 1722 [2711].)

On or about July 18, 1904, Respondent merged into itself the said Newtown & Flushing Gas Company. By virtue of the merger and of the statute pursuant to which it took place, respondent became possessed of and became the owner in fee simple of all of the real and personal property owned by the Newtown and Flushing Gas Company, the owner of the franchises and rights then owned or enjoyed, and the owner of the business established and developed. The extent of the business at that time developed does not appear in the record.

SUMMARY OF LACK OF PROOF.

The method employed by respondent in attempting to prove its operating expenses consisted in having a witness for respondent submit to the appellants in advance of the hearings a series of summaries consisting of tables that are condensations of the figures and statements or other data contained in the general account books of the respondent.

It was assumed by the Master and the Court below that respondent's expert accountant having stated that the books have been kept according to the prescribed rules of the uniform system of accounts of the Public Service Commission, each and every one of the entries therein are accurate, and the expenditures all legitimately made. This method of proof throws the burden wholly upon the appellants, on the theory that they or their experts had an opportunity to scrutinize and should have examined the tabulations of respondent's accountant and made such objections to or criticisms of the partial transcripts of the books as they deemed necessary.

The method of proof in effect, therefore, is something of this sort: The gas company, prepares a series of tables based upon the books, offers them in evidence and says to the appellants, "Now, find out what's wrong, if anything, with all of this, and point out in what respect anything is incorrect." The Master (R. 1255) indicated this was his attitude during the trial, and was consistent in his belief as is shown by his opinion (R. 50 [83]).

We respectfully submit that this method of proof entirely throws the burden upon those opposing the attack upon the statute and does not require those complaining of the unconstitutionality of the

statute to shoulder the burden that is justly theirs.

That the Master had his mind made up that all of the data submitted on the part of the company without detail proof was *prima facie* evidence of its claim appears from his statement upon the motion to dismiss.

> The Master—* * * The complainant has proven the cost of making gas, on the evidence as it stands, that it costs them more to make gas than they sell it for or are compelled to sell it for. (R. 962 [1479].)

There is no justification for the admission in evidence of respondent's books. An expert accountant, in no way connected with any branch of respondent's business and having no personal knowledge of any of the transactions recorded in said books, testified to the effect that the entries are copied from underlying data and are arithmetically correct. That witness did not even make an audit of the books of account.

Evidence of mathematical accuracy is no proof of the truth of the data in said books. The underlying data back of the books was not proved by any witness, and the tabulations of the witness Teele, which are limited transcripts of the books, were lacking in proof to the extent that the books themselves were not proved (R. 230).

Respondent failed to prove the extent of the property used and useful in the public service. It called an assistant engineer in the employ of the parent Consolidated Gas Company, Herbert W. Alrich (R. 166 [32]), who presented a diagram of respondent's property purported to be owned and used as of January 1, 1920 (R. 168 [34]). We contend that Alrich is not competent to testify concerning the use and usefulness of the property because he does not know how much gas is sold per

annum and therefore cannot know if the gas production property described very generally by him is actually used and needed in serving the gas consumers (R. 173 [44]).

No other witness was called to prove that all of the plant included in the rate base or in the books of account is used and useful in giving gas service.

Alten S. Miller, an expert employed by respondent, testified to the method used by him in ascertaining the extent of the distribution system, but his plan for securing this data was condemned by the Master (R. 235 [181]). No witness was called to prove that the gas mains in the streets are suitable for the purpose and of no greater extent or capacity than is called for by the needs of the present or prospective consumers of gas.

Respondent called no witness who actually receives the coal, oil and other expensive materials so largely used in the manufacture of gas. Its superintendent, Martin Morrison, merely described, in a general way, the system used in accounting for the receipt and use of materials and in recording the time of the men employed in the plant operations. No witness was produced who could swear to the accuracy of the shop labor costs or as to the allocation of the expense as between capital, operating or depreciation reserve accounts.

No proper proof was submitted as to the need for setting aside certain sums annually to take care of depreciation, the evidence being merely to the effect that the bookkeeper entered in the books a charge in the amount that he was instructed to set aside by the officers of the respondent, who, in turn, received their instructions through the action of the Board of Directors (R. 264 [197]).

The amount of gas sent out to the system of

mains was not properly proved. The witness Woods, consulting engineer to respondent and engineer of manufacture to the Consolidated Gas Company, attempted to show that he knew the amount, but the Master rejected this evidence and said he would have the manufacturing engineer produced to give the facts (R. 273 [212]). No such engineer was subsequently called, and the superintendent of the works when on the witness stand was not interrogated as to the amount of gas sent out.

Respondent failed to prove the amount of gas sold. Not one of its meter readers was called to testify as to the system used in indexing the meters and recording the amount of the consumption by individual gas consumers. Not one of the consumers' ledger clerks was called to testify to the accuracy of the system used in recording the gas used and in computing the amounts of the bills.

Respondent offered no proof that the salaries paid to its officers and the wages paid to its employees are fair and reasonable.

The record is deficient in proof that the manufacturing plant is reasonably well designed, properly operated, or of the right type to produce gas economically.

POINTS

I.

Respondent failed to prove that its cost to manufacture gas is reasonable.

The *allegation* by respondent that certain sums have been expended in the production and distribution of gas is not sufficient to establish that the statutary rate for gas service is confiscatory. The burden is upon respondent to *prove* that its management of the property has been reasonable.

"The property of the public utility is devoted to the public use. There is always the obligation springing from the nature of the business in which it is engaged,—which private exigency may not be permitted to ignore,—that there shall not be an exorbitant charge for the service rendered * * *. No direct parallel can be drawn between a private corporation and a public service corporation, for the reason that to a greater or lesser extent the public has acquired an interest in the use of the property devoted to public use, and correlatively the company owes a duty to the public as well as to its stockholders and must charge no more than a reasonable rate for service rendered (citing *Havre de Grace and Perrysville Bridge Co.* v. *Towers* (*Md.*) 103 *Atl.* 319)," [P. U. C. *ex rel.* City of Springfield *v.* Springfield Gas & Electric Co., 291 Ill. 209.]

Respondent has not proved that its operations are carried on efficiently.

As to the manner in which coal is received at the plant:

"Q. How is coal received at this plant of the New York & Queens Gas Company? Is it received directly from a railroad connection up to this time, or is it brought by trucks or wagons?

"A. It is brought by barge and unloaded at the dock, on Flushing Creek, and then carted from there in automobile trucks to the plant and stacked in the yard, in the coal bins.

"Q. How far is the point of unloading of the barges?

"A. About half a mile. At the present time they have got to cart it over that, on account of the construction of a big sewer which blocks the way. They have got to go a round-a-bout way to get to it."

(R. 181 [57].)

The Court will take note of the fact that coal is one of the important items of expense in the production of water gas. Respondent's plant is located inland. The coal that it receives comes to tidewater in railroad trucks which are dumped into barges each containing about 600 tons. These barges are then transferred by tug to a dock on Flushing Creek, and the coal is there unloaded on to automobile trucks or wagons for transportation to the yard or coal bins at respondent's plant. While the trial was in progress the automobile or wagon haul was considerably over half a mile in length.

George E. Woods, engineer of manufacture of the Consolidated Gas Company of New York and consulting engineer to respondent in its plant operations, testified to the manner of handling coal at the dock and into storage, and he computed the cost per ton for such labor, handling and cartage at $1.25. He was asked if this unreasonable expense could be reduced if coal was handled to the plant by means of a railroad siding:

> "Q. Assuming that a new railroad siding and appurtenant coal-handling facilities are installed at this plant, as has been indicated, would this expense of labor, handling, carting, and so forth be increased or decreased?
>
> "Mr. Neumann—I object as incompetent, irrelevant and immaterial.
>
> "The Master—Overruled.
>
> "Mr. Neumann—Exception.
>
> "A. It would be reduced.
>
> "Q. About how much; have you figured it?
>
> "A. It would be reduced to about 50 cents a ton, I should say.
>
> "Q. But that would involve an increase in the investment in land and apparatus?

"Mr. Neumann—One moment.

"A. It would."

(R. 411 [418].)

The evidence is conclusive that every ton of coal put into this gas plant, or into Woods' hypothetical plant, costs 75 cents more than it would, if the plant was even moderately well equipped to handle raw material used in the production of gas. We draw particular attention to the fact that Woods was merely asked by counsel for respondent if the cost of handling coal would be reduced if the plant was provided with a railroad siding. No doubt this Court will want to know why the plant is not provided with railroad facilities; but we also believe it will require to know why this gas plant is not located on the waterfront, from which it is distant one-half mile. What right has respondent to retain, as a site for its production plant, the land that was selected by one of its predecessors over sixty years ago? Possibly, at that remote period it did not much matter if the plant was on a site having no frontage on tidewater and no connection with the railroad.

Things are and for many years have been vastly different. Why should the consumer pay $1.25 to unload and haul every ton of coal delivered to this plant, when the fair cost of unloading coal from barge direct to coal pits would not exceed 10 cents per ton?

There is no proof on the record that the cost of handling coal by the present method is not even higher than $1.25 per ton, because the evidence introduced on behalf of respondent is confined, in this respect, to the testimony of engineer Woods, who, so far as the records show, has had no ex-

perience whatever in handling coal in this way. He certainly does not do it in such an antique way at the plants directly under his control.

During the year 1919, respondent sold 336,241,400 cubic feet of gas (R. 39 [65]). Woods assumes that for each thousand cubic feet of gas *made* there is required 34 pounds of generator coal, and 22 pounds of boiler fuel, which means, allowing for gas lost, that about 9,500 gross tons of coal are unloaded per annum. A saving of only $1.00 per ton would therefore be equal to $9,500 in the year 1919.

Evidence of the excessive cost to handle coal at this plant, as compared with the cost at other plants under Woods' control, is found by reference to his further testimony as follows:

> "Q. In the Consolidated Gas case you testified that labor handling would be .0075 per thousand cubic feet.
>
> "A. Right.
>
> "Q. And here you have it a dollar and a quarter?
>
> "The Master:
>
> "What was it in the Consolidated?
>
> "Mr. Chambers—.0075.
>
> "Mr. Ransom—That is a dollar and a quarter a ton.
>
> "The Witness—A dollar and a quarter a ton.
>
> "The Master—What is it carried out at?
>
> "Mr. Chambers—That would be 3.13 cents.
>
> "The Witness—Yes, as against three-quarters of a cent in the other case.
>
> "Q. How do you explain that wide variance?
>
> "A. Because in the case of the Consolidated Plant referred to, they were all on tide water where the coal was taken out.

"Q. But you didn't base this on any Consolidated plant?

"A. No, I said the Consolidated plants referred to were all on tide water where it was drawn right from the boat and put in the pile.

"Q. You testified in the Consolidated case that you didn't base that on any particular plant?

"A. No, I based it on a ten million plant; I said it ought to be on the water front—a plant of that size should be on the water front for economical operation.

"Q. And this is not, you say?

"A. No, this is not.

"Q. Well, how do you go to work to handle this coal?

"A. It has to be taken from the barge and put in automobile trucks and carted to the plant.

"Q. A distance of how far?

"A. Oh, I should say a half a mile.

"Q. That is the way it is handled here?

"A. That is the way it is handled.

"The Master—Isn't this Flushing plant on the water front?

"The Witness—No.

"The Master—A half a mile inland?

"The Witness—Well, I should say, probably—it isn't half a mile, from the water, but probably half a mile, I don't know the exact distance, from where they would bring it.

"Mr. Ransom—No place where there are any piers or bulkheads?

"The Witness—No.

"Mr. Neumann—Why not let the witness testify?

"Q. Isn't it on any navigable water?

"A. The amount of money involved, however, in the transportation would not justify the abandonment of the plant for the purpose of putting it on the water; the amount ex-

pended for the purpose of putting it on the waterfront would not justify in changing from the present location of the plant.

"Q. Well, it is a badly located plant, is it?

"A. It may have been badly located but it is there.

"Q. What did you figure on labor, how much?

"A. A dollar twenty-five a ton.

"Q. How many men?

"A. That was the contract price they got; I didn't take into consideration the number of men.

"Q. Isn't it on a railroad, this Flushing plant?

"A. There is a railroad, but there is no railroad siding to the plant.

"Q. But one could be built?

"A. Yes, and probably will be.

"Mr. Ransom—It is not on the railroad, the testimony in the case shows.

"The Witness—I say it is not on the railroad but by the purchase of some land a siding could be put in.

"Q. How far is it from the railroad?

"A. Five or six hundred feet, I should say, —is that right, Mr. Spear?

"Mr. Spear—About 200 feet.

"Q. Then if you had a little siding 200 feet, you would be rid of that transportation or some of it?

"A. With the expense involved in doing that, putting it in?

"Q. Supposing the railroad would put the siding in?

"Mr. Ransom—Objected to. The company has indicated that they were going to do that when it could acquire the land. We have not yet proved the situation in that respect; the company could not do it until it acquired the land.

"Mr. Neumann—You just stuck your head in the door, didn't you?

"The Witness—They didn't go any further with it.

"The Master—Objection overruled.

"Q. Then you took that figure of coal-handling from the records of the company?

"A. That is right.

"Q. And that is not your idea about it?

"A. Well, it is my idea because I knew that they were paying for doing that work. I think, under the conditions, it could not be done for any less.

"How much was that a year ago, say, or two years ago, that cost?

"A. I don't know. I can recall some three or four or five years ago, I think it was fifty cents.

"Q. In place of what, a dollar and a quarter?

"A. That is just an illustration, Mr. Chambers, of how things have gone up all along the line.

"Q. Well, things are abnormal. That proves it, doesn't it?

"A. Well, it is a question of what may be considered abnormal. It looks now as if we had normal conditions, unless it goes higher."

(R. 431-433 [482-485].)

It is no answer to our criticism concerning the location of this plant for Engineer Woods to say that it is there and that respondent must make the best of a bad bargain. To our mind, this continuance of excessive cost for handling coal for over fifty years, condemns the management. The record shows there is a railroad within 200 feet of the plant, and a railroad siding should certainly have been put in some years ago to bring down the cost of handling coal from $1.75 per ton to not over 50

cents per ton. Does not this lack of intelligent effort indicate that in the past this company has been able to earn ample returns under the very worst kind of management. It may well be presumed that the executives did not feel there was any need worry about profits. They were content with what they got and made no effort to get more by cutting down expenses.

In addition to the fact of this unnecessary expense in handling coal, it will be noted by the Court that respondent has submitted no proof that it actually receives all of the coal for which it pays:

"By the Master:

"Q. About how many barges of coal do you have in a year?

"A. Of broken coal, about an average, pretty nearly, of a cargo a month, five or six hundred tons; and on boiler coal probably one every two months.

"Q. When it comes on the barge alongside of Flushing Creek is it weighed there at all or is it weighed when it gets to the plant?

"A. No, it is not weighed; we take the bill of lading weight.

"Q. You always take the bill of lading weight?

"A. We have to pay on the bill of lading weight.

"Q. Do you not in any way check up your quantities?

"A. Well, we check up the quantities by periodical inventory, periodical measuring of the coal pile.

"Q. You do not check up the quantity in the barge for which you are charged?

"A. No.

"Q. Who receives the coal from the barge?

"A. The superintendent of the works.

"Q. Personally?

"A. Yes.

"Q. So he can tell us just how many barges of coal he got during the year—he would know?

"A. Oh, yes."

(R. 182 [58].)

The Court will no doubt bear in mind, after reading the testimony in this case, that there are many possibilities of coal being diverted from respondent's use. For instance, the coal is loaded at the mines on the railroad cars, and a bill of lading is issued showing the weight of coal so loaded. That is what respondent pays for. The coal on the railroad cars, however, is dumped into barges at tidewater. There is no evidence and no assurance that all of the coal is dumped out of the said railroad trucks, and this is really an important point to take into consideration in winter weather when it is obvious that moist coal may stick in the pockets of the car, due to frost.

In addition to this probable source of loss to the respondent, there is the further likelihood that coal may be stolen from railroad trucks *en route*, particularly in the yards where quantities of coal are stored before sufficient trucks are available to make a barge load of 600 tons.

We next may consider the probability that, in unloading from railroad trucks into barges some spillage occurs. Furthermore, these barges are transferred to the public dock by steam tugs. It is surely quite likely that if fuel for raising steam was short, or of poor quality, the tug engineer might borrow some of the high grade anthracite generator coal or bituminous boiler coal while he is transporting it across the bay to Flushing Creek.

The possibilities of loss are not yet exhausted.

The coal on the barges is unloaded into automobile trucks or horse drawn wagons and delivered along public highways. It being evident that it is very difficult to clean out the pockets in a barge and, the work being done by contract, one can well imagine the great temptation there is for the contractor to get out the bulk of the coal which is easily handled and refuse to bother with the coal in the corners of the barge pockets.

Still another possibility occurs for loss of coal. It would be only human on the part of the hauling contractor to load his trucks to the limit because idle time of the truck, or the required travel of over a half mile distance with only a part load, would mean additional expense per ton-mile. A full truck passing over uneven dock structures and roads causes much spillage. This is particularly true where there is a detour, as in this case. Any intelligent layman must have observed, in passing coal docks or railroad freight yards, that some people make a regular business of gathering up the spillage of coal.

We point to the fact that respondent relies upon pure assumption as to the amount of coal received. It has not proved that it receives all of the coal it pays for. *What it does pay for is the coal loaded on the railroad trucks, hundreds of miles from the plant. Furthermore, the trip by water from the lighterage limits of New York Harbor to Flushing Creek dock, which serves the plant of respondent, takes about five hours* (R. 182).

The system used by respondent in accounting for the coal that it professes to use for generator fuel in the production of gas, condemns the plan of reporting its operations.

Mr. Morrison, as Superintendent of the Flushing Works, in direct personal charge of the operation of the works and the manufacture of gas, devotes

his entire time to that business. (R. 571 [801].)

We have shown that respondent pays for the coal on the basis of railroad company's bill of lading weights.

The following questions were put to the witness Morrison:

"The Master—Do you weigh the coal when it comes in?

"The Witness—No.

"Q. That is, you make a check of the coal pile monthly by measurement?

"A. I do.

"Q. So that if there were any considerable discrepancies between the amount of coal billed and the amount of coal received, your invetory would show it?

"Mr. Neumann—Objected to on the ground it is incompetent, irrelevant and immaterial. That is a conclusion for the Master to draw from the witness' testimony, not for the witness to testify to.

"The Master—Overruled.

"Mr. Neumann—Exception.

"Mr. Tobin—Exception.

"A. Yes.

"By the Master:

"Q. You said something about keeping track of the coal used, did you not?

"A. Yes.

"Q. How do you do that?

"A. We keep an account of the number of buggies as they are dumped into the machine, and *the gasmaker puts it on his sheet*, and we add those buggies up each day and compute the weight of coal from those buggies.

"Q. How much does a buggy contain?

"A. From eleven to thirteen hundred pounds.

"Q. Do your buggies vary in size?

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"A. No, they are all the same size.

"Q. Do you weigh each buggy?

"A. No.

"Q. How do you say from eleven to thirteen hundred pounds?

"A. We have weighed them to check up on the weights.

"Q. How do you figure them, 11 or 13?

"A. We use 13.

"Q. You use 13 as the quantity that goes into the manufacture?

"A. Yes.

"Q. Why do you do that when some of it runs as low as 11?

"A. Using it in that way and checking up with our inventory at the end of the month, our coal pile comes out nearer to what we have used, using 1,300 pounds to the buggy.

"Mr. Neumann—I move to strike that out, as to how much he used, as a pure guess, based on his conception.

"The Master—Overruled.

"Mr. Neumann—Exception.

"Mr. Tobin—Exception.

"By Mr. Ransom—Do you personally watch the filling of the buggies?

"A. Yes." (R. 572-3 [804]).

It is to be noted that none of the three gasmakers was called to prove the entries on the daily work's report sheet.

In connection with the above testimony, we will endeavor to show that it is impossible for the witness to do what he claims he does in the matter of measuring the coal pile periodically, watching the buggies that go to the generator charging floor and keeping track of the coal used, even though he claims he is on the job twenty-four hours in the day (R. 571 [801]). The witness testified that it takes about thirty buggies daily to handle coal

from the pile to the generator floor (R. 577 [812]). He also testified:

"Q. Did I also understand you to have said that you personally watch the filling of those buggies?

"A. At times, yes.

"Q. Is that part of your task, or your job at this plant, to watch these buggies as they are filled?

"A. It is part of my work, yes.

"Q. How much time would it take to fill a buggy?

"A. One man about fifteen minutes.

"Q. And you would be right there present when they were being filled?

"A. Not the entire time, I might not, but I see the buggies as they go on the elevator and on the generator floor?

"Q. All the buggies?

"A. No, not all.

"Q. Well, how many of them?

"A. Well, I might observe a dozen a day.

"Q. So you do not really know whether they contain 1300 pounds of coal, or 1200 pounds of coal or 1000 pounds of coal?

"A. I would know that by the amount of coal that is on the buggy from previous weights that I have taken.

"Q. It would simply be mere guesswork, would it not?

"A. It would—a pretty good guess, though.

"Mr. Tobin—I ask that the last part of the answer be stricken out.

"The Master—Motion denied.

"Mr. Tobin—Exception."

(R. 594 [840].)

Just before this point in the record, the witness testified that there is no check on the coal used until it goes into the manufacture of gas, other

than the monthly periodical measurement of the coal piles, which he makes personally. *In passing, it may be noted that he takes the measurement of the stock pile and makes a memorandum, but there is no way of checking these memoranda, because they are not preserved.*

We direct the Court's attention to the testimony of the witness Morrison that there is a shortage of men and the company cannot get all the men that it needs. (R. 600 [849].) This must mean that Morrison is kept extremely busy and it is therefore fair to conclude that he cannot possibly check up these buggies to see that they are properly filled, particularly as the shortage of men has been so great that he, Morrison, according to the testimony of General Manager Spear, has been forced at times to go on the operating floor and make gas himself.

The witness, Spear, tried to bolster up the weak testimony of Morrison by stating that he also looked at the buggies containing the coal as they go from the coal pile to the generator floor. (R. 637 [911].)

Mr. Spear only spends a short time at the plant on some not particularly specified mornings throughout the year, so it is quite evident he cannot have any personal knowledge that all the buggies containing coal are properly filled. His testimony regarding the checking up of the coal is as follows:

> "Q. Taking up the coal, how do you follow that through, how do you take care of that as far as protecting the company in getting the full quantity of coal that is billed to you is concerned?
>
> "A. Only by the measurement of the piles which is taken periodically.
>
> "Q. There is no account taken of it as it is

unloaded from the barges to the wagons or carts which draw it from the barges to your coal piles?

"A. No.

"Q. You take no account at all until it reaches the coal pile?

"A. That is right.

"Q. And then you follow it through in the measuring of the coal as it goes into the manufacture of gas, that is, you take another measurement then?

"A. We measure it periodically, usually about the first part of the month.

"Q. I mean these buggies?

"A. I don't pay any attention to the buggies except occasionally as I go to the generator house and look to see if they are filled to about a certain point, to see how they are running.

"Q. Your account then, of quantity is taken in these periodical measurements as against the amounts that are received for bills rendered? A. Yes.

(R. 637 [911].)

Incidentally, we may say, the testimony of the witness Spear as to the average amount of coal contained in the buggies, or in fact on any matter of quantities relating to materials used, is very unsatisfactory, because he does not even know what is meant by a weighted average, as is shown by the following testimony:

"Q. (Interrupting) Do you know what a weighted average is?

"A. A weighted average?

"Q. Yes.

"A. No.

"Q. You take merchandise that you have purchased over a number of years, in order to get a weighted average, you must know how much you purchased in each year, that is correct isn't it?

"A. Yes.

"Q. Do you recall now what a weighted average is?

"A. Well, I have never used it.

"Q. You did not use it in this exhibit?

"A. Oh, no, we took the high and low price that we paid for these materials in those respective years.

"Q. And that is true of every item, is it?

"A. Yes.

"Q. And you have arrived at these figures of percentage here not according to what is called weighted average, but a straight average?

"A. A straight average, yes.

"Q. Irrespective of the quantity?

"A. Yes.

(R. 707 [1031].)

How does respondent attempt to prove that its operations are reasonable? It offers opinion testimony by an engineer in its employ who, in the bulk of his operations has to do with plants of enormous size, both coal gas and water gas, totally unlike that used by respondent both in design and capacity. Woods' chief concern is with a coal gas and water gas plant that has a capacity of not less than 80 million cubic feet per day.

The testimony of Woods shows that he based his estimate of fair operating cost upon a hypothetical plant. He did not even go to the trouble of examining the record of operations which respondent keeps (R. 178 [562]) although he did admit, (R. 432 [184]) that he took the cost of handling coal from the records of the company. It is further shown by the following that Woods did not base his estimate of cost for producing gas on any records of the company.

"Q. Did you base that on any records of the company?

"A. I know the number of men required to operate a plant of that kind? For instance you have a gasmaker who makes a million feet a day, in three shifts they would make a million feet for each of three machines, and in a larger plant, where they had larger machines, in a plant capable of handling larger machines that same gasmaker would make three million, so for the gasmaker himself it would be three times as much as in the large plant where they have these large individual units. You could not afford to put up individual units of that kind in a plant like Flushing, you would have to rebuild the plant entirely in order to handle the proposition.

(R. 112 [500].)

In reference to Woods' claim that it costs a certain amount, per thousand cubic feet, in making a million cubic feet of gas per day, it will be noted from his testimony that he figures a fixed number of men at certain rates of pay, and then divides the result in dollars by one thousand M cubic feet of gas made. The testimony shows that the plant he figured on would make much more than one million feet a day.

"Q. This company out there does not make a million cubic feet a day?

"A. They do.

"Q. They make a good deal more than that?

"A. They will make slightly more than that; they average that.

"Q. Didn't you hear testimony the other day that it was 1,600,000?

"A. That is a maximum capacity. They probably gave you a send-out of 1,600,000? I do not recall the exact figures, but I think their annual send-out was around 375 to 380 million cubic feet make, which would be close to an average make of one million a day. A mil-

lion a day would be 365 million. Their average make was probably 1,050,000 a day.

"Q. They make sometimes 1,600,000?

"A. Yes.

"Q. Wouldn't that cut the cost down?

"A. Yes, and if they made less than a million it would probably bring it up.

"Q. Do they make less than a million that you know of?

"A. There are times when it must be less than a million to get an average throughout the year of slightly more than a million.

"Q. Then they could close down one of the machines and relieve some of these gas-makers and others.

"A. I took it as a condition of operating a million a day. At times their cost may be a little more, and at times a little bit less than that."

(R. 446 [507].)

The claim we make is that, while the average make per day for 365 days in the year may be slightly over a million cubic feet, this does not indicate that the plant sometimes runs a little higher, and sometimes a little lower, from day to day. The evidence is to the effect that this plant has a seasonal load, so that when the make from day to day runs, *for consecutive months*, over 1,500,000 per day, the cost per M should be a good deal less than on a plant which is running on an average close to a million cubic feet per day throughout the year. The evidence shows this plant has three sets of generating apparatus. When the production gets down below one million cubic feet a day, it is not necessary to keep Woods' whole gang of men on. Respondent would operate only one machine, and, therefore, the amount of money into which the quantity of gas would be divided would be very much less than it would be

if respondent had to operate two machines all the year round, making an average of a million cubic feet per day.

The strange feature of Wood's testimony is that he sets up a hypothetical plant, with an imaginary force of men to operate it, notwithstanding the fact that he frequently visits the plant in the capacity of consulting engineer, and could keep an accurate record of the number of men actually employed. His testimony regarding the number of men who *might* operate the plant is as follows:

> "Q. That is, have they a superintendent, one clerk, three gasmakers, three engineers, two boiler firemen, two generator firemen and coal passers, and two laborers?
>
> "A. I would say so, yes.
>
> "Q. Are you sure about that?
>
> "A. I am quite sure that they have that many men.
>
> "Q. You don't know what they pay them over there, do you?
>
> "A. I do.
>
> "Q. Those prices?
>
> "A. Those are the average rates. The gasmakers and engineers are not all paid the same rate. The average rate for those different classes is there.
>
> "Q. The superintendent, do you know what he gets over there? A. I do.
>
> "Q. Those prices?
>
> "A. Those are the average rates. The gasmakers and engineers are not all paid the same rate. The average rate for those different classes is there.
>
> "Q. The superintendent, do you know what he gets over there?
>
> "A. I do.
>
> "Q. What does he get?
>
> "A. $2,100 a year, I believe.
>
> "Q. And his maintenance, his house there?
>
> "A. His house.

"Q. Does he pay rent for that?

"A. No, he doesn't pay any rent that I know of.

"Q. Now, the clerk?

"A. The clerk I have there at $4 a day. Just what they are paying the clerk I don't know. I don't believe they are paying quite that, because they have a new clerk they just put on, and he probably is not getting $4. $4 is what they will have to pay as soon as he is broken in.

"Q. What are the gas makers getting over there?

"A. The average rate is indicated on that exhibit.

"Q. Then they have got three over there?

"A. Yes.

"Q. And three engineers?

"A. Right.

"Q. At these prices?

"A. Right.

"Q. That is, some of them are getting less, I take it, and some more?

"A. Yes, for all three that would be the rate."

(R. 117 8 [509].)

Looking at the above testimony, it will be seen that Woods allowed for a clerk to be employed all the time, whereas the testimony of Mr. Morrison is that very frequently he does not have any clerk.

(R. 574 [806].)

While this point is fresh in the Court's mind, about there being no clerk, and also bearing in mind that Mr. Morrison occasionally has to make gas himself as an operator of a machine, it would seem all the more unreasonable to believe that he knows the buggies of coal going to the generator floor are properly loaded to carry 1,300 pounds of coal each.

Mr. Wood's testimony regarding the cost of oper-

ating a hypothetical plant was shown to be very much different from his testimony in the Consolidated Gas Company case, to which frequent reference was made in the present record. One cannot get his viewpoint that in the Consolidated case he testified to the estimated cost of a hypothetical plant of 10 million cubic feet capacity, which operates almost to capacity every day. It surely must be evident that in a plant making 10 million cubic feet on an average, the spread between the daily minimum make and the maximum daily make must be at least as great as in another hypothetical plant where the average daily make is one million cubic feet. How then can his claim be given any weight that the marked difference in his hypothetical cost in the 10-million plant is explained by a greater amount of idle time in the smaller plant. Woods claims that the cost is much higher in a million foot plant than in a 10-million plant, but that it would be no lower in a 20-million foot plant.

"Q. Well, what did you testify to in that regard?

"A. I testified that in a plant such as I testified to in October, 1919, as bearing upon the Consolidated Gas Company's system, which did not include the Flushing Company in any sense, that a fair operating condition was 2½ cents per thousand cubic feet for gas-making labor.

"Q. If you had a plant of 20 million cubic feet capacity, could you operate it for less than these figures that you have in October, 1919?

"A. I could not.

"Q. There would be no decrease?

"A. No.

"Q. How about the other way, the converse?

"A. If you can operate a plant continuously anywhere from five to ten million—if you recall, Mr. Chambers, in my testimony, I testi-

fied to a plant on an average condition operating on ten million feet a day, and that plant would run anywhere from 7½ to 15 or 18 million. I took a fair operating condition throughout the year. At times the gas-making labor would be somewhat less than 2½ cents, and at other times it would be somewhat more than 2½ cents, but I believe under the conditions under which we were operating, a fair amount was 2½ cents per thousand cubic feet."

(R. 1156 [506].)

In the instant case he testified that the cost ought to be 6.71 cents per thousand cubic feet (R. 1597).

In further reference to the inefficiency displayed in the management of this company, attention is drawn to the testimony relating to the handling of coal from the stock pile at the plant to the water gas generators. We have already noted, from the testimony of Superintendent Morrison, that he had great difficulty in getting men to operate the plant, and it is apparent that respondent has a plant which requires more men than would be needed in a well-designed gas works. This is shown by the following testimony:

"Q. In a general way, will you describe these buggies?

"A. A large steel buggy on two wheels that has a funnel at the end. As they tip this buggy, it is dumped into the generator.

"Q. It runs on tracks?

"A. We run them, not on tracks but on channel irons, from the bin to the elevator.

"Q. What is the motive power?

"A. Man.

"Q. How many?

"A. Two. Two from the coal bin to the elevator, one after they get on the floor or where it is level pulling."

(R. 578 [813].)

The testimony of Morrison in reference to the way in which he keeps track of the coal used is so confused that we doubt if anyone can make sense of it. Beginning at page 572 of the Record, it will be noted that Morrison testified that each buggy can contain from 1,100 to 1,300 pounds. They do not weigh each buggy load. He uses 1,300 pounds rather than 1,100 when he puts the amount down on the works reports' sheets. He was asked why he put down 1,300 pounds when some of the buggies ran as low as 1,100 pounds, and his answer was:

> "Using it in that way and checking up with our inventory at the end of the month, our coal pile comes out nearer to what we have used using 1,300 pounds to the buggy."
>
> (R. 573 [801].)

It was evident that the Master was quite confused by Mr. Morrison's testimony regarding the keeping of records of coal used, as is shown by the following:

> "By the Master:
>
> "Q. Let me ask you this, Mr. Morrison. You say that you take these buggy quantities at 1,300 pounds, then you check it up with your inventory at the end of the month. What quantity of coal used do you report at the end of the month, the amount shown as the result of your inventories or the amount of the computation of the buggies?
>
> "A. The computation of the buggies.
>
> "Q. Suppose that is less than the amount shown by your inventory check, do you still stick to your buggies?
>
> "A. No, we change the weight of the buggies to meet that.

"Q. Suppose it is more than indicated for your inventory check?

"A. Then we would increase the weight of the buggies.

"Q. Then you take the result of your inventory check rather than your 1,300 pounds per buggy, don't you, as the total used in the course of a month?

"A. In that way, yes.

"Q. What?

"A. In that way, yes.

"Q. What?

"A. In that way, yes.

"Q. In what way, don't you? What I am trying to get at is this, Mr. Morrison. You use a certain quantity of coal in the course of a month, do you not?

"A. Yes.

"Q. How do you determine that?

"A. By the number of buggies and by the weight per buggy.

"Q. Suppose the number of buggies in the course of a month indicates that you have used 500 tons?

"A. Yes.

"Q. When you check it back with your inventory you found you only used 100 tons?

"A. Well, that never happens; we are very much closer than that.

"Q. What?

"A. We are within ten tons of our inventory.

"Q. Always?

"A. Most always.

"Q. Then you would stand by your buggies' weights?

"A. We would stand by our buggy weights.

"Q. And you disregard the variance of the ten tons?

"A. Yes, take the standard weight of the buggy against the tape measurement of the coal pile.

"Q. Then you rely on your buggy weights of 1,300 pounds?

"A. Yes."

(R. 575-6 [809].)

We confess that we are still confused as to what respondent actually does in regard to the amount of coal used, notwithstanding we have made a very close perusal of the entire record in respect to the amount of coal reported used. Furthermore, we cannot point to any place in this record where respondent showed that the computations made of the amount of coal used are in any way checked against the amount of coal paid on bill of lading weights.

In his report the Master makes no reference to errors that admittedly took place in reporting the amount of coal used, although the record shows that during the trial he was amazed at some of the errors which crept in. This is shown by the following testimony:

> "The Master—Yes, I am going to sustain the objection in a minute. I just want to let Mr. Neumann develop his theory here. Is that in error?
>
> "The Witness—That is an error.
>
> "The Master—An error of how much?
>
> "The Witness—200,000 pounds.
>
> "The Master—How could that error get by to such an extent? Let's understand something about it? How does a big error like that creep in?
>
> "The Witness—Due to the labor conditions and other troubles up at the plant. I did not check these underlying figures here but checked the summaries and took the clerk's figures here.
>
> "The Master—Well, 200,000 pounds makes a good deal of difference in the cost.

"The Witness—It does, yes, but we catch that on the measurement of the coal pile.

"The Master—Well, how could it? It shows up there, does it? Does the error show on there?

"The Witness—No, the error does not show here, but the error is gradually taken up, so that it is taken care of as we go on.

"Mr. Ransom—What month was that?

"Mr. Neumann—I move to strike out that last answer as a mere conclusion.

"The Master—Yes, I will grant that motion.

"Mr. Ransom—Exception."

(R. 588-9 [830].)

In comparison with the testimony of Woods regarding the number of men to be used in his hypothetical plant, there is the evidence of General Manager Spear. Woods testified that three gas makers would be needed, whereas Spear showed this was not the fact:

"Q. And how many gas makers?

"A. Three.

"Q. Is that the average, three, or is that the extreme number employed?

"A. Three would be the extreme number, except that we have an extra man broken in in case of sickness of one of the gas makers that could take his place, but we only use the three where we are running three shifts.

"Q. Taking the twelve months, for many months, would you employ three gas makers during the year 1919?

"A. I can't tell that without looking over the records.

"Q. Would you employ two gas makers for most of the year?

"A. That is pretty hard to say. I say possibly two and a half for the year 1919, it might average that.

"Q. It would average about two and a half?

"A. It might; I can't tell except from the records.

"Q. That would be your judgment?

"A. I would not want to say positively on that without a study of it."

(R. 641 [918].)

In Woods' computations concerning cost of producing gas at a hypothetical plant, he inflated the figures by assuming the generator coal was of bad quality. Instead of testifying that 32.5 pounds would make a thousand cubic feet, he insisted that 34 pounds was required.

We draw the attention of the Court to some testimony which shows the unreliability of the opinion evidence of Engineer Woods:

"Q. Has the coal during recent years oftentimes been of inferior grade?

"Mr. Neumann—Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

"The Master—Objection overruled.

"Mr. Neumann—Exception.

"Mr. Chambers—The witness has not any knowledge on the subject.

"The Master—I am going to find out.

"By the Master:

"Q. Have you kept in touch with the quality of coal delivered at Flushing?

"A. Yes, I have, your Honor.

"Q. To what extent?

"A. Why, we have an analysis of their cargoes and a knowledge of the results from the operations of their various cargoes.

"Q. You are watching that all the time, are you?

"A. All the while. I get reports from Flushing the same as I do from the other companies.

"Mr. Ransom—And some parts of their coal at least are taken to Flushing from the Astoria?

"Mr. Neumann—That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it, not by what this witness——

"Q. Do you know?

"A. Yes.

"Q. Have you seen it?

"A. We have shipped them coal.

"Q. Have you seen that done?

"A. I have.

"Mr. Neumann—Exception."

(R. 1212-13 [451].)

Woods also testified to the quality of coal on his cross-examination, as follows:

"A. No, I would not necessarily. It might be possible, Mr. Chambers, that they could get three or four cargoes of coal, and it would be an unfortunate thing, but if they were all bad that generator fuel would run 37 or 38 pounds, and you could not help yourself.

"Q. That would only be an isolated incident, would it not?

"A. It would be an incident. It is an incident we have at times, where they will get a cargo of coal and immediately the results go off, that they cannot control them or rectify them; they cannot get back to a good operating condition.

"Q. You took that into consideration when you testified in the Consolidated case?

"A. I did, and, as I stated here, while we have those conditions and we have a bad fuel condition, that with the coal that we receive and the coal that we have on hand, the quantities that we are able to use, we are able to use some of our good coal with our bad coal and

try to obviate those conditions, which cannot apply in a case like this."

(R. 151 [520].)

Woods' opinion testimony was not supported by the evidence of another employee of the Consolidated Gas Company, Walter R. Addicks, Vice-President, who purchases coal for respondent:

"Q. You stated this morning that where it was found by Mr. Spear that the coal was not up to the requirements, that is, was not of the quality good for making gas, that he reported to you. Can you tell the Master what procedure you followed, that is, what you did about that when Mr. Spear reported to you that the coal was not proper gas-making coal, was not sufficient in the qualities necessary for making gas—what did you do then?

"A. I would ordinarily take it up with the coal companies, they would send an inspector down——

"Q. Tell us exactly what you did do?

"A. I would have an analysis of every cargo of coal that is used——

"Q. Who makes that analysis?

"A. The chemists. If we found that the coal was not well prepared we would take it up with the coal company and ask them to inspect it. They might say our sample was not good, and might take other samples, and we would object and they would say the coal was not made by them, they gave us the best they could, etc. Anthracite coal has been running fairly well. Bituminous we had some trouble with.

"Q. What rebate has been allowed to the Consolidated Gas Company because of the failure of the coal company to furnish the quality of coal which was called for in the contract?

"A. I don't remember any rebate.

"Q. That is, you cannot recall any moneys

being paid back to the Consolidated Gas Company?

"A. Not one cent.

"Q. For poor coal, at least coal that was not sufficient in quality?

"A. No.

"Q. Well, taking the New York & Queens Gas Company, can you tell us of any rebates that were paid back to the Consolidated Gas Company for the benefit of the New York & Queens Gas Company because of the failure of the coal companies to deliver coal of a proper quality?

"A. I cannot. I don't remember any complaints from Mr. Spear about the quality of the coal. I did not take up any question of the quality of his coal.

"Q. You indicated that Mr. Spear at different times had complained?

"A. No. I said that would be the procedure if the coal had not been up to the standard, but I don't remember any complaint.

"Q. Then I misunderstood you. I understood you to say he had complained?

"A. No. I don't remember that he ever did.

"Q. So your testimony is that you don't remember Mr. Spear complaining at any time?

"A. As to anthracite I do not.

"Q. How long a period of time would you say that would cover?

"A. Five or six or seven years.

"Q. And no rebates have been paid back for poor coal?

"A. Absolutely not.

"Q. Have any adjustments or allowances been made at all for the benefit of the New York & Queens Gas Company covering the period of 1919, 1918?

"A. None.

"Q. None whatever?

"A. No.

"Q. So that the price fixed in the contract

is the price that the New York & Queens was called upon to pay?

"A. It is.

"Q. And there has been no change whatsoever as to those terms?

"A. Absolutely none.

"Mr. Tobin—I don't like to prolong this testimony, but Mr. Gawtry indicated that there was the possibility of protesting, and of protests being made because of poor quality. If it was of no avail then there would be no purpose of making the protest.

"Q. Has the Consolidated Gas Company on behalf of any of its companies, or on behalf of its own company, gained anything by those protests?

"A. Merely demanding and asking for better preparation of the coal. We have frequently done that in my experience.

"The Master—Does that avail you very much?

"The Witness—Not very much, excepting asking for better quality.

"The Master—Do they do any better?

"The Witness—I think they do. We test every single cargo of coal that comes to us. Most people put it in their boilers and let it go. We tear apart those ingredients on every ton of coal, and we are very particular. I think because the coal companies know we are particular we get better coal and better service.

"The Master—But you don't get any rebates?

"The Witness—No. Coal is not made to order. Coal comes from the ground ready made.

"Q. Has it not at any time been so poor in quality that you deemed it advisable to turn to some other coal company to purchase coal?

"A. Not with anthracite. I have with bituminous, but not with anthracite

"Q. You only buy anthracite coal?

"A. That is practically all the Queens Company uses. I have bought large quantities of bituminous coal for the Consolidated Company.

"Q. So there was no complaint sufficient at any time to make it necessary for you to turn to some other companies to buy anthracite coal?

"A. No."

(R. 551, 552, 553 [686, 687, 688].)

We will next refer to the testimony of Maynard H. Spear, General Manager of respondent. He was asked concerning the quality of the coal and testified as follows:

"Q. Now, as to the quality of coal, do you make any complaint if the quality of coal does not meet the necessary requirement, or what your gas maker says it should be?

"A. Yes.

"Q. How often would it happen in the course of a year that the quality of coal would be deficient?

"A. Oh, it is very rare.

"Q. Very rare?

"A. Yes. Coal will vary, but we very seldom make a complaint on the quality of coal.

"Q. Did you find in the year 1919 that the quality of coal was more or less deficient, and that you had to make up that deficiency by something else to make up the manufacture of gas?

"A. It had more dust in it than usual.

"Q. It had more dust than usual?

"A. Yes.

"The Master—Screenings?

"The Witness—Screenings."

(R. 638 [912].)

So far as Mr. Spear's testimony is concerned, the Master showed by his questions that the presence of more dust or screenings in the coal would not account for the use of more of this coal, as generator fuel, than is usually required. These screenings do not go into the generator but are in fact taken out for use as boiler fuel.

Spear also testified regarding coal, as follows:

"Q. Do you follow closely the quality of the coal supplied to the company?

"A. Yes, I do.

"Q. From whom do you receive reports on which to base your complaints if any are made, whom do you receive reports from, the gas maker?

"A. No, from Mr. Morrison, or from looking over results, or from looking over the coal myself. From my experience in the gas business I can tell ——

"Q. You can tell whether it is proper quality or not?

"A. Yes.

"Q. Now, what would you say as to the quality of coal in 1918 as compared with the quality of coal in 1919, confining yourself entirely to the coal received by your company?

"A. Well, I cannot recall the comparison now between 1918 and 1919.

"Q. Can you say as between 1919 and the period of time that we have gone in 1920?

"A. No, I do not want to draw a comparison on that from memory now.

"Q. Would you say it was better in 1920 than it was in 1919?

"A. That would be pretty hard for me to say from memory; I would not want to do it.

"Q. Would you say it was about the same in 1920 as it was in 1919?

"A. I would not want to make a statement on that.

"Q. That is, you do not care to make a statement?

"A. Well, I cannot recall it from memory."

(R. 639 [911].)

As compared with Mr. Woods, of the Consolidated Gas Company, who testified that more coal is needed because the quality is poor, it is interesting to note that respondent called Martin Morrison (R. 569 [798]), the superintendent of the plant, who testified that when a cargo of coal arrives he generally goes down to look it over:

"A. (Continued.) I am present when the coal is hauled into the plant. We pay for the coal on the railroad's bill of lading. When the coal has been delivered I notify Mr. Spear of its receipt by signing my name on the back of the invoice."

(R. 571 [802].)

Mr. Morrison, who knew, if anybody did, what quality of coal he received and used at this plant, was not asked a single question by counsel for respondent regarding the quality of the coal received.

The saving of 1.5 pounds of coal per 1,000 cubic feet of gas made is equivalent, on Woods' basis, to about .63 cents per M cubic feet of gas sold. Add this to the $9,500 saved on handling the coal, equal to about 2.8 cents, and we have available for return to the investors, from this source alone, nearly 3½ cents per thousand cubic feet of gas sold.

A cent per thousand here and there will make a great difference in this case. Take for instance the Master's finding (No. 48, R. 44) where it is noted that he believes respondent failed to make the revenue meet the expenses, in 1919, by $9,074.70. Here we have, by challenging just the one item of

generator fuel, thus reducing the expense about 2½ cents per M cubic feet, more than wiped out the deficit. If we take the book figures for generator fuel, our correction of the reported cost would be still greater, because the respondent alleges it used 34.59 pounds per M feet, as against the 34 that Woods used and the 32.5 pounds that we claim should be the maximum allowance.

It is worthy of note that the Master sets up the book costs in arriving at his conclusions, and he seems to rely upon Woods' hypothetical figures to substantiate them. Woods, however, demonstrated that several items of cost are unreasonable, and we cite as one instance the reported expense for boiler fuel. Teele's exhibit (Complainant's No. 64, R. 1569) shows an expense of $.0882 for this fuel whereas Woods said $.0639 is ample. The difference in favor of appellants on account of reducing this excess cost is equal to almost $.028 per M cubic feet of gas *sold*, figuring the unaccounted-for gas at 12 per cent. The Master erred in not finding that the evidence of respondent's witness Woods conclusively shows the boiler fuel is excessive to the extent of at least 2¾ cents per M cubic feet of gas sold. On a spread of 336,241.4 M cubic feet of gas sold, this saving alone would have given respondent an additional net revenue of $9,246.64.

There is another feature about Woods' evidence that we find difficult to follow. He assumes a cost of $1.25 per ton to handle coal. He then sets forth Boiler Coal as an item of expense and assumes a certain number of tons hauled into the plant. As a matter of fact, respondent uses its own water gas tar for boiler fuel and, of course, that is pumped to the boilers and does not come by rail-

road cars, barge, automobile trucks or horse wagons. It is a byproduct of the gas and requires only a little steam to pump it to the boiler furnaces.

The Court will note from "Complainant's Exhibit 77" (R. 2-31), this being the estimate of cost to produce one million cubic feet of gas per day in a hypothetical plant, and from "Complainant's Exhibit 64" (R. 1569), which is Teele's tabulation of the reported cost of production for the year ended December 31, 1919, that the principal cost of producing gas is the expense for oil used to enrich the gas.

Woods claims that 4.2 gallons of oil are required to enrich each thousand feet of gas and that the purported cost per M feet, under the price conditions assumed by him, is 30.59 cents.

In Teele's Exhibit the amount of oil reported used for the year ended December 31, 1919, is 4.19 gallons per thousand cubic feet of gas made and at the price purported paid for oil the expense for enriching each thousand cubic feet of gas made is 28.2 cents.

The testimony regarding the price paid for oil was offered by Mr. Addicks, Vice-President of the Consolidated Gas Company (R. 317 [284]). He is a member of the Executive Committee of said Consolidated Gas Company and familiarizes himself with all questions of new construction and expenditures, and is primarily responsible for contracts covering gas oil and coal. For a number of years he has had charge of the purchase of oil and coal for the Consolidated Gas Company. The company has made a practice of purchasing its gas oil on contracts extending over periods of time at a stipulated price. Addicks personally negotiates

agreements for the purchase of oil and submits the results of his negotiations for the approval of the Executive Committee of the Consolidated Gas Company. His purchase of oil for the Consolidated embraces also the oil requirements of certain Gas Companies affiliated with the Consolidated Gas Company, including the respondent.

Addicks negotiated the contract for gas oil required by the Consolidated and its affiliated companies, including the respondent, during the year 1919. The contract was placed with the Standard Oil Company of New Jersey.

Before the contract was signed Addicks asked for prices on oil from other refiners. He took into account whether or not the people that he asked to quote prices were in a position to supply the needs of the Consolidated Gas Company in the event that they were awarded a contract (R. 323 [291]). *This shows there is a question as to the advisability of tying in the comparatively small requirements of the respondent with the enormous needs of the Consolidated and its affiliated companies.*

In 1919, gas oil was scarce and the requirements of the group of gas companies controlled by the Consolidated Gas Company were so enormous that probably only one or two refiners could have fulfilled them.

As shown by "Complainant's Exhibit 71" (R. 1581), *an agreement for the deliveries of oil required in the year* 1919 *was made on the* 18*th day of December*, 1918. *There is nothing in the record to show that any attempt was made at an earlier date to purchase oil, when the market price was low, and store it in tanks for future use.*

Without exception, all contracts for gas oil are made by Mr. Addicks with the Standard Oil Com-

pany of New Jersey. The particular contract in question calls for the delivery of 122 million gallons of gas oil, for consumption in the business of the Consolidated Gas Company in its various plants in New York City or the plants of such other companies as it may designate in the said City or in Westchester County. The purchaser is given an option to cancel, on or before May 1, 1919, its obligation to purchase one-half of the quantity specified in the contract.

It appears from the record that Mr. Addicks is not an officer of the respondent (R. 337). He is a director. He admitted that in the contract (Exhibit 71) it is not stated how many gallons of oil is the proportionate share for the respondent, but he let the New York and Queens Company have all the oil it wanted. How much that amounted to he did not know, although he thought it might be somewhere between a million and a million and a half gallons, which is, of course, a comparatively small quantity out of the 122 million gallons contracted for.

The witness Addicks tried to show that he attempted to get prices for some oil in quantities sufficient to meet only the needs of the respondent, but the cross-examination shows that he did no such thing. The only thing approaching evidence to the effect that an attempt was made to secure some oil sufficient to meet the needs of the respondent is in the interpretation by counsel for respondent of certain form letters written by the witness Addicks to certain oil companies. Those refiners received such letters periodically, but were never given a contract for oil by Mr. Addicks:

> "Q. Did you ever try to buy for them that quantity of oil from any company except the Standard Oil Company?

"A. I tried to buy any quantity of oil from any company at that time.

"Q. No, I am asking you if you ever tried to buy that requirement of that company alone from any company, like the Texas Company or the Gulf Refining Company?

"Mr. Ransom—I object to that as immaterial and incompetent, unless limited to this period. 'Ever' is a long time.

"The Master—Yes, I think I will sustain the objection as to an indefinite period.

"Q. Well, at this time?

"A. I got a price within this period from the Texas Company.

"Q. For that number of gallons?

"A. For a million to a million and a half gallons per month for six months, with the privilege of renewal for another six months.

"Q. What was the price?

"A. Eight cents.

"Q. From the Texas Company?

"A. Yes, sir.

"Q. In writing?

"A. Yes, sir, in writing.

"Q. Where is the letter, have you got it?

"A. I have.

"The Master—When you said a million and a half gallons, did you mean a million and a half a month?

"A. No, a million and a half gallons a year.

"Q. What is this?

"A. A million to a million and a half per month for a six months' period.

"Q. I asked you if you tried to buy a million and a half gallons—not a million and a half gallons a month—but the requirements of this company, from any company?

"A. I think I did.

"Q. That letter you speak of is the letter you wrote for the entire Consolidated system, is it not?

"A. Yes, but it included——

"Q. No, I am asking you, did you ask any

company if they could furnish a million and a half gallons a year?

"A. I did not write any letter different from what I have already testified to in the other case, and a copy of that is here.

"Q. We don't want that. That is to say, you made no effort, did you, in 1918, to buy the oil requirements of this New York & Queens Gas Company separately from the rest?

"Mr. Ransom—I object to that as incompetent and contrary to the facts. The witness has testified that he asked for a bid for any quantity of oil, however small.

"Mr. Chambers—He didn't say so.

"A. The letter says that I would be glad to be informed if they have any gas oil from 28 to 30 Baume for sale and the price per gallon.

"Q. Don't read that, that is 1919. We are talking about 1918.

"Mr. Ransom—We are talking about 1919.

"Mr. Chambers—I am talking about 1918.

"Mr. Ransom—The objection was sustained to 1918.

"The Master—I understand the question to relate to the 1919 requirements.

"The Witness—That is what I am testifying to.

"Q. In that letter you say, 'For your information would say that the quantity involved would be in the vicinity of 122,000,000 gallons.'

"Mr. Ransom—The companies understood that they could submit bids for any quantity, however small, as shown by the fact that they did.

"Q. Mr. Addicks, I am going to ask you a plain, simple question. Did you try to buy oil for the New York & Queens Gas Company in the quantity needed by that company only, without including your system?

"A. I tried to buy oil for the New York & Queens Gas Company collectively with our other companies——

"Q. No, did you try to buy oil for that company alone without including it with the others?

"The Master—Let us understand this. Mr. Addicks, Mr. Chambers intimates by his question that if you had tried to buy, as a separate proposition, a million and a half gallons of oil for the New York & Queens Gas Company that you could have done better than you did under the method that you pursued. He wants to know whether you made any effort to buy, as a separate proposition, a million and a half gallons of oil to cover the requirements of the New York & Queens Gas Company, and whether you made it clear to the people you were inquiring of that that was all you wanted?

"The Witness—I did not.

"Q. Do you know that the New York & Richmond Company was buying it for 5.75, from your own table in the Consolidated case?

"A. I do know in the case of the New York & Richmond that they did buy for 5.75.

"Q. And the Brooklyn Union—and the Bronx Gas & Electric were buying it——

"Mr. Ransom—When are you referring to?

"Mr. Chambers—1919.

"A. Yes, I inquired of that same company for oil and they said they were not able to furnish any.

"Q. What company was it, do you know?

"A. That was the Gulf Refining Company.

"Q. That was because you were asking for that large quantity?

"Mr. Ransom—Or any part of it.

"Mr. Chambers—He said he didn't try to buy in this limited quantity.

"Q. Was it not known that you were in the market to buy 122,000,000 gallons of gas oil?

"A. They knew that was the maximum that I was in the market for.

"Q. When anybody said 'Addicks' they knew that it meant 122,000,000 gallons?

"A. They knew we bought in large quantities.

"Q. They knew that Mr. Addicks was not around trying to buy a million and a half gallons?

"A. I was not trying to buy a million and a half gallons only.

"In the Bronx Gas & Electric case, it was 7.55?

"A. Yes, 7.55.

"Q. And the Brooklyn Union 6.08?

"Mr. Ransom—Yes, back in 1918.

"Mr. Chambers—1919, according to your own exhibit.

"Q. 6.08, wasn't it, in March, 1919?

"A. 6.08, and we were buying as low as 6.28 in 1919.

"Q. Your contract is not as low as that that you put in evidence?

"A. Not for the first part of it.

"Q. That contract does not say six something, in 1919, it is over seven cents?

"A. Yes.

"Q. How do you explain this table here?

"Mr. Ransom—I object to the question. Contracts made at different times——

"Q. How do you explain the fact that this contract is over seven cents when you were actually paying six and something?

"A. At this time, but this 6.08 is the same date exactly as our 6.08, the same date, March 26, 1919.

"Q. Now, I can't understand how you can conform that with the price stated on the Exhibit 74.

"The Master—This Exhibit 74 is dated December 4, 1919.

"Mr. Ransom—But it covers the requirements for March, 1919.

"The Master—How can it when it is dated December 4, 1919?

"Mr. Chambers—That is the second exhibit. Where is the other one?

"The Master—Exhibit 73 was dated March 28, 1919.

"Mr. Chambers—I want the December, 1918, exhibit.

"Q. Where is your contract that covers March 28, 1919, Mr. Addicks? Is this it?

"A. March 28, 1919, is this contract.

"Q. What price was it?

"A. That was one and one-half cents less than the price that was involved on February 8, 1919, and that price, as a matter of fact—the New York & Queens Company, the first price was 7.7172, and at that date that I have just mentioned it became 7.7833, and then 1½ cents less than that figure which dated from April 1st. That is 6.2833.

"Mr. Ransom—For the New York & Queens?

"The Witness—For the New York & Queens.

"Mr. Ransom—The Consolidated would be somewhat less.

"Mr. Chambers—Just wait a minute.

"Mr. Ransom—No, I won't let even you mix up the case.

"Mr. Chambers—I ask that counsel keep from interrupting when I am cross-examining.

"Q. In other words, Mr. Addicks, gas oil dropped from December, 1918—it went down one and one-half cents when we get up to March, 1919?

"A. Yes, they gave us a reduction of 1½ cents a gallon as of that date. The contract for that year enabled us to cancel the contract as of the *first* of July on a certain number of days' notice.

"Mr. Ransom—That is why 1919 costs were so low.

"Mr. Chambers—I move to strike that out.

"Mr. Neumann—The Witness Ransom is again testifying.

"The Master—No, he is not, and therefore I will not strike it out.

(R. 338-342 [320-326]).

The testimony of Addicks in relation to his attitude towards the Standard Oil Company of New Jersey is very illuminating. Questions were put to him concerning the probability that cheaper grades of oil would be used by gas companies in the future, and his evidence shows that, no matter how conditions might change, the Standard Oil Company will always be the beneficiary of contracts let by the Consolidated Gas Company and its subsidiaries, of which respondent is one.

"Q. You can give me so much of the answer as I have stricken out, which said for the last two months it has been stationary, Mr. Addicks?

"A. I should say that quotations were within were similar within narrow limits; I will put it that way.

"Q. For the last sixty days?

"A. Yes, and not increasing as rapidly as during a period of say, four or five months ago.

"Q. How does that level of the last sixty days compare with the level of 1919, the high level of 1919?

"A. I should say that

"Mr. Chambers—I make the same objection.

"The Master—Overruled.

"Mr. Chambers—Exception.

"A. I should say the price of oil today was double what it was in 1919.

"Q. I get the impression from what you

have said that you do not expect it to go much higher?

"Mr. Chambers—I think that answer ought to be stricken out; it was not responsive.

"The Master—Yes, I am going to let it stand. I think it was.

Mr. Chambers—Exception.

"Q. What is your opinion or judgment as to the future price; do you think it is going further up, or will it remain stationary where it was for the last sixty days.

"Mr. Chambers—I object to that as incompetent, irrelevant and immaterial and speculative.

"The Master—All opinion evidence is speculative.

"Mr. Chambers—The witness is not competent to guess as to the future, and it is not a subject for opinion testimony.

"Mr. Hyatt—There is a very extraordinary thing about this testimony, your Honor, in my humble opinion, and that is that there is no foundation given. Inasmuch as there is no market price for oil, how can this witness determine whether there is an upward trend or downward trend, or what the situation is. It seems to me he is testifying, giving his opinion, on something that does not exist in the case and does not exist in fact anywhere.

"The Master—He knows more about it than I do, and I am going to get his opinion about it.

"Mr. Hyatt—It is just a dignified guess, that is the only way I can characterize it.

"Q. What is your dignified guess which I term an opinion, Mr. Addicks?

"Mr. Chambers—Same objection.

"A. I think the tendency of the price of gas oil will be upward.

"Mr. Hyatt—Of course, that is objected to, your Honor.

"Q. Still up?

"A. Upward to a point where the gas companies will no longer purchase it for the manufacture of gas, and they will have to seek a source other than gas oil.

"Q. Seek a source other than what?

"A. Other than gas oil. In other words, a quality of oil, a lower grade of oil than has been used heretofore as a gas oil. In other words, it will require a lower B. T. U. standard in order to use some other quality of oil, and not make the candle power.

"Mr. Neumann—I move to strike it out, in reference to that part of it that states there is a lower grade of oil furnished.

"The Master—Yes, motion denied.

"Mr. Neumann—And also the part that the gas companies will have to use a different kind of oil.

"The Master—Motion denied.

"Mr. Neumann—Exception.

"Q. What makes you reach that conclusion; on what do you base that judgment?

"A. The great increase in the number of automobiles requiring more gasoline. The natural source of gasoline, that is the natural distillation of oil does not supply enough gasoline. The high pressure distillation method which has been introduced in the last four or five years takes up the gas oil, a certain portion of the process has taken up that source for gasoline, and the use of petroleum is going ahead faster than the production at the present time.

"Mr. Hyatt—I move to strike out the latter part of that, 'and the use of peroleum is going ahead faster than the production at the present time.'

"The Master—Motion denied.

"Mr. Hyatt—Exception.

"Mr. Chambers—I move to strike it all out as being Mr. Addicks' guess.

"The Master—Motion denied.

"Mr. Chambers—Exception.

"By Mr. Chambers:

"Q. Where are you going to get the lower grade oil?

"A. We will have to get the lower grade oil from the same sources that we have obtained the gas oil.

(R 370-1 [376-399].)

It is evident that the Standard Oil Company, which has always had the contracts for oil, will continue to get all of the business no matter what quality of oil is used for enriching the gas.

The Master was not impressed with the long term oil contracts made by other gas companies, which permitted them to get over the abnormal period without handing their profits to the Standard Oil Company.

By Mr. Chambers:

"Q. Mr. Adelicks, when we left off last week, a week ago today, we were talking about oil purchased by the Boston Consolidated and the Public Service of New Jersey. You said you had not heard of those contracts at four cents, the five-year contract?

"A. You did not say anything about Boston, you mentioned——

"Q. You knew about the contract, didn't you, of the Public Service of New Jersey, and the Gulf Refining Company, whereby the Public Service purchased from the Gulf Refining Company 252,000,000 gallons of oil covering the period from August 1, 1914, to July 31, 1919, at a price which runs from 3.05 to 3.55.

"Mr. Ransom—I object to that as incompetent and not within the issues here, no proof of any such state of facts before this Court in this case. It is an effort on the part of the

Attorney General to interject and misrepresent facts as to which he is charged with knowledge.

" Mr. Chambers—How am I misrepresenting any facts?

" Mr. Ransom—You have not offered any proof of the contract.

" Mr. Chambers—I am asking him what he knows about oil. He is called here as an expert on oil.

" The Master—Objection overruled.

" Mr. Ransom—Exception.

" Did you, Mr. Aldrich?

" I don't recall any figures except as you mention them. I do recall a figure of a certain contract which was not entirely fulfilled on the part of the Gulf Refining Company at somewhere in the vicinity of five cents, four to five cents.

" Didn't you hear the representative of the Gulf Refining Company testify at the last trial that that contract was lived up to?

" Mr. Ransom—I object to that as incompetent and not the proper method of proof. They cannot bind this complainant by asking this man on the stand whether he heard somebody else testify in another case to something which Mr. Chambers is willing, despite his oath as a member of the bar to state.

" The Master—Objection overruled.

" Mr. Ransom—Exception.

" A. The contract was not fulfilled. I heard him state that. He said they considered it fulfilled, but it was not delivered under the contract, all the oil was not delivered. I think it was about twenty per cent, according to my memory.

" Q. That is your recollection of his testimony?

" My recollection is that he said that they considered the contract was fulfilled, and that

the United Gas Improvement so accepted it, but as a matter of fact they did not deliver within twenty per cent. of the oil that was contracted for.

"Q. That is your recollection of his testimony?

"A. That is my recollection of the testimony, not only of himself, but of the other witnesses.

"Q. Will you look at that and see if that is not just as I stated it (showing paper to witness)?

"Mr. Ransom—I object to it as incompetent and not the proper method of proof. No contract is produced. He cannot ask this man in this case something about a copy of a document which was in another case; and no foundation has been laid.

"The Master—I think counsel ought to stipulate that all contracts and exhibits in the case can be offered here without formal proof.

"Mr. Ransom—I am willing to stipulate that all the testimony in the other case on the subject of gas oil and gas oil contracts shall be put in evidence in this case. In the absence of such a stipulation I shall continue to object to what seems to me a very improper and objectionable method of attempted proof.

"The Master—Objection overruled.

"Mr. Ransom—Exception. He is asking him to construe a copy of something that he produced. The witness doesn't know anything about it. This document was not proved by the witness even in the other case. There is no proof as to the identity of this document which is shown to the witness.

"The Master—The witness having read that paper, Mr. Chambers, what is your inquiry?

"Mr. Chambers—I am asking if that is not as I represented it to be in the question, as to the quantity and price.

"Mr. Ransom—I object to it as incompetent.

"The Master—Objection sustained.

"Mr. Chambers—Exception.

"Mr. Ransom—I offer to stipulate into this record all the testimony of all the witnesses who testified on the subject of gas oil for either the defendants or the complainant in the case of Consolidated Gas Company *vs.* Newton, before A. S. Gilbert as Special Master.

"Q. What were you paying for oil at the time this paper was dated here, Mr. Addicks, August 5, 1914?

"Mr. Ransom—I object to that as not the proper method of proving any such contract.

"The Master—Objection sustained, upon the ground that the 1914 prices are not in question here.

"Mr. Chambers—Exception.

"Q. Did you say you knew of the contract between the Boston Consolidated and the Gulf Refining Company?

"The Master—As of what period, Mr. Chambers?

"Mr. Chambers—Five year period, 1914 to 1919.

"Q. Were you acquainted with that?

"Mr. Ransom—I object to that as incompetent and not the proper method of proof.

"The Master—I will let Mr. Addicks answer that.

"A. I heard some testimony in regard to it, that is all.

"The Master—I am not going to have any more of what you heard. Do you know anything about that contract of your own knowledge?

"The Witness—Nothing, except what developed in the other case.

R. 351-3 [344-347].

As to the amount of oil used for enriching the gas, the evidence is sadly lacking in weight. There

is, in fact, affirmative proof of errors in the book records of respondent as is shown by the following testimony:

"Q. Mr. Morrison, I now show you paper marked 'Daily Record of Manufacture of New York & Queens Gas Company for the month of January, 1919,' which was produced by counsel for the complainant, and I will ask you to state whether that was the record that you had in mind when you testified as to the materials received and used (indicating)?

"A. It is.

"Q. And is this signature, 'M. Morrison, Works Superintendent,' your signature?

"A. It is.

"Q. You testified, did you not, that this was correct?

"A. I did.

"You testified that you had added up the columns and found them correct?

"A. I did.

"Q. I now direct your attention to the column marked 'Oil Used,' the figure in red '*ink*,' at the bottom of that column; 146,964 is intended to be the sum total of that column, is it not?

"A. It is.

Q. Will you add that and see if it is not incorrect, or I will say to the witness fairly that we have added it up and it is 149,964?

"The Master—What does he make it?

"Mr. Neumann—146,964.

"The Master—Add it up, Mr. Morrison, and see what you make it. What is the answer, Mr. Morrison?

"A. (Making computation) 149,964.

"By the Master:

"Q. 149,964 is right?

"A. Yes.

"Q. So there is an error there?

"A. There is an error.

"By Mr. Neumann:

"Q. An error of 3,000?

"A. Right.

"The Master—What is that, in oil, Mr. Neumann?

"Mr. Neumann—Yes.

"Q. Directing your attention to the bottom here, to the words 'Used in Manufacture,' you have copied down this incorrect total of 146,964?

"A. Yes.

"Q. Whoever did it. And that figure there should be 149,964?

"The Master—What was the total gas manufactured that month?

"Mr. Neumann—I do not think that has anything to do with it, if the Court pleases, at the present time.

"The Master—I would like to know.

"Mr. Neumann—What I am trying to develop at this time is this fact that the record is incorrect.

"The Master—How much gas was manufactured during the month?

"The Witness—32,903,000.

"Mr. Neumann—If the Master please, I object to that.

"The Master—How much?

"The Witness—32,903,000.

"The Master—What difference would it make, the 3,000 gallons of oil, in the quantity of oil used per thousand?

"The Witness—Very little."

R 578-9 [814-815].

Another error in the oil records is shown in the testimony of Superintendent Morrison. In reproducing this excerpt from the record we also draw attention to the attitude of the Master. He took the position that if appellants show an error on a

page of respondent's records and do not go through every figure in all of the books, it follows that appellants thus prove, by inference, that every other entry in the books is correct. Such a conclusion is manifestly unwarranted, and if carried out consistently would result in the burden of proof being shifted to the shoulders of the defendants. The testimony above referred to is reproduced below:

"Q. That would leave a balance of how many, or how much?

"A. (Making computation.) 158,606.

"Q. What is the figure you have there?

"A. 158,378.

"Q. That is a difference of 228?

"A. Right.

"Your figure, then, as the balance on hand on the 4th at 7 A. M. is incorrect?

"A. According to that it is.

"Q. Is there any doubt in your mind that your figure is incorrect?

"A. Well, the figures are correct there.

"Q. The figures are correct on the sheet?

"A. Yes.

"Q. Despite what I have shown to the contrary?

"A. Yes.

"Q. Explain, then, how you figure out 158,606 should be on hand on the 4th?

"A. Wait a minute, this figure is correct, 158,606.

"Q. That is correct?

"A. It is correct.

"Q. And there is a difference of 228?

"A. Yes.

"Mr. Neumann—These are all on the question of their correctness, that is what I am endeavoring to demonstrate.

"The Master—I am letting you show it. I do not see how it will help us any.

"Mr. Neumann—Here is a man who has

sworn these figures are correct and they go into the books.

"The Master—And the other answer to them is that except for the errors you show you are putting them up.

"Mr. Neumann—All right, I am taking a chance on that.

"Mr. Ransom—And Mr. Teele's exhibits are made up on a basis which this does not in any way challenge.

"Mr. Neumann—Mr. Teele says that he took these and checked them. If Mr. Teele's figures are wrong, this is wrong.

"The Master—I am indicating to you, Mr. Neumann, the impression that you are making on my mind, that the moment you prove that error on the sheet, you prove up the sheet. You show the amount of coal used and the quantity of oil used. I think you are helping the complainant's case.

"Mr. Neumann—And in view of the state of the record I have offered it, and I do not think that any reviewing court will determine from that that it had been proven.

"The Master—Very well, go ahead.

"Mr. Neumann—These are intended solely and wholly to impeach the witness' testimony.

"The Master—But you are making other evidence while you are doing it.

(R. 582-3 [820-1].)

These excerpts from the testimony do not complete the record of errors made in the books relating to the amount of oil used (R 585-6, 602-3). We claim that Mr. Neumann, by the questions put to Mr. Morrison, cast serious doubt upon the records relating to the amount of oil used. Inasmuch as Teele's tabulations of cost were taken from the books, and Morrison's records form one step in the process of getting the figures of cost on the books, Teele's figures are proved unreliable to the same

extent as the underlying figures on which he had to rely.

For the reason that appellants were not in a position to call witnesses to testify concerning the fair cost of oil or the reasonable quantity to be used in the manufacture of gas, we can make no definite claim regarding the just amount that should be allowed in the operating expense for gas oil. However, in view of Wood's testimony in the Consolidated case, referred to in the present case (R. 434), that 4.1 gallons per M. feet of gas made is the reasonable amount, and noting the use of 4.19 gallons in respondent's plant during the year 1919, when errors in the plant records were admittedly made; and taking into account the testimony of Morrison, which evidently impressed the Master on account of the large amount of oil reported used (R. 607), we respectfully suggest that the respondent cannot complain if the fair quantity of oil is found by this Court at 4.1 gallons per thousand cubic feet of gas made. The price paid to the Standard Oil Company in 1919 was undoubtedly high, but to what extent we cannot determine from the record. Using the price shown in Teele's tabulations (R. 1569) $.067 per gallon, and 4.1 gallons per thousand, the expense would be $.2747 per thousand cubic feet as against the book figures for the year 1919 (R. 1569) of $.282. The saving would therefore be .73 cents per thousand cubic feet of gas made and .83 cents on the basis of each M. cubic feet of gas sold, allowing for the cost of the unaccounted for gas.

The next important item of expense is for Gas-making Labor, the books recording $.0631 per thousand cubic feet of gas made and Wood's figures being $.0671 per thousand. It is evident that the

testimony of Spear was not intended to prove the expense incurred for gas-production labor. The Master commented on the fact that Spear merely described the system in use:

> "Q. What is your system of keeping track of the labor elements entering into your various departments?
>
> "A. The superintendent has a distribution sheet for each employee, each man at the plant, and——
>
> "Q. He has a time card, which permits of a showing of the distribution of his time?
>
> "A. Yes.
>
> "Mr. Neumann—Why not let the witness say it, Mr. Ransom? He was going along in good shape.
>
> "The Witness—Yes, he has a distribution sheet, with the man's name on it, and then it has the various accounts on the upper part, and the dates down the side. It runs for a month. He puts the man's name down opposite each account that he worked the previous day, and then once a week he totals it and makes up his payroll from that, and the payroll goes through the accounting department. At the end of the month this distribution sheet is checked and the distribution put on the back of the payroll."
>
> * * * * * * * * *
>
> "Mr. Chambers—I think we ought to object to that. I think he is going too far, and you ought to get that information from the person himself. I object to it as incompetent, irrelevant, immaterial and hearsay.
>
> "The Master—I think the witness is just describing a system.
>
> "Mr. Chambers—If it is limited to that, I think that might be all right."

(R. 184-5 [61:3]).

The Master, in the Consolidated Gas case, accepted the books in evidence without requiring proof of the entries therein. In the present case the same Master seemed inclined at the beginning of the trial to insist upon proper proof, but in the end he let the books in with no better evidence of their accuracy than he had in the Consolidated case.

"Q. Will you describe what books of account and subsidiary records were kept by the New York and Queens Gas Company during the years 1919 and 1920.

"The Master—Do you believe that this will be a case where I am forced to take in general books of account, the same as I did in the Consolidated case?

"Mr. Ransome—I so think.

"The Master—I should not imagine it would be very difficult to put in somewhat better proof here.

"Mr. Ransom—I think we will be able to produce somewhat more detailed proof in certain respects.

"The Master—You can have the man who made the entries in books, I imagine, and bring in the original papers, with a small company like this.

"Mr. Ransom—We can do something like that.

"Mr. Tobin—Mr. Master, I think Mr. Neumann's objection is good—that is, his last objection. There is nothing shown yet that Mr. Spear is in real touch with the books of the company.

"The Master—His objection was not good, Mr. Tobin, because the inquiry was simply, what did he have to do with them. Now he has told us what he had to do with them. There may be another objection come along based on that; but that objection was not useful.

"Mr. Neuman—It was a very clumsy ques-

tion, and I did not get the purport of it, myself.

"The Master—What was the last question?

"Q. (Repeated by the stenographer.)

"A. General Ledger No. 1——

"Q. Which covers what?

"A. January, 1919, to date.

"Mr. Neumann—You are now reading from a memorandum, are you, Mr. Spear?

"The Witness—Yes. General Journal No. 5, from September, 1918, to date; General Cash Book No. 3, July, 1916, to date; Accounts Payable Ledger, No. 1, January, 1919, to date; Operating Expense Ledger No. 2, January, 1919, to date.

"Subsidiary to that, are the Accounts Receivable Ledger, Sundry Debtor Blotters, then Consumers' Ledgers A. to I, inclusive, and K, and four Prepayment Ledgers, Bill Register, Pay Rolls, Vouchers and reports of various departments."

There was not one witness called on behalf of respondent to testify as to the original records of labor cost incurred at the plant. Mr. Teele, a certified public accountant, who made tabulations from the books, described the nature of the work done by his men, under his direction, in making a limited audit of certain records, covering a period of four months, kept by respondent. (R. 220-29 [122-138]). He also testified:

"A. Then into the journal and from there into the ledger account from which these statements were compiled.

"As to expenditures for labor, the company has three different payrolls, office pay roll, works pay roll and shop pay roll.

"The first pay roll—the distribution of the office payroll— it has entries upon it, and the entries distributing that pay roll were traced

from the pay roll itself to the journal and from there to the ledger.

"The shop pay rolls are distributed in accordance with the endorsements appearing upon the pay rolls, and the payrolls themselves, the endorsements are made up by taking the monthly distribution sheets of the individual workmen whose names appear upon the shop pay rolls, and compiling those for the month. The total amount to be charged to each account is then endorsed upon the back of the shop pay roll.

"A similar method is followed in the case of the works pay roll. The monthly distribution of each man's time is shown upon the sheet for each man. Those sheets are compiled, the total amounts being charged for each account being the aggregate total pay roll for the month, is then endorsed upon the pay roll. The accounts to be charged, and the amounts to be charged against each account, are shown by this endorsement and entered in the journal, and from there posted into the ledger accounts.

"Q. Then so far as the cost of labor, so far as the men in the manufacturing department and the other departments of the company are concerned, these exhibits 64 and 65 for identification have been checked both to the books and to the various payrolls?

"A. And to the various pay rolls.

"Q. And the books were likewise, as postings, checked back to the pay rolls?

"A. The postings appearing in the ledgers were checked back to their original sources.

"Q. The postings in the ledger were traced back to their sources?

"Q. The postings in the ledger were traced back to their sources?

"A. They were.

"Q. What if anything was done by you to verify and check the correctness of these departmental pay rolls?

"A. I have just stated how these pay rolls are compiled. We checked the monthly distribution sheets against the several monthly pay rolls, both the shop pay roll and the works pay roll. In the case of the shop pay roll I took four months in 1919, and went back to the individual daily workmen's time sheets. That is a sheet made out each day by the workman, indicating the work upon which he is engaged and the number of hours he was engaged upon that work.

"Mr. Neumann—I object to that on the ground that there is nothing here shown as to this witness' knowledge and ability to testify as to what any particular workman did.

"The Master—Objection overruled.

"Mr. Neumann—Exception.

"Mr. Tobin—Exception.

"A. (Continued). I checked the four months of these individual sheets against the monthly sheets, and then checked all the monthly sheets to the monthly journal entries where the distribution of that time is indicated, and charged to the various ledger accounts.

"Q. What about the works pay roll and the manufacturing department pay roll? What checks back did you make on those?

"A. *There is nothing, so far as I could find, back of the monthly sheets kept for each man.*

"Q. There is a monthly sheet kept for each man?

"A. There is a monthly sheet kept for each man in which the days of the month are set down on the left hand side, and the accounts to be charged are at the tops of the sheets, and the time each day for each man is put on those sheets.

"Q. And charged to different account numbers?

"A. Charged to different account numbers.

"Q. Those being the various uniform system of accounts lettered accounts, or by numbers?

"Mr. Neumann—I object to that as incompetent, irrelevant and immaterial and no foundation laid."

(R. 228-9 [136-8]).

Martin Morrison was called as a witness by respondent. He is the Superintendent of the gas works at Flushing (R. 569). His direct testimony covers just about eight pages of this record, two of them devoted to his qualifications. His testimony, as to labor expense, is of a very indirect character as may be noted by the following excerpt:

"Q. Do you keep a daily manufacturing record?

"A. I do.

"Q. Of the operations of the company at the works?

"A. I do.

"Q. Is this record kept on a large sheet covering the entire month?

"A. It is.

"Q. Are the entries thereon made daily showing the results of operations for each day?

"A. They are.

"Q. Who makes the entries on this record?

"A. The clerk, when I have one. When I have not I do it myself, personally.

"Q. When the record has been made up, either by yourself or by a clerk, do you personally check the accuracy of the entries and the computations?

"A. I do.

"Q. That is, you always go over both the computations and the entries?

"Mr. Neumann—That is objected to as incompetent, irrelevant and immaterial and a conclusion.

"The Master—Overruled.

"Mr. Neumann—Exception.

"The Master—What is your answer, Mr. Morrison?

"A. I do.

"Q. What is done with this report at the end of the month?

"A. It is totaled and sent to Mr. Spear.

"Q. Is it certified to by you?

"A. It is certified to and signed by me."

(R. 574 [806-7]).

On cross-examination he was interrogated as to the making up of the work's pay-roll:

"Q. Have you anything to do with the pay-rolls, the works?

"A. Yes.

"Q. What part do you have to do with the work's payroll?

"A. I make it up.

"Q. You make it up each week?

"A. Each week.

"Q. That is, you certify to the works pay-roll?

"A. No, I make it up and certify to it as well.

"Q. Then you turn that payroll over to whom?

"A. To Mr. Raynor.

"Is that the only payroll that you make up, the works payroll?

"A. That is all.

"By the Master:

"Q. Do you carry anybody on that payroll that is not actually employed?

"A. Absolutely not.

"Q. Do you carry any amount in there that is not actually paid?

"A. No, sir.

"Q. Do you carry any man that you don't actually need?

"A. We can't get all we need.

"By Mr. Tobin:

"Q. Does your position as superintendent extend beyond the actual manufacture of gas?

"A. No.

"Q. The work in the office is in charge of someone else?

"A. Yes, sir.

"Q. Your work is entirely that of the works?

"A. Entirely.

"Mr. Tobin—We would like, if the Master please, an opportunity to——

"The Master—Have you asked everything that you are prepared to ask?

"Mr. Tobin—At this moment, yes.

"Q. Who makes up the shop payroll?

"A. I don't know anything about the shop.

"Q. You don't know who makes that payroll?

"A. No, I do not.

"The Master—Now, are you all through?

"Mr. Tobin—As far as I can at this time determine.

"The Master—Have you anything else to ask now?

"Mr. Tobin—No, sir.

"The Master—Have you, Mr. Neumann?

"Mr. Neumann—Not at the present time.

"The Master—The cross-examination is ended. I shall permit you, however, to recall Mr. Morrison for further cross-examination before I permit counsel to rest his case. I want to protect the complainant against anything happening, that is all.

"Mr. Neumann—All we want is a reasonable opportunity to take this up, in view of Mr. Frank's situation.

"The Master—I am protecting the party that called the witness, and I am going to give you an apportunity to recall him if you find you have any more questions to ask him."

(R. 599-600 [848-850].)

It is evident that the mere making of the payroll, and the ready answer of Morrison, to the Mas-

ter's question, that he pays only men that are employed and that he needs, does not constitute proof that the books accurately reflect the proper and reasonable expense of producing gas. It does not follow, because certain moneys are paid to men employed by respondent, that the expense reported incurred is properly allocated on the books to production or capital account.

Wood's testimony concerning the labor cost at a hypothetical plant did not cure the defects of proof in respondent's evidence anent labor charges. Wood's testimony as to gas making labor is as follows:

> "Q. What employees, in your judgment, are necessary for the efficient and proper operation of the plant that we have been describing?
>
> "The Master—Of this Flushing plant, what kind of repair labor do you need?
>
> "Mr. Ransom—I am speaking of gas-making labor first.
>
> "The Master—Well, gas-making labor.
>
> "Mr. Neumann—Objected to on the ground it is incompetent, irrelevant and immaterial, already covered by Exhibits 58 and 59—or Exhibit 58 only.
>
> "The Master—Overruled.
>
> By the Master:
>
> "Q. You have set out on this statement you have prepared the various kinds of gas-making labor and the number of men needed, have you not?
>
> "Yes, sir.
>
> "Mr. Ransom—And the rates of pay.
>
> "Q. And the rates of pay?
>
> "A. Yes, sir.
>
> R. 419-20 [461-2].

The Master took Wood's estimate of cost as evi-

dence that the book records of production cost are reasonable, as appears from the following:

"The Master—No, I have taken them on the same theory that I took them in the Consolidated Gas case. I do not want to rely entirely on the books as indicating a result, nor do I want to rely entirely on the sworn testimony of the witness' opinion; but when I find, assuming that I am satisfied in this case that the books have been properly and correctly kept, and in due course of business, that those operating records actually show substantially what Mr. Wood's says the plant will do, and when there is no other witness to take issue with Mr. Woods as to what a plant like this, or this plant, will do, I am quite satisfied that the figures shown to me, checked up by operating results are correct. To illustrate what I did in the Consolidated Gas case, I took Mr. Wood's statement of what he thought it ought to do. I checked it up by operating results as per the books. In some instance I found that the books show slightly less coal or fuel used than the quantity Mr. Woods said ought to be used, and I therefore felt that the operating results appearing from the books, in the light of the sworn testimony given by Mr. Woods, could be relied on, and I did rely on them, and I based my decision on the books themselves and the operating results.

"That is what I am going to do here. If when I get the books before me, and Mr. Teele's exhibits, I find that the operating results tally with what Mr. Woods says it will do and should do, and I do not hear any other witness come on the stand and take issue with Mr. Woods on the quantity of coal and oil used——

"Mr. Cummings—Why didn't they do that first?

"The Master—The books are in evidence; Mr. Teele put the books in evidence. I want

his testimony confirmative and corroborative of the books' actual operating results. That to my mind is one way of getting a good result.

"Mr. Chambers—I want to say on the record that if we do not challenge Mr. Woods' hypothetical figures and you draw the inference we cannot challenge them—I want to say you will be mistaken, because we rely on the fact that you cannot do this, as Mr. O'Brien says, in capsule form.

"The Master—All right, you take your chances on that.

"Mr. Chambers—We consider it incompetent.

"The Master—The record before me is the testimony of Mr. Woods' that certain quantities are necessarily used in the efficient operation of this plant, and if there is not any sworn proof to the contrary, I am going to assume that there cannot be any.

"Mr. Chambers—You will be in error if you do that.

"Mr. Cummings—Then you shift the burden on to us.

"The Master—The burden is on you when Mr. Woods comes in and says that it takes a certain quantity of coal and oil and labor to produce a thousand cubic feet of gas.

"Mr. Cummings—Not in a plant of his own creation.

"The Master—In any plant—and the books show that it does substantially that very thing, the burden shifts to you to show that it is wrong.

"Mr. Cummings—But the minutes you let him create a plant in his own mind, that is different.

"The Master—The record shows what it is.

"Mr. Ransom—This may be marked.

"The Master—Yes."

(R. 1234 [1689].)

Woods' figures on labor were shown to be unreasonable by the cross-examination, as appears below:

"Q. Now, Mr. Woods, gas-making labor, in the Consolidated case you fixed a figure of 2½ cents per thousand cubic feet.

"A. I did.

"Q. Here you jump that to 6.71 cents.

"A. Yes.

"Making a difference of nearly 4¼ cents?

"Mr. Ransom—That was last September. There have been several increases in pay since then.

"Q. And it is 4 cents, nearly 1¾ cents more per thousand cubic feet?

"A. Yes.

"Q. Did you base that on any records of the company?

"A. No, I know the number of men required to operate a plant of that kind.

"For instance, you have a gas-maker who makes a million feet a day, in three shifts they would make a million feet for each of these machines, and in a larger plant, where they had larger machines, in a plant capable of handling larger machines that same gas-maker would make three million, so for the gas-maker himself it would be three times as much as in the large plant where they have these large individual units. You could not afford to put up individual units of that kind in a plant like Flushing, you would have to rebuild the plant entirely in order to handle the proposition.

"Q. Four cents more to gas in a million cubic-foot company than in a ten million company.

"Mr. Ransom—I object to that. He is comparing September, 1919, with April, 1920, whereas the proof in the Consolidated case showed two increases in pay after the September figure.

"The Master—Objection overruled.

"Mr. Ransom—Exception.

"A. The gas manufacturing labor in a plant such as exists there would be infinitely more than in a plant making ten million cubic feet a day.

"Q. You figure one superintendent here at $5,75?

"A. Yes, sir.

"Q. In the Consolidated how many superintendents did you figure?

"A. One superintendent.

"Q. At the same price?

"A. No.

"Q. How much did you give him?

"A. I don't recall the testimony that I gave now. I would not like to give it offhand again.

"Q. Wouldn't the superintendent be about the same?

"A. No, the superintendent in a larger plant would be getting more money.

"Q. $5,000 a year—that is what you testified to in the Consolidated case, isn't it?

"A. Right.

"Q. How much a year would you give the superintendent?

"A. That figures, I think, about $2,100, including his house rent, or, he lives in the plant. I make it on a ten million a day, with a man getting $5,000 a year. Here is a plant making one million a day, and the superintendent getting $2,100 a year.

"Q. Plus his house?

"A. Plus his house.

"Q. How much do you figure that at?

"A. I didn't figure his house. I suppose it would be $600 to $700 a year.

"Q. That would make about $2,699 or $2,700.

"A. Yes.

"By Mr. Ransom:

"Q. House rent is not in this figure, is it?

"A. No.

"By Mr. Chambers:

"Q. You have a clerk here at what, $4 a day?

"A. $4 a day.

"Mr. Neumann—I move to strike out the question of counsel, because that house is figured in the plant.

"Mr. Ransom—Not in the $5.75 a day figure.

"Mr. Neumann—But that is added in the whole plant.

"Mr. Ransom—We will add to these costs whatever you say the value of the house is.

"Q. You have not figured the superintendent's house in this?

"A. No.

"Q. Not a clerk—how many clerks did you have when you testified in the Consolidated Gas Company case?

"A. I don't recollect now.

"Q. More than one.

"A. One or two, probably a clerk and assistant.

"Q. And here you only have one?

"A. Yes.

"Q. You have three gas makers here on this Exhibit 77?

"Yes.

"Q. At $4.64 a day?

"A. An average price of——

"Q. How many gas-makers did you have when you testified in the Consolidated case?

"A. I don't recollect the number now. I would have to make the calculation again to find out. Gas-making labor on the other statement, there were so many things involved that I don't recall just now, unless I went into it.

"Q. You have three engineers here?

"A. Yes.

"Q. At $4.88 a day?

"A. The law requires that we have the plant covered by an engineer at all times.

"Q. How many engineers did you have in the Consolidated case?

"A. I don't recollect the number; probably more than that.

"Q. More than three?

"A. Yes, because we have exhausted attendants and turbine attendants from time to time.

"Q. Now, two boiler firemen you have on Exhibit 77?

"A. Yes.

"Q. At $4.48?

"A. Yes.

"Q. How many boiler firemen did you have in the Consolidated case?

"A. I don't recall the figure now; I would not undertake to give it to you from memory.

"Q. More than two?

"A. Yes.

"Q. Two generator firemen and coal passers you have here?

"A. Right.

"Q. At $4.48 a day?

"A. Yes, sir.

"Q. How much did you pay—they were both firemen and coal passers?

"A. Yes, sir.

"Q. How many firemen and coal passers did you have when you testified in the Consolidated case?

"A. More than that; I don't recollect the number.

"Q. You have two laborers here at $4?

"A. Yes, sir.

"Q. How many boilers did you testify to in the Consolidated case?

"A. I don't recollect.

"Q. Now, you have Sunday and holiday overtime?

"A. Right.

"Q. $2.73?

"A. Right.

"Q. What does that $2.73 relate to?

"A. Because some of these men are paid time and a half for overtime for Sunday and holiday work.

"Q. What is that?

"A. That is a percentage of their daily pay when they work Sunday and holidays, for which they get time and a half.

"Q. All those figures are based on your own idea?

"A. Those figures are based upon the rates of pay that are being paid by the Flushing Company. I know it requires that number of men to perform that work.

"Q. Were the same last fall?

"A. No.

"Q. Substantially the same?

"A. No, they were somewhat less, I think.

"Q. Were they?

"A. Yes.

"Q. How much less for gas-making?

"A. I don't recollect the exact amount, but I know there has been a change made since last fall.

"Q. In those very men at that plant?

"A. Yes.

"Q. But you don't know how much?

"A. I am not undertaking to say from memory just how much it was.

"Q. How do you explain the difference of four cents here to make a thousand cubic feet of gas than you testified to as of October 16, 1919?

"Mr. Ransom—I object to that as already fully covered.

"The Master—Objection overruled.

"Mr. Ransom—Exception.

"A. Because of the difference in the character of the plant and the unit which a man

can produce at that plant as compared with a plant such as I testified to. If you have one five-ton truck, Mr. Chambers, and five one-ton trucks, they cannot be as economically and efficiently operated as the one five-ton truck. The conditions might be such that you could not operate the five-ton truck and would have to operate the five one-ton trucks.

"Q. How many machines did you have in the ten million cubic foot plant, gas machines?

"A. I don't recollect, probably four or five machines, operating four or five machines.

"Q. That is only one more than you have here in this million cubic feet?

"A. No, we are operating those continuously. I had three to four machines in operation all the time in the ten million plant, with a standby for cleaning and recheckering.

"Q. How many machines in all in that plant?

"A. I think five or six machines.

"Q. That is three more than here?

"A. Yes, but different sized machines.

"Q. And yet you are able to run them for less than you with three machines?

"A. We are talking now about cost per thousand cubic feet. You can operate them for less per thousand cubic feet, naturally.

"Q. You testified in October that you could run, according to that, six machines four cents cheaper than you could run, so far as labor is concerned, three machines?

"The Master—Per thousand cubic feet?

"A. Per thousand cubic feet. I did not testify to any such thing, as you have asked the question.

"Mr. Ranson—The figure relates to the entire process of gas making, and not merely to the machine.

"Q. Well, what would you testify to in that regard?

"A. I testify that in a plant such as I testified to in October, 1919, as bearing upon the

Consolidated Gas Company's system, which did not include the Flushing Company in any sense, that a fair operating condition was two and one-half cents per thousand cubic feet for gas making labor.

"Q. If you had a plant of twenty million cubic feet capacity, could you operate it for less than these figures that you have in October, 1919?

"A. I could not.

"Q. There would be a decrease?

"A. No.

"Q. How about the other way, the converse?

"A. If you can operate a plant continuously anywhere from five to ten million—if you recall, Mr. Chambers, in my testimony, I testified to a plant on an average condition operating on ten million feet a day, and that plant would run anywhere from seven and one-half to fifteen or eighteen million. I took a fair operating condition throughout the year. At times the gas making labor would be somewhat less than two and one-half cents, and at other times it would be somewhat more than two and one-half cents, but I believe, under the conditions under which we were operating, a fair amount was two and one-half cents per thousand cubic feet.

"Q. This company out there does not make a million cubic feet a day?

"A. They do.

"Q. They make a good deal more than?

"A. They will make slightly more than that; they average that.

"Q. Didn't you hear testimony that it was 1,600,000?

"A. That is a maximum capacity. They probably gave you a send-out of 1,600,000. I do not recall the exact figure, but I think their annual send-out was around 375 to 380 million cubic feet make, which would be close to an average make of 1,000,000 a day. A million a day would be 365 million. Their average make was probably 1,050,000 a day.

"Q. They make sometimes 1,600,000?

"A. Yes.

"Q. Wouldn't that cut the cost down?

"A. Yes, and if they made less than a million it would probably bring it up.

"Q. Do they make less than a million that you know of?

"A. There are times when it must be less than a million to get an average throughout the year of slightly more than a million.

"Q. Then they could close down one of the machines and relieve some of these gas-makers and others.

"A. I took it as a condition of operating a million a day. At times their cost may be a little more, and at times a little bit less than that.

"Q. I don't quite understand these Sundays and holidays here overtime, Mr. Woods. You didn't have that in the Consolidated case, at least not so we could see it.

"Mr. Ransom—I object to that as incompetent and not the proper way of proving a statement in the Consolidated case, which was made up on a somewhat different basis. He did not in his Exhibit 353 for Identification undertake to give the details of the different classes of labor and rates of pay. He submitted a separate statement which showed the rates of pay and of overtime.

"The Master—Objection overruled.

"Q. You didn't have any such item in your Exhibit 353 for Identification in the Consolidated case, did you?

"A. I don't recollect. I think probably an allowance was made in figuring up the cost per thousand cubic feet that was taken into consideration. It was not shown in the Exhibit in the Consolidated case as it has been shown there.

"Q. Did you base this 82.73 on the practice of the company?

"A. On the practice of the company, time and a half for overtime for Sunday and holiday work.

"Q. And that is based on that?

"A. That is right.

"Q. For these different men here?

"A. That is right.

"Q. Now, have they as many men as you have set forth there over in the plant?

"A. I should say they have, yes.

"Q. Well, do you know?

"A. I should say so.

"Q. That is, have they a superintendent, one clerk, three gas-makers, three engineers, two boiler firemen, two generator firemen and coal passers, and two laborers?

"A. I would say so, yes.

"Q. Are you sure about that?

"A. I am quite sure that they have that many men.

"Q. You don't know what they pay them over there, do you?

"A. I do.

"Q. Those prices?

"A. Those are the average rates. The gas-makers and engineers are not all paid the same rate. The average rate for those different classes is there.

"Q. The superintendent, do you know what he gets over there?

"A. I do.

"Q. What does he get?

"A. $2,100 a year, I believe.

"Q. And his maintenance, his house there?

"A. His house.

"Q. Does he pay rent for that?

"A. No, he doesn't pay any rent that I know of.

"Q. Now, the clerk?

"A. The clerk I have there at $4 a day. Just what they are paying the clerk I don't know. I don't believe they are paying quite that, be-

cause they have a new clerk they just put on, and he probably is not getting $1. $1 is what they will have to pay as soon as he is broken in.

"Q. What are the gas-makers getting over there?

"A. The average rate is as indicated on that exhibit.

"Q. Then they have got three over there?

"A. Yes.

"Q. And three engineers?

"A. Right.

"Q. At these prices?

"A. Right.

"Q. That is, some of them are getting less, I take it, and some more?

"A. Yes, for all three that would be the rate.

"Q. Now, repair labor—they have two mechanics over there?

"A. Not always.

"Q. But you have two here steady?

"A. I testified that on the average they would have two. They may have two or three at one time and they may not have any for a day or two, because they have different classes of work to perform, and they have to call in men to get that work done; but in my judgment the average employed on repair work would represent what I have indicated on the exhibit.

"Q. A helper—have they got a helper over there?

"A. They would have when the work is going on.

"Q. Isn't work going on?

"A. There is always some minor repair work going on. On other days there may be some extensive repairs where they will want to put extra men on the work.

"Q. Is that a pretty high price, $1?

"A. That is the best we can get. It is a question of how long we can get that. We are

paying more than that for a good many of our laborers now.

"Q. Labor is very high now?

"A. It is considerably higher than it was last October when I testified, and it looks as if it might go higher still, due to our present inability to get men.

"Q. You don't know whether it will ever stop, do you?

"A. God knows I hope so."

(111-118 | 499-510.)

The foregoing testimony was not corroborated by General Manager Spear, as appears below:

"Q. Taking the item off gas-making labor, has the company employed at any time during the year 1919 any more than one superintendent?

"A. No.

"Q. Has employed how many clerks in that particular branch of the works?

"A. One.

"Q. And how many gas-makers?

"A. Three.

"Q. Is that the average, three, or is that the extreme number employed?

"A. Three would be the extreme number, except that we have an extra man broken in in case of sickness of one of the gas-makers that could take his place, but we only use the three where we are running three shifts.

"Q. Taking the twelve months, for how many months would you employ three gas-makers during the year 1919?

"A. I can't tell that without looking over the records.

"Q. Would you employ two gas-makers for most of the year?

"A. That is pretty hard to say. I say possibly two and a half for the year 1919, it might average that.

"Q. It would average about two and a half?

"A. It might; I can't tell, except from the records.

"Q. That would be your judgment?

"A. I would not want to say positively on that without a study of it."

(641-2 [918].)

It is our belief that an allowance for labor used in the production of gas, based upon the record, should not exceed 5 cents per thousand cubic feet. This we arrive at by averaging the amounts testified to by Woods in the Consolidated case and in the instant proceeding (R. 441). The actual figures in the record are, respectively, 2.5 and 6.71 cents, and an average of the two would be 4.6 cents, which we call 5 cents. The saving as compared with the book cost of 6.31 cents, would thus be 1.31 cents per thousand, or, on a spread of 336,241.4 thousand cubic feet, the saving would be equal to $1,404.76, on the basis of gas made, or nearly $5,000, on the basis of per thousand feet sold. The next item of consequence in the cost of producing gas is the alleged expense incurred for repairs to works, reported by Teele as $0.0735 per thousand cubic feet of gas made (R. 1570). Even Woods, respondent's expert gas engineer, could not vouch for the reasonableness of such a cost, his estimate being $0.0530 per thousand cubic feet (R. 1597). Woods' figure for repair material in the hypothetical plant is just twice as much as he testified was reasonable in another hypothetical plant that was used as a basis by him in the Consolidated Gas case (R. 449).

"Q. Your Exhibit 353, for Identification in the Consolidate case was not based on the Consolidated plant, was it?

"A. It was based on their rates of pay, of the system.

"Q. Now, the repair material, you have 3 cents here?

"A. Yes, sir; right.

"Q. And in the Consolidated case you had $1\frac{1}{2}$ cents?

"A. Right.

"The Master—Why should the repair material cost any more?

"The Witness—Because your Honor, in making repairs for instance, in repairing machines and repairing the steel work, repairing the door-frames, all these repairs that must take place, these machines won't run any longer a period of time than with the larger machine, but the unit of production is considerably less, so that the actual cost of repair is practically the same as on the larger amount, but, owing to the production the cost per thousand cubic feet is lower.

"The Master—Do you think 3 cents is pretty liberal?

"The Witness—I think, taking it year in and year out 3 cents would be a fair cost of material.

"The Master—Then 1.69 is high?

"The Witness—I think taken on the average that would probably be a little high.

"Q. Don't you think you could cut that 3 cents down a little?

"A. No, I do not; if I had thought it was lower, I would have put it lower."

(R. 449-50 [513].)

It is our firm belief that the matter of maintenance cost in a gas works is one requiring close scrutiny. It is obvious that the repairs may be deferred during periods of stress such as arise during war times, and this means an abnormal amount of repair work has to be undertaken at a later period. Take as an illustration the figures

appearing in appellant's Exhibit A-14, which we reproduce below:

Repairs, Works and Holders.

Year	c. per thousand cubic feet
1909	1.53
1910	1.75
1911	2.21
1912	2.20
1913	2.25
1914	2.26
1915	2.18
1916	2.50
1917	2.65
1918	3.52
1919	7.35

The expense for 1919 is obviously unreasonable. An average of all years prior to 1919 shows a cost of 2.305. If we add 50 per cent. to take care of increase in cost of labor and material, the cost would be less than 3.5 cents per thousand cubic feet of gas made. We claim that anything over that would be excessive. As compared with the Master's finding, based upon the books, that 7.35c. per thousand is reasonable, this fair cost of 3.5c. would result in a saving of 3.85c. per thousand cubic feet of gas made, and on a spread of 336,241.4 thousand feet, the reduction in operating expense would amount to $12,945.29 per annum, on the basis of gas made, and of close to $14,600 on the basis of the gas sold.

The next item meriting consideration is the cost of making that part of the gas which is subsequently not accounted for. Teele's tabulation reports the expense for this leakage and condensation loss at 8.28 cents per thousand cubic feet—

the difference between 8.6345 (R. 1570) and 8.7173 (R. 1571).

The Master found (No. 23) that "so-called unaccounted-for gas, in the instance of the complainant company, reasonably represents approximately eleven per cent. (11.03 per cent.) of the gas made, and that in calculating the requirements of the complainant, that percentage should be used as a basis for computation" (39). The Master on this occasion did not place the reliance on Woods' opinion testimony that he indicated he would. He accepted the book figures, notwithstanding that Woods' testimony shows the amount of gas reported last is excessive.

> "Q. Mr. Woods, taking into account all of the factors known to you and appearing with reference to the New York and Queens Gas Company, do you consider 10 per cent. of gas made as the percentage of gas unaccounted for a reasonable or an unreasonable condition?
>
> "Mr. Neumann—Objected to on the ground it is incompetent, irrelevant and immaterial.
>
> "Mr. Hyatt—And nothing shown here as to his experience with other companies.
>
> "Mr. Neumann—It is not shown as within this witness' qualifications, not the subject of opinion testimony, and highly speculative.
>
> "Mr. Hyatt—In this particular field he has not qualified, your Honor, as I remember it, as to the unaccounted for gas of other companies.
>
> "The Master—Objections overruled.
>
> "Mr. Neumann—Exception.
>
> "The Master—Any man who has run a gas plant for twenty years knows something about other gas plants.
>
> "Mr. Hyatt—He has been with the company for twenty years, but I do not know that he had anything to do with unaccounted for gas of other companies.

" Mr. Chambers—We should try this case on the facts in it.

" Mr. Neumann—He may know something about congested districts, but he does not know——

" The Master—He has been connected with this company since 1901.

" Mr. Chambers—Well, as to the unaccounted for, what is the use judging from his experience in other companies? You are going to judge this case on the experience with this company.

" The Master—I think so, but I will take this witness' opinion.

" Mr. Chambers—What does it show from 1906 down to date as an average?

" The Master—I do not know yet.

" Mr. Hyatt—It is a very easy way to prove a case, your Honor, in the absence of any particular records.

" Mr. Neumann—We have not a large case here, we have a case where they can prove the facts, and the law requires they must prove them beyond a reasonable doubt. This is an important issue in the case, the unaccounted for gas.

" The Master—I know it. I understand how important it is, and that is why I welcome the testimony of a sworn witness, who swears that 10 per cent. is or is not reasonable, so that you can cross-examine him and show that he is wrong about it. I would rather rely on that than on the books.

" Mr. Hyatt—I would rather find out the extent of his knowledge.

" The Master—You will have plenty of time for that.

" Mr. Chambers—Exception.

" By the Master:

" Q. Is it or is it not a reasonable loss?

" A. A reasonable unaccounted for, your Honor.

"Q. You think it is?
"A. I do.
"Mr. Hyatt—The witness in the Consolidated case said it was otherwise."

(R. 408-9 [443-5].)

On being cross-examined as to the percentage of gas last, Woods testified as follows:

"Q. Now, you would not be surprised, would you, if the unaccounted for gas, according to the company's own statement for 1917, was 7.96 per thousand cubic feet?

"The Master—For what year?
"Mr. Chambers—1917.

"A. I should say that if that is the record—I don't recall what it is—it has probably gone from 8 to 16 or 17 per cent.
"Q. There is 7.96 for 1917, and 8.07 for 1918?
"A. Well, the weather conditions would have something to do with that. If you will refer to previous years you will find it is higher, and for 1919 it was more than ten per cent."

(439-40 [496].)

The amount of unaccounted for gas in 1917-1918, respectively 7.96 per cent. and 8.07 per cent. would appear to be more convincing evidence of the fair amount than the abnormal year 1919. The average of the two years is 8.015 per cent. An allowance of 8 per cent. is sufficient for the purpose, in our opinion. In this connection, we refer to the opinion of Judge Hand, in the Consolidated Gas Company case, that in Manhattan the fair amount of unaccounted-for gas should not exceed 4.1 per cent. In that case, the Master, who was the same as in the instant case, found:

> "after listening to the testimony given by Mr. Woods and by the defendant's expert, Mr. Little, and after analyzing the various reports of the various companies and the experiences of the various companies, and the explanations of Mr. Woods and the statements of Mr. Little with reference to it in this and other cases, I am convinced that 7 per cent. of the gas made must be figured as unaccounted for gas."

Judge Hand disagreed with the Master in that case and fixed the percentage at 4.1. In the instant case, Judge Mayer also disagreed with the Master. He said:

> "This percentage varies. Some years it may be more, others less. Therefore, the estimate of an expert like Mr. Woods is valuable. This plant, in his opinion, should show a loss of about ten per cent. and I accept that figure, for the purpose of this case, instead of 11.03 per cent."

(R. 111.)

We do not believe this Court will allow such an excessive amount on the mere expression of an expert. The year 1919 being abnormal, the book records should not be taken even if proper proof had been submitted on the matter of gas made and gas sold. No injustice will be done to respondent if the percentage of unaccounted-for gas is fixed by this Court at the average of the years 1917, 1918, or just a shade over 8 per cent., which is nearly double the percentage found to be reasonable by Judge Hand in the Consolidated Gas case. The expense beyond the holder, commonly referred to as "Distribution Cost" was not properly proven by respondent. The Court below disallowed:

(a) Defensive Emergency Service.
(b) Expenses of Litigation.

(c) Interest on Unpaid Taxes.
(d) Federal Tax on Bondholders' Income.
(e) Income from Insurance Participation.

In this way, the book costs were reduced from 42.07 cents per thousand feet to 37.14 cents. We contend that "Uncollectible bills" should not be figured as an operating expense where a company, as here, is allowed to collect in advance from its consumers a sum equal to two months consumption of gas. This item appears as an expense amounting to $.0040 per thousand cubic feet (R. 1572). Interest on consumers' deposits should likewise be disallowed. The respondent collects that money and can do what it pleases with it. If placed out at interest the return would be equal to the amount that respondent figures it has to pay to the consumers in the form of interest. The amount of this expense is equivalent to $.0048 per thousand cubic feet.

Summing up our contentions on this matter of operating expense and taxes, we set up the following table.

TABLE I.

Summary of Adjustments to Operating Cost.

Brief p. No.	Item	Cost per M ft.	Total Saving
46	Cost of hauling coal.....	$0.02825	$9,498.82
46	Generator coal	.00630	2,118.32
47	Boiler coal	.02750	9,246.64
67	Gas oil	.00830	2,790.80
90	Gas-production labor	.01487	5,000.00
92	Repairs	.04342	14,600.00
91	Uncollectible	.00400	1,344.97
97	Interest on deposits.....	.00480	1,613.96
97	Deduction by Court.....	.04930	16,576.70
	Total of reasonable savings	$0.18674	$62,790.21

Master's findings (No. 48) (R. 44).

"Net loss from gas business..... $9,074.70"
Possible savings, as shown above..... $62,790.21
Loss converted to Profit by taking into consideration reasonable operating expense in a fairly well-designed water gas plant, year 1919..... $53,715.51

II.

This company has had the benefit of a fair average return within the meaning of the statute governing public utilities in the state of New York and a fair average return more than sufficient to overcome any claim of confiscation.

In *Municipal Gas Company* v. *Public Service Commission*, 225 N. Y., 89, 98, 99, Judge Cardozo** stated:

> "For more than nine years, the statutory rate was adequate. Abnormal conditons brought about a change, and now, when the return is figured upon the value of the property, the outcome is said to be a deficit. The defendants argue that courts must pay some heed to the average results; that the prosperity of one year may atone for the adversity of another; and that confiscation does not ensue unless there has been an unreasonable extension of the period of dearth. *That dearth does not signify confiscation unless unreasonably prolonged, may be assumed to be true.* (*Darnell* v. *Edwards*, 224 U. S., 564). The difficult thing is to determine where the line is to be drawn. Its location will vary with the nature of the business, the exigencies of the present and the chances of the future. There is no other test than the rule of reason and fairness (*Cedar Rapids Gas L. Co.* v. *City of Cedar Rapids*, 223 U. S., 655, 669). One cannot crowd the governing principle into any formula more definite. It will seldom be important that rates have been inadequate for a

day or a week or a month. *Fleeting losses may be suffered and yet the balance sheet may show a profit.* Prolong the losses, however, for a year, and you may reach and cross the danger line. It is by the average of the year that business commonly reckons its losses and its gains. *On the other hand, there may be times when the average must be distributed over periods still longer. We make no attempt to solve these problems now. We cannot solve them fairly until all the evidence is in. Then only can the changes and chances of the business be probed and measured.* The case is here upon demurrer. The only question to be determined is the adequacy of a plea. * * *

"We have allegations that the bounds of moderation have been passed; that confiscation has resulted and will indefinitely continue. Unexplained and undenied, these allegations made out a *prima facie* case of the denial of a just return. It may, of course, be impossible to prove them. The deficit when analyzed may be dissolved. The apprehension of evil may be the vain forebodings of timidity. The conditions engendered by the war may linger for months or years, or may vanish with the coming peace. Those questions are for the trial." (Italics are ours.)

The picturesque and comprehensive language above set forth meets with the line of decisions handed down by this court and is in consonance with the very character of the subject matter involved. Specific reference is made to the following considerations:

(1) That reference must be had to the nature of the business.

(2) The exigencies of the present must be taken into account.

(3) The chances of the future must be considered.

As for the chances of the future, Judge Cardozo takes into account the possibility of reconstruction as affecting alleged confiscatory rates by referring to the fact that conditions of abnormality might "linger for months or years or may vanish with the coming peace."

The summary, however, seems not to have included what must necessarily, of course, be taken into account; namely, the past.

In *Omaha & C. B. S. R. Co.*, vs. *Nebraska State R. Comm.*, the Nebraska Supreme Court, through Cornish J., said (P. U. R., 1919, F), p. 308, at p. 309:

> "The purpose of the law being to allow those who voluntarily furnish the necessary capital to install and operate such public utilities, a fair average return upon the value of the property so devoted to the public use, and to prevent unreasonable profits, in fixing the rate at any particular time, *former earnings and probable prospective earnings should always be considered with a view to so adjust the rate as to prevent extortion and allow such fair average return.*"

In *Darnell* v. *Edwards*, 244, U. S. 564, the question of the confiscatory character of rates fixed by a Commission was involved and the period of condition was about a year and a half. The Court, at page 569, stated:

> "The evidence for complainant tending to show they were non-remunerative while based upon actual experience in the operation of the road, yet relates to only a brief period when conditions were abnormal."

And further, the Court said:

> "But it is sufficient for the present to say that the experimental period was too brief

> * * * and conditions during the entire period covered by the *testimony have been too abnormal to enable us to say that the Commission's rates are confiscatory.*"

As to what constitutes confiscation must depend upon the facts in each case. If a public utility corporation has been prosperous for a long series of years, but during the war, or immediately thereafter and as a result of an upheaval that was world-wide in its effect, earned a reduced return for a period of one year, and, as claimed, a slight deficit for a period of four months, it cannot claim the rate fixed by the Legislature is confiscatory. Particularly is this so where the period was extremely abnormal and where it was followed by a gradual and fairly rapid decline in the level of prices.

As previously pointed out, Judge Cardozo's statement of considerations which must be taken into account in determining whether a rate is confiscatory, refers only incidently to past earnings and does not attempt to show just how they must be treated. He does, however, make the point that past returns are a factor, but the issue before him did not require a detailed analysis of the extent that they enter into the constitutionality of an existing rate.

The relation of past earnings to the constitutionality of an existing rate fixed by statute has never received a final judicial determination because it has never come as a direct issue before the courts. The point when made, as by Judge Cardozo, has always been merely incidental, indicating only that the Court realized that the issue existed, but not determining it because it was a minor matter and did not affect the particular decision.

In the present case, however, the appellants urged, and have urged throughout the trial before the Master, that *in passing on the question of confiscation, complete account must be taken, not only of the present earnings and future prospects of operation, but of the past earnings and returns realized under the rate fixed by statute.*

Evidence was presented before the Master, by the appellants, showing clearly that the respondent has received during the continuance of the rates fixed by statute, more than a fair return on its investment in the property used in public service. For many years under the statutory rate it realized excessive returns, which under proper financial management should have been reserved against the time when the revenues temporarily might not be sufficient to bring a full return. These earlier excesses must be considered as an accumulation of surplus or reserve for an equalization fund to provide *a fair average return* to the investors. The intent of the legislation was that the excesses of prosperous years should be used for deficiencies of poor years.

Facts as to prior earnings were offered in evidence by appellants to show that respondent earned more than a fair return since its organization and that there was no ground for setting aside the statute. The Master, however, refused to consider the relevancy of these facts, and based his decision altogether upon the alleged financial condition during the year 1919. By ignoring the facts as to earlier earnings he held, in effect, that the company is entitled constantly, each year taken by itself, to earn a full return on the investment, and that whenever in any year the rate fails to bring such a full return, it becomes confiscatory and in-

operative; also that excessive earnings during any period become the absolute property of the investors.

Appellants urge upon the Court that this view is erroneous, and that the Master should have taken complete account of respondent's earnings during the time the legislative rate has been in effect. It is this error, particularly, that renders the Master's opinion and findings unsound, and if it were sustained would place a gross injustice upon the gas consumers.

When the Legislature first fixed the rate for gas in 1906, by that very act it announced a new public policy in regard to the future gas supply furnished by respondent and other companies in New York City. Theretofore, respondent had been free, except as to the common law requirement of reasonable rates and fair service, to charge such rates as it deemed expedient. It had been substantially free *to charge what the traffic* would bear, without any attempt at public regulation or restriction. In 1906, however, the Legislature definitely exercised the right which had been recognized under the police power for many years, to fix definitely a rate which for the future should stand as a maximum. This was exercised for the general public welfare and was subject only to the limitation that it could not confiscate private property for such public purpose and thus required the allowance of a fair return on the investment.

But within the limits of this general constitutional restriction that a fair return must be allowed on the investment at the time this direct rate fixation was put into effect, the Legislature was free to determine the policy to be pursued for the future in reference to gas rates. By fixing the rates in

1906, therefore, the Legislature virtually made the direct announcement that this would be the maximum rate, unless it came clearly to be confiscatory. Further, this announcement carried the clear implication that the company would be entitled to earn only a fair return on its investment and no more, if the question were to arise whether the rate so fixed was confiscatory.

This announcement of new policy in 1906, when the Legislature fixed the rate by statute, was subsequently reinforced in 1907 by the enactment of the Public Service Commissions Law, by which the Commission was directed in fixing reasonable rates to have due regard to *a fair average return on actual investment* in property used for the public service, and to make due allowance for surplus and contingencies. The clear purpose of this provision, which corresponds with common sense and the practical necessities of rate regulation, was that rates should be fixed from the standpoint of a long term policy; that there should be certainty and stability, and no change unless it could not be reasonably avoided. The plain intent, therefore, if the Acts of 1906 and 1907 are considered together, was that the gas rate fixed by statute should continue as a maximum so long as it remained constitutionally valid. The Commission had full power to reduce the rates when there were excessive earnings, but not to raise them. But it also had the right for the purpose of maintaining stability to leave the rate in force even if there were excessive earnings, with the view that the excesses should be accumulated as surplus under the terms of the statute, to be employed as an equalization fund during periods of inadequate earnings or loss. Respondent, therefore, is entitled

to a fair average return on its investment and no more, and was in duty bound to conserve the greater earnings of "fat" years for the "lean." It is not entitled to an increase in rates when "lean" years appear until the previous excesses or surplus have been consumed.

As the record shows, under the rates fixed by the statute, respondent realized excessive earnings for many years, and the Commission might properly have reduced the rates, but did not do so under its discretion. It thus conserved the excesses as an accumulation of surplus to maintain a constant and stable rate. Under this policy, therefore, the excessive returns of the earlier years must be set up against the deficiencies of the limited period of extraordinary business conditions due to the war. The Master's view, therefore, is manifestly unsound, i.e.,—that since the Commission did not reduce the rates when there were excessive earnings, these became the absolute property of the company, and thereafter it would still be entitled to earn a full return each year and could demand an increase in rates whenever the prospect of deficiencies appeared. This view would render nonsensical the terms of the statute providing for a fair average return on actual investment and requiring the Commission to have consideration for a surplus and contingencies in fixing a reasonable rate. Respondent did, in fact, set up a contingency fund as is hereafter shown, and it was not drawn upon during the aforesaid abnormal period.

Unless the purpose of the Acts was to apply excessive earnings of prosperous years against deficiencies of poorer periods, why did the statute prescribe the duty of allowing a fair average return on actual investment and providing for a surplus and contingencies? Why should there be provision

for surplus and contingencies, unless, in providing for a fair average return, such allowances are to be used when and if needed in the payment of reasonable return when the earnings were insufficient? Could the Legislature have had an idea that a surplus accumulated through excessive earnings should ever be conveyed as an outright gift to the company? Does the statute make sense, unless it is clearly recognized that under any rate the investors are entitled only to a fair average return, and that any excessive earnings for a period are to be accumulated against any subsequent deficiencies.

In the present case, the accumulation of earnings continued for many years. The Commission simply exercised its legal discretion to permit an accumulation rather than to reduce the rates. There is no precise point where a further accumulation must cease and where a consequent reduction in rates must be effected. This is a matter of reason to be exercised under the discretion of the Commission.

Under this long standing policy, therefore, of maintaining the statutory rate in spite of excessive earnings, the rate should be continued until all the previous excesses have been consumed; or even longer unless without any doubt as to the facts the further requirements of service and the equitable treatment of the investors would necessitate an annulment of the rate. But the following statement, which is based upon data in the record, shows that there is still a large balance of unconsumed excessive returns applicable to future deficiencies. The statement presents the amount of a fair return for each year since 1906, the return actually realized under the statutory rate, the excessive return or deficiencies, and the total accumulative excessive return:

TABLE II.

RETURN ON RATE BASE.

Aug. 1st, 1905—Dec. 31st, 1918.

Year Ended.	Operating Income, Plus Book Deprec., Exh. No. 12.	M. Cubic Ft. Gas Sold.	*Depreciation Allowance at 3c. Per M. Cu. Ft.	Adjusted Operating Income.	Rate Base as Shown in Brief of Newton.	6% Return on Rate Base.	Excess or (Deficit) Over Operating Exp., Taxes, Deprec., & 6%.	Per Cent. Return on Rate Base.
July 31st, 1906	$48,955.93	90,477.5	$2,714.32	$46,241.61	$402,711.00	$24,162.66	$22,078.95	11.48
July 31st, 1907	46,174.23	103,943.5	3,118.30	43,055.93	434,253.00	26,055.18	17,000.75	9.91
July 31st, 1908	62,739.93	124,959.0	3,748.77	58,991.16	467,593.00	28,055.58	30,935.58	12.62
Five Mos., 1908	33,185.72	61,402.7	1,842.08	31,343.64	194,830.40	11,689.82	19,653.82	16.09
Dec. 31st, 1909	71,878.38	146,496.9	4,394.91	67,483.47	503,470.00	30,208.20	37,275.27	13.40
Dec. 31st, 1910	80,054.07	168,664.8	5,059.94	74,994.13	536,825.00	32,209.50	42,784.63	13.97
Dec. 31st, 1911	74,001.08	184,720.9	5,541.63	68,459.45	584,825.25	35,089.52	33,369.93	11.71
Dec. 31st, 1912	79,595.17	209,380.1	6,281.40	73,313.77	615,422.25	36,925.33	36,388.44	11.91
Dec. 31st, 1913	72,122.15	220,679.3	6,620.38	65,501.77	639,099.25	38,345.96	27,155.81	10.25
Dec. 31st, 1914	74,121.09	239,176.8	7,175.30	66,945.79	672,132.25	40,327.93	26,617.86	9.96
Dec. 31st, 1915	83,650.26	239,410.3	7,182.31	76,467.95	751,772.64	45,106.36	31,361.59	10.17
Dec. 31st, 1916	88,453.55	252,310.3	7,569.31	80,884.24	831,867.64	49,912.06	30,972.18	9.72
Dec. 31st, 1917	65,321.97	286,175.9	8,585.28	56,736.69	867,871.90	52,072.31	4,664.38	6.54
Dec. 31st, 1918	43,178.13	327,585.6	9,827.57	33,350.56	871,874.90	52,312.49	(18,961.93)	3.83
							$341,297.26	

*Depreciation has been figured consistently at 3c. per M. Cubic Ft. of gas sold. This is the rate at which respondent set aside sums to meet renewals and replacements beginning in the year 1915. That estimate of 3c. exceeds the amount required to meet renewals and replacements as shown by the record.

Note—We have not deducted anything from the book figures of operating expense, not even the Federal Income Tax and Tax on bondholders' income, nor have we taken into account that operating costs were above the reasonable requirement.

From August 1, 1905, to December 31, 1918, based upon the figures in Table II, respondent had thus realized a total of excessive return, under the statutory rate, amounting to $311,297.26. This excess return should be treated as a prior contribution by the consumers, it being a credit balance to cover temporary annual deficiencies in earnings during abnormal periods. Before the statutory rate, therefore, can be pronounced confiscatory, this entire sum ought first to be wiped out by actual deficiencies, and there is now no prospect that any such amount will be required, in view of the rapidly declining cost of operation, of which this Court can take judicial notice.

While respondent cannot claim that the rate is confiscatory so long as there remains an unconsumed balance of previous excessive earnings, the statutory rate might well be continued for a considerable time, even if all such excesses had been consumed and outright deficits were about to be incurred, provided that there are reasonable prospects of meeting such temporary deficiencies by future earnings and returns.

If the Master's view were to prevail, that the validity of the statutory rate must be judged on the basis of one year, or at most only sixteen months, the reasonable discretion of rate regulation would be unduly restricted. The Court or the Public Service Commission would be bound, under such conditions, to make a new analysis of rates each year, increasing or reducing them according to the costs of the moment, although the changes in expenses might be accidental or temporary, and sound policy would require a stable rate, in spite of the fluctuation in costs. The New York law, therefore, had a purpose not comprehended by the Master,

namely, to provide for the maximum stability in rates, to be maintained with reason.

Further, if the Master's view were sustained, the excessive returns paid by the consumers during prosperous years would be paid over to respondent as its own property. Although they were paid for the purpose of furnishing a fair average return *and to provide a surplus for any temporary deficiencies*, they would be diverted from the latter purpose and the rates would be raised to meet temporary deficiencies. Such a procedure would be rankly unjust to the consumers, requiring them, first, to furnish a surplus to meet possible deficiencies and, second, compelling them to meet the temporary deficiencies by contributing higher rates.

The period selected by Respondent in its Bill of Complaint, 1904 to 1918, inclusive, should be considered in ascertaining if a fair average return has been had on the investment in the property.

The Master stated in his opinion (R. 48 [79½]):

> "If, therefore, the actual results of operations for the year 1919 show the rate to be confiscatory, it follows that the net result of operations for the year 1920, which can only be determined in definite figures when the year has ended and the books for 1920 have been closed, will show a larger deficiency than appeared as the result of operations in the year 1919. *I have therefore concluded to base my findings as to the cost of making and distributing gas especially upon the operations and costs established for the year* 1919, those figures being taken, of course, in the light of what I have just said, that the cost of making and distributing gas in the year 1920 will be in excess of

the figures which I reach for the year 1919." (Italics ours.)

In its bill of complaint, respondent claims (XVI) that "the maximum price of one dollar ($1.00) per thousand cubic feet for gas, fixed by the said Act of 1906, has been, is, and will continue to be wholly inadequate, in that it does not permit your orator to earn a reasonable return upon the fair value of its property devoted to the public use." Furthermore, it specifically claims (XIV) that during no year since its organization, in 1904, have the earnings been sufficient to provide a return of as much as six per cent. upon the reasonable value of its property; although in paragraph IX thereof it alleges that "since its organization in 1904, it has managed the business prudently but has paid no dividends to its stockholders, has devoted to the development and expansion of the business certain income which might have been used for dividends."

Respondent did not offer a scrap of evidence in support of its claim that the statute has been confiscatory since the organization of the company in 1904. It was practically directed by the Master to confine its testimony to 1919, as appears from the Record:

> "The Master—That cross-examination is not at all helpful, I believe, to the determination of this issue. I have got to know what gas oil, in the quantities required by the New York & Queens, could have been bought for in 1919, and what happened in 1912 or 1914, or some other year does not help us.
>
> "Mr. Chambers—We don't agree with you at all about that, and we want to have you take the proof as to other times.
>
> The Master—That does not interest me at all, whether you agree with me or not.

Mr. Chambers—It does the defendants and it may the other court.

"The Master—I am going to direct this trial. I am simply indicating to counsel now what I think is useful to the Master in determining the issues in this case. I am going to sustain objections to any line of inquiry that does not bear upon that situation.

"Mr. Ransom—I have no objection to his stating what the change in price was between——

"The Master—Well, I have. I am not going to lumber up this record——

"Mr. Chambers—The claim in the bill of complaint that they have not enjoyed a fair return since 1906.

"The Master—I don't care what they say.

"Mr. Chambers—The same issue is raised in the Consolidated——

"The Master—I don't care what they say in their bill. The question is what, by actual experience, beginning January 1, 1919, is the result to this company at a price limited, as I understand it, to one dollar. I have got to know what it cost to make gas in 1919 and 1920, and as one of the elements I have to know what oil should have cost the New York & Queens during that period. I don't care what happened years ago.

"Mr. Deegan—You are going to limit your inquiry to the period subsequent to January 1, 1919?

"The Master—Yes."

(R. 354 [349-50].)

Considering all the circumstances surrounding the statutes and the showing in the record that respondent has enjoyed more than a fair average return upon the capital actually employed, appellants respectfully submit that the judgment of the lower court should be reversed.

III.

For the purpose of making a fair test of the statute, the period selected by the Master is altogether abnormal.

Under any circumstances, one year's operations form no true criterion of the reasonableness of legislation establishing rates for public utility service; but when we find that the year under consideration in this case was in almost every respect abnormal, it becomes manifestly unfair to use that short and unprecedented period as the basis for declaring confiscatory a statute that was held to be constitutional by this Court in 1909. Judicial notice may be taken of the fact that the year 1919 was abnormal, but it is perhaps advisable to prove by the record that the year was one of unprecedentedly high prices; labor conditions were subnormal so far as concerns the number of men available, and abnormal as to the rates paid. The following quotations from the record are very much in point:

> "Q. What is the situation? You cannot get anthracite coal under contract at all just now?
>
> "A. No, sir; we cannot. They are not prepared on account of the situation in the mining region on wages; it has not been settled, and no one is prepared to make a price, a definite price for next year, with the exception, I think, of one where we have an offer of 10,000 tons of coal—well, even that is not definite, because that is subject to increase in miners' wages, so there is really no definite price.
>
> "Q. How long has that condition existed

that you have not been able to get a contract?

"A. We have not been able to get quotations prior to the 1st of April. The coal contract year is from April 1st.

"Q. In other words, up to April 1st you had some coal contracts that were running out?

"A. Yes, sir.

"Q. But beginning April 1st you were not able to make any coal contracts at all?

"A. No, sir. And in order to keep running we have been running into our stock of coal which we had on hand. During the month of April, for instance, we have received about 5,000 tons of anthracite coal, and during that period of time our stock of anthracite coal in our various plants has decreased about 30,000 tons.

"Q. Where does the New York & Queens get its anthracite coal from?

"A. The New York & Queens had some stock of coal on hand in the same way as the other plants, and we have a surplus stock of coal at Astoria which is available for the New York & Queens in case of necessity."

(R. 333 [311-2].)

"Q. And you do not know anything about the sources of supply of coal, do you; you have not made any study of that?

"A. Yes, I have been down in the mines.

"Q. You do not want this Court to understand that that is running out, too, do you?

"A. The coal is not running out, but the ability to get it is very difficult at the present time.

"Q. We are in unusual times, then, I take it?

"A. Yes, so far as the strikes are concerned; as they occur they are unusual at the moment.

"Q. So far as everything is concerned, isn't that so?

"A. Well, it is very difficult to get any de-

livery of first class—we are speaking of anthracite coal, I assume?

"Q. Yes.

"A. In the first place the labor situation in the mines is not settled; in the next place the strike on the railroad is retarding the delivery of the coal, and in the next place the strike of the harbor tugs of the railroad is making it so that they do not deliver any coal. I believe they delivered one boat yesterday, the first one in, I guess, thirty or forty days. We are compelled to get outside tugs to go down and bring coal up from the terminals, which ordinarily would be delivered by the railroad.

"Q. Labor is on the warpath, would you say?

"A. Well, I think labor is unsettled. I do not know that it is on the warpath.

"Q. You would say that the times are abnormal now?

"A. The labor situation is very much disturbed, there is no question about that.

"Q. You do not want to use the word "abnormal?"

A. Well, I went through a similar experience in 1902 and 1903 with respect to coal, which was practically identical in that time, and other companies had to—I did not in my case, because I got frightened in time to fill up all my coal sheds with coal, and I got through that time without going abroad for coal, but other companies had to go abroad for coal.

"Q. You looked ahead a little bit at that time?

"A. Looked ahead at that time? Yes, I looked ahead at that time.

"Q. And you bridged over the gap?

"A. In that particular case of the Boston Company I succeeded in bridging that over.

"Q. Now, would you not say that conditions were abnormal all around?

"Mr. Ransom—I object to that as vague in meaning and indefinite. What does he mean by abnormal, the attitude of the Attorney General, or what?

"The Master—I will let Mr. Addicks say.

"Mr. Chambers—No, I refer to the Consolidated Company.

"The Master—I did not ask you to refer to anything; I have ruled on it.

"Mr. Chambers—Well, I have the attorney in mind, for one thing.

"A. I do not know of any time in my experience where it was so difficult to get coal, either hard or soft, and either coal or gas oil, and that situation being more acute than I have ever seen it, I should call that abnormal. As to when it is going to straighten out, why, everything is very uncertain.

"Mr. Hyatt—You are only testifying for yourself, are you not, Mr. Addicks, you do not mean to testify for others?

"Mr. Ransom—I object to the interruption by this self-constituted representative of the District Attorney.

"The Master—Objection sustained.

Mr. Hyatt—Exception.

"Q. You would not say that was so only as to coal, you do not have that in mind; that condition prevails generally, does it not?

"A. I think the same thing applies to oil.

"Q. Does it apply to labor and materials that you use?

"A. Labor is very, very uncertain.

"Q. It applies to everything, does it not—food and everything else?

"Mr. Ransom—What applies?

"Mr. Chambers—This abnormal and uncertain period.

"Mr. Ransom—There is nothing abnormal about it.

"A. I think there is a great deal of unrest with labor, a great deal of uncertainty. No

one knows what the rate of pay of a man is going to be from one day to another.

"Q. If you were writing some friend of yours, and if you were discussing the times, would you not say that the times were abnormal all around?

"Mr. Ransom—Objected to as an effort to make the case ridiculous.

"Mr. Chambers—Leaving out counsel for the complainant.

"Mr. Ransom—It is not a form of question that will look intelligible on any record.

"The Master—I will allow it, anyhow.

"A. I shall have to ask you to repeat it.

"Q. (Repeated by the stenographer.)

"Mr. Ransom—I object on the further ground that it is calculated to bring the constitutional law officer of the State into contempt.

"The Master—Objection overruled.

"A. I think I should be very apt to express myself as I have just expressed myself. I do not know how I could do it more completely."

(R. 372-4 [380-3].)

"Q. How much was that a year ago, say, or two years ago, that cost?

"A. I don't know. I can recall some three or four or five years ago, it was I think fifty cents.

"Q. In place of what, a dollar and a quarter?

"A. Yes. That is just an illustration, Mr. Chambers, of how things have gone up all along the line.

"Q. Well, things are abnormal. That proves it, doesn't it?

"A. Well, is it a question of what may be considered abnormal. It looks now as if we had normal conditions, unless it goes higher.

"Q. Suppose it goes lower?

"A. If it goes lower, it will be lower.

"Q. Well, it is an unusual situation, isn't it?

"A. Well, the situation has been unusual for the last three or four years; based upon three or four years ago it is very unusual, from 1914, but whether you call it an unusual situation now is another proposition because it has become a usual condition with us."

(R. 433 [485]).

"A. There were no contracts made during that period, because the Government had charge of the coal supply.

"The Master—Because who had charge of the coal supply?

"The Witness—The Government.

"Mr. Neumann—One moment. I move to strike out that part of the witness' answer 'because the Government had control of the coal supply.

"The Master—Motion denied.

"Mr. Neumann—Exception.

"Q. By the Government, you mean the United States Fuel Adminstration?

"A. I do.

"Mr. Neumann—Same objection.

"The Master—Same ruling.

"Mr. Neuman—Exception.

"Q. So that coal secured by the New York & Queens Gas Company during January, February and March of 1919 was not pursuant to any contracts with the coal companies?

"Mr. Neumann—Objected to on the ground it is incompetent, irrelevant and immaterial, and nothing yet shown with reference to the New York & Queens, no foundation laid for it.

"The Master—Overruled.

"Mr. Neumann—Exception.

"Mr. Tobin—I ask, if the Master please, the

date—I cannot just recall the date that Mr. Gawtry left the company.

"The Master—March 1, 1920.

"A. What was the question?

(Question repeated by the stenographer.)

"A. That is correct.

"Q. Did you ordinarily purchase your coal through jobbers or deal directly with the coal companies?

"Mr. Neumann—That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving a custom or practice.

"The Master—Overruled.

"Mr. Neumann—Exception.

"A. Direct from the coal companies, the parent companies.

"Q. That is, as wholesalers?

"A. As wholesalers.

"Mr. Neumann—I move to strike that answer out, because I do not think that means anything, 'wholesalers.'

"The Master—Motion denied.

"Mr. Neumann—Exception.

"Mr. Tobin—Exception.

"Q. During the coal year beginning April 1, 1919, were you in fact able to get all the coal that you required from producers?

"Mr. Neumann—That is objected to on the ground that it is incompetent, irrelevant and immaterial, and not the proper way of proving it. It is a conclusion of this witness. He may state what he did, and from that the Master must determine whether they were able to get coal or not.

"The Master—I think there is a good deal of force in that objection. I will sustain it.

"Mr. Ransom—It is your feeling that the question calls for a conclusion?

"The Master—Yes.

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"Q. During that coal year what did you do to get coal?

"A. We tried in every possible way. We had to go to Washington frequently, to Philadelphia, to the railroad officials of the different roads on which coal is shipped, to the Coal Administration, Mr. Garfield—every possible way.

"Mr. Neumann—I move to strike from that answer the words 'possible way.'

"The Master—Overruled.

"Mr. Neumann—Exception.

"Q. Mr. Garfield was the director of the United States Fuel Administration during that time?

"A. He was.

"Q. Did you get all your coal from producers, or did you have to get it from other sources?

"Mr. Neumann—Objected to on the ground it is incompetent, irrelevant and immaterial, vague and indefinite.

"The Master—Overruled.

"Mr. Neumann—Exception.

"A. We got most of it from producers; we got some from brokers.

"Q. During the coal year beginning April 1, 1918, were the prices for anthracite coal fixed by agreement between yourselves and coal companies, or were they fixed otherwise?

"Mr. Neumann—That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

"The Master—Overruled.

"Mr. Neumann—Exception.

"A. 1918 that is?

"Q. Yes, during the coal year beginning April, 1918?

"A. Fixed by the United States Government.

"Q. The Fuel Administration?
"A. The Fuel Administration.
"Q. Were railroad and other charges likewise fixed by the Government?

"Mr. Neumann—Same objection.
"The Master—Overruled.
"Mr. Neumann—Exception.

"A. They were.

"Mr. Neumann—If the Court pleases, if the Government fixed these prices there must have been some order of some kind, and that would be the best proof of it.
"The Master—Yes, but this proof is good enough.
"Mr. Neumann—I except, your Honor."

(R. 527-9 [645-8].)

"Now, Mr. Gawtry, within the last few months there have been strikes at the coal mines, have there not?
"Mr. Ransom—I object to the question unless limited to anthracite.
"The Master—Objection overruled.
"A. Not that I know of.
"Well, for how far a period back do you recall a strike at the mines.
"A. Anthracite mines, you refer to?
"Q. Yes.
"A. Some period; there has been a cessation of work.
"Q. Well, there has been a cessation of work only.
"A. (Interrupting) Prior to the 1st of April.
"Q. Prior to April 1, 1920?
"A. Right.
"Q. How far back did that run?
"A. Just about the 1st of April, that is when their agreement ran out, the last day or so, about the end of March they ceased and did not work in the early part of April and the

last few days at the end of March and the 1st of April.

"Q. Are they working now?

"A. To a certain extent.

"Q. But not to their capacity?

"A. No.

"Q. At the present time there is considerable railroad congestion, is there not?

"A. Yes.

"Q. You read the announcement about the railroads asking the Government to take control again and issue priority orders?

"A. I have.

"Q. And both of those conditions would tend to affect the price of coal, wouldn't they?

"A. They would."

(R. 548 [680].)

"By the Master:

"Q. Do you carry anybody on that payroll that is not actually employed?

"A. Absolutely not.

"Q. Do you carry any amount in there that is not actually paid?

"A. No, sir.

"Q. Do you carry any man that you don't need?

"A. We can't get all we need."

(R. 599-600 [848-9].)

"The Master—How about coal? Would you say it was poorer today than it was two or three years ago?

"The Witness—No, because during the war period we got some cargoes that were very poor. We even had to go to the Shipping Board to get some coal, and some of it was awful. It is hard to form a comparison.

"Q. On the coal you cannot say, but on the oil you are satisfied that it is not running quite so good. Can you give us any degree

of less quality in 1920 as against 1917 or 1916?

"A. No, I cannot.

"Q. You have not formed any judgment on that?

"A. No.

(R. 639-40 [914].)

"The Witness—There are conditions which sometimes turn up in a small works like ours, where we have trouble in getting labor. I have seen conditions there when Mr. Morrison has had to go in and make gas because the gas-maker has not shown up in the morning, and we were short of help. If that condition existed around the first of the month, he would not take his inventory."

(R. 683 [988].)

"Q. What factors do you take into consideration when you give such an order?

"A. I get the works report about the second or third of the month; I go over those figures and then I go back over several days' use of coal for the previous month, and estimate about how long the coal on hand will last, and if we have plenty of room and coal is coming in easy, I order more, so as to keep our bins pretty well filled. Sometimes I have to get down pretty low on coal, because it is pretty hard to get at times.

"Q. When do you find coal harder to get, in the summer or in the winter?

"A. In the winter time, where there is much ice in Flushing Creek and Flushing Bay.

"Q. No, I am talking about from the company, irrespective of climatic conditions.

"A. I would say right now it is the hardest time I have ever known to get coal."

(R. 684 [991].)

"Q. Yes, you testified you had storage capacity for 2,000 tons.

"A. Yes, that is only three barges.

"Q. Yes, that would be three barges; assuming your pile went down to 300 tons you could order two barges and have them delivered, could you not; there would be no obstacle in the way of that, would there?

"A. Well, the only obstacle would be the impossibility of getting it.

"Q. Impossibility of what?

"A. Of coal getting into tidewater. For instance, only last month we would not get any coal from tidewater, and we had to get coal from Astoria to keep going.

"Q. Why?

"A. Because our stock was getting too low.

"Q. Why could you not get it from tidewater?

"A. Because there was none coming in."

(R. 685 [993].)

Public Service Commissions have generally held that the stockholders of public utilities are not to be relieved, or at least wholly relieved, from the losses and burdens resulting from the war or the immediate period of adjustment or reconstruction immediately following.

In re *West Virginia Traction & Electric Co.* (W. V. reported P. U. R. 1919 E. 95) it was held that the increased operating expenses of a utility due to war conditions, should not be transferred to its patrons.

In re *Tri-State Telephone & Telegraph Co.* (P. U. R. 1919 C. 5), it was held that corporations as well as individuals must bear their share of the burdens of the war, and sustain some loss of income without flinching.

In re *Hammond Water Works* (P. U. R. 1919 A. 180), the Indiana Commission refused to base permanent rates upon existing abnormal conditions, because of the impossibility of forecasting

operating expenses and revenues with certainty.

In re *Home Telephone Co.* (Va. P. U. R. 1919 A. 243), it was held that a prosperous utility which has created a large surplus out of earnings, is not entitled to increase its rates on a mere showing of increased cost of operation due to war conditions.

In re *Salt Lake & U. R. Co.* (Utah P. U. R. 1919 C. 565). The Commission declared, in effect, that it would seem to be the part of wisdom to permit utilities to bear temporarily, during the period of reconstruction, such share of the public burden as they can carry without too seriously affecting their financial stability.

In re *Pacific Power & Light Co.*, P. U. R., 1918, at page 670, the Commission said:

> "We are living in unusual times. All are called upon to forego many pre-war privileges and luxuries, and the Commission believes that stockholders of the company should bear a portion of the increased burdens incident to war."

The New Jersey Board of Public Utility Commissioners held (P. U. R., 1918, Vol. E, p. 915):

> "During the war period and in accordance with national and state war policies while in underwriting normal returns for public utilities we should allow rates sufficient to keep the utility solvent and in good operating condition, we must also continue our declared policy of disallowing rates in war times for the purpose of increasing dividends. Stockholders in such corporations must share in the burdens and hardships resulting from financial changes due to the war and cannot expect to wholly escape therefrom."

Similar expressions by Commissions may be found in

(1) The Indiana Public Service Commis-

in "In re Union City Telephone Company, P. U. R., 1918, E., p. 669;

(2) New York Public Service Commission in Long Island Railway Co., 1918, P. U. R. 651;

(3) The Utah Public Service Commission, P. U. R., 1918, B., 497;

(4) The West Virginia Commission in Re Winifrede R. Co., P. U. R., 1918, C, 156;

(5) The California Railroad Commission in Re Northern California Power Co., P. U. R., 1918, C., 394.

The courts before the World War held generally in the same direction:

In *Stevenson* v. *Great Northern Ry. Co.*, 72 N. W. Rep., pp. 713, 721, the Court said:

> "There is no constitutional principle which guarantees the capital invested in railroads, immunity from business vicissitudes to which capital invested in all other enterprises is subject. * * * The courts should take notice of the general depression in business prevailing in 1894."

In *Matthews* v. *Board of Corporation Commissioners*, 106 Fed. Rep., 9, the Court said:

> "It is said however, that the net profits of the good years should be appropriated to make good the losses of the bad years, but it must be remembered that these bad years from 1891 to 1895 were years of panic and general depression. All investments of every character suffered. *The grant of a charter to a railroad company does not guarantee that it will or can make the investment at all times a paying one. A corporation is not entitled as of right and without reference to the necessities of the public to realize a given per cent. on its capital stock* (Turnpike v. Banford, 164 U. S., 578)."

That there has been a recession from the abnormally high prices caused by the Great War, suf-

ficient in extent to justify the denial of applications by public utility corporations for increases in rates, is evident from recent decisions by Public Service Commissions throughout the country.

The Maryland Public Service Commission said:

> "The Commission fully realizes that in view of the numerous reductions in prices which have occurred in the last few months, the time is not opportune for any increase in rates."
>
> Re Consolidated Gas, Elec. Light & Power Co., P. U. R. 1921, A-619.

The Illinois Public Utilities Commission said:

> "It is clear that the inevitable re-action from war prices is already under way in this country *and the signs of financial depression now so prevalent about us cannot be ignored.* While thus far, lighting materials have been practically unaffected by the tendency of lower prices, it must be evident to even the casual investigators that industrial depression must effectively operate to reduce the price of oil, coal and other materials essential to the production of gas, electricity and other utility services. It now is a matter of daily testimony before the commission that labor has increased in efficiency within the past few months.
>
> "Therefore, in order to protect the interests of the utilities, and the consumers of their services, it is important that advances of rates in the face of adverse economic conditions shall be made with circumspection lest undue hardship be worked upon the public."
>
> Re Freeport Gas Co., P. U. R. 1921, A-687.

In a more recent case, the Illinois Public Utilities Commission in re Metropolitan, West Side Elev. R. Co., P. U. R., 1921 B, p. 293 (opinion, January 4, 1921) said:

"Further, it must be manifest that our nation is now upon the threshold of important economic readjustments *which will hasten the return to normal industrial conditions. The trend towards lower prices is too pronounced to be ignored, and its effect may properly be taken into account by us in the instant case as it has been in the recent past.*"

The New York Public Service Commission, Second District, said:

"It is quite apparent now that these prices experienced by this petitioner were abnormal, and also that they were temporary. *The peak has been passed and repairs are already in progress.* It appeared from the evidence of the witnesses called in this case that in the Hudson Valley the price prevailing not long ago for bituminous coal of 89 at the mines shrunk slightly prior to the hearing held in November to 85. This emphasizes the fact which follows, not only from the evidence in this case, but from general conditions known to this Commission, of which we should take notice, that the exceedingly high prices lately experienced are transitory. They form no safe basis for rate making in an attempt to compute a reasonable return for the future. On the other hand, it would be equally unjust to have recourse to pre-war prices or to conditions which formerly maintained in this industry, because there is no reasonable assurance that they would be restored within any short period of time."

Re Kingston Gas & Elec. Co. P. U. R., 1921, B. 76, 82, 83.

As to the meaning, a fair average return, the reports of the public utility commissions abound with decisions to the effect that these words are to be broadly construed in the public interest without damage to the companies.

In re *Queens Borough Gas & E. Co.* (P. U. R., 1918, F. 891).

> "Before the company demands 'emergency' increase in its present rates, *it should 'level off,' average and absorb its excessive earnings and reserves of recent years.* The 'fat' of those past years must serve, in the first instance, to carry it through the 'lean' years of the uncertain present. Sums unwarrantedly taken from operating revenues, and paid out as dividends on over capitalization *or put into property* with only a nominal book entry as 'reserves,' should first be utilized in meeting the charges of the emergency period, before demand is made for higher rates and larger revenues. This company has no right or reason to claim that it is confronted with any real extremity or 'emergency.'"

In re *Jefferson City Light, Heat and Power Co.*, the Missouri Public Service Commission, in P. U. R., 1919, A., at page 722, said:

> "According to Section 82 of the Missouri Public Service Commission law the Commission is empowered to fix maximum rates for electricity, 'with due regard, among other things, to a reasonable *average* return upon capital actually expended.' Italics above are ours. *We construe this to mean an average for a series of years.*
>
> "The evidence in this case fails to demonstrate that an increase in rates is required in order to enable the petitioner to secure a reasonable average return, taking into consideration the earnings during the past four years."

In *Smyth* vs. *Ames*, 169 *U. S.*, at page 546, the Court said:

> "The utmost that any corporation, operating a public highway, can rightfully demand

> at the hands of the Legislature when exerting its general powers, is that it receive, what, *under all the circumstances*, is such compensation for the use of its property as will be just both to it and to the public."

In *Kings County Lighting Co.* vs. *Lewis*, 110 *Misc.*, at page 212, Justice Greenbaum said:

> "It is clear that confiscation may not be predicated upon the operations of the plaintiff for 1916 and 1917. As to the years 1917 and 1918 it must at the outset be said that those years were abnormal, owing to the war conditions then existing."

IV.

Respondent failed to prove the fair present value or the investment in the property devoted to public use.

Ultimately, in every case affecting the rate for public utility service, the question to be determined is: What is a fair and reasonable return upon the fair value of the property employed in rendering service to the public?

In arriving at the present value of this class of property, courts and commissions take into consideration the cost to reproduce, the original cost, the investment, the present value, overhead expense and other elements of intangible value that have been enumerated in the many cases decided by this Court.

In order for the Court to reach its opinion on the fair value of respondent's property, the rate base on which it is entitled to a reasonable return,

it must have before it competent evidence of the original cost of the property; the cost to reproduce it new under normal market conditions; the present condition as compared with the property new; and a record of the operating costs from which it may be determined whether or not the plant is functioning properly and permitting the utility corporation to serve the public at a reasonable cost. A public utility is entitled to ask a fair return upon the value of that which it employs for the public convenience; but, on the other hand, the public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth.

(*Smyth* v. *Ames*, 169 U. S., 466, 18 Sup. Ct., 418; *San Diego Land and Town Co.* v. *National City*, 174 U. S., 739, 19 Sup. Ct., 804; *San Diego Land and Town Co.* v. *Jasper*, 189 U. S., 439, 23 Sup. Ct., 571; *Stanislaus County* v. *San Joaquin and King's River Canal and Irrigation Co.*, 192 U. S., 201, 24 Sup. Ct., 241; *Chicago Union Traction Co.* v. *City of Chicago*, 199 Ill., 579.)

In the bill of complaint, respondent claims that the reasonable value of the property devoted to the gas business as of December 31, 1918, including additions made during the year, is not less than $1,492,976; and that the cost of reproducing the said property during the year 1918 would greatly exceed that amount. In addition, respondent claims that it possesses "going-value" and other intangible assets of great value; and that there existed at that time an aggregate deficiency

in earnings below 7½% upon the value of the said property devoted to the gas business, in the sum of at least $300,858.41, not including compound interest on the deficits at the rate of 6% per annum (R-3).

In the Master's report it is stated:

> "Fortunately, there has been agreement between the parties upon this record as to the cost, up to and as of August 1, 1904, of the tangible properties still in existence and use, which were acquired by the complainant company on that date. The complainant and the defendants agree that the tangible property acquired on August 1, 1904, and still in existence and use, did cost, and as of that date was reasonably worth, at least, $280,108, and I accept that figure in arriving at the complainant's total investment and the present value of its property. Since that date, the net additions to the plant and property of the complainant have cost $850,389.08, and there is no dispute as to this item. These two items not in controversy cover the actual cost of the tangible property now in use, aggregating $1,130,497.08.
>
> "*Additional Elements of the Original Investment.*
>
> "To the first of these items, the complainant asks me, on the basis of Mr. Miller's testimony and the book entries as of 1904 and subsequent years, to add $320,350 for the preliminary organization and development expenses of the enterprise and other items of cost set forth in Mr. Miller's estimate (Complainant's Exhibit 96). It is conceded by the defendants that in the initiating of a gas enterprise there is necessarily incurred preliminary and development expenses, cost of financing, engineering and superintendence expenses, interest and taxes during construction,

and the like as to which varying amounts were testified by the witnesses on each side, principally based upon opinions as to the proper percentages to be allowed for such items. The defendants contend, moreover, that there is no adequate proof before me on which I should base any finding of value for the franchises and rights."

(R-54 [89].)

It will be seen from the above that the Master confuses cost with value because he takes the sum of $280,108, *the agreed upon cost of property installed prior to August* 1, 1904, *and accepts that figure as the present value of said property,* thus ignoring the inevitable depreciation that has accrued since that part of the property was built which existed when respondent took it over in 1904.

We propose to devote several pages of this brief to a discussion of the reproduction cost theory on which respondent relies in setting up what it conceives to be the value of its property on which a fair return should be had. We do not for one moment believe this Court will decide the case on any such theory of value, but we feel compelled to lay the facts in the record before the Court for the reason that the Master failed to deduct from his finding of so-called original cost any sum representing the depreciation that has taken place in this property. He relied upon his opinion that the physical or functional depreciation that exists has been offset by theoretical appreciation. He arrived at his estimate of appreciation by accepting the reproduction cost figures of the expert witness Miller, which figures represent Miller's opinion of the prices that prevailed January 1, 1920.

The attitude of respondent in submitting its case is shown by the following:

"Mr. Ransom—The complainant, as already stated, is offering proof along the lines which it started to do with respect to the value of this property for rate purposes. Judge Mayer has said that, if we expect to offer proof of original cost as a part of our case, we shall furnish it. We do not expect to offer proof of original cost as part of our case any more than we did in the Consolidated Case.

"The Master—Yes, you did in the Consolidated Case.

"Mr. Ransom—We did in rebuttal.

"The Master—What?

"Mr. Ransom—We did in rebuttal.

"Mr. Neumann—Do you think we are going to take the burden of proof?

"The Master—Wait a minute; let us understand this right now, Judge, and we will not be misled. If you rest your case here, without any evidence at all as to what you invested in these properties, I will dismiss the complaint.

"Mr. Ransom—I do not think you could.

"The Master—Then I will refuse to take any more proof.

"Mr. Neumann—That is his position.

"Mr. Ransom—If we show, as we shall, that the cost of making and distributing gas alone, without any return on any investment, is substantially more than the statutory rate——

"The Master—I guess that is a complete answer, of course, but if I find there is even four cents——

"Mr. Chambers—They admit 2½ per cent. they make. Have you seen that complaint?

"Mr. Ransom—Well, in 1918.

"The Master—But in the Consolidated Gas

case you had proof that you issued $38,000,000 worth of capital for property. That you got right away, the first thing you got in your case. There was proof, and I said at the start I would hold that to be evidence of some cost to the Consolidated.

"Mr. Ransom—We have even better proof in this case without offering either proof of original cost or proof of reproduction costs, which we will offer.

"Mr. Chambers—They say they are making 2½ per cent.

"Mr. Ransom—Why not be fair? We said in 1918.

"Mr. Chambers—Well, that is the only time you speak of.

"The Master—My only purpose here and in the Consolidated Case was to give you the way my mind is running.

"Mr. Ransom—I am very glad to have it.

"The Master—And you take your chances.

"Mr. Ransom—I shall."

(R-193-194 [76-77].)

Notwithstanding that respondent relied upon its ability to prove that the revenue received fell short of meeting the operating expenses for the year 1919, it offered testimony in an effort to prove the cost of reproducing the property according to an inventory which had applied to the items therein, by the witness Miller, unit prices as of January 1, 1920. (R-252 [176].)

Appellants contend that inasmuch as the complaint was filed April 7, 1919, and the Master made his findings, based upon the result of operations for the year 1919, any evidence of cost to reproduce the property new, as of January, 1920, is not entitled to any consideration.

Appellants further contend that there is no competent evidence before the court as to the actual amount of property owned by the respondent, used

and useful in serving the public. The Master stated (R-255):

> "I am not going to take Mr. Miller's value until I get more proof of what actual property they have on hand."

As to lack of fairness in accepting reproduction cost during the period of abnormal prices, as an indication of the fair value of the property, the Master stated his views during the trial as follows:

> "The Master—I am frank to say in this connection, and in connection with this inventory, that I do not believe the Court ever intended by any statement made in any case to require the consumers of gas to pay a price based upon a theoretical or opinion statement as to the cost of replacing the plant today. Now, it may be that I have got to value the plant as of this time under some of the language of the cases, but having in mind an expression in the decision or opinion of the Supreme Court in the prior Consolidated case, I do not believe the Court ever intended that the consumers should pay for gas based upon the present, and to some extent, in one point of view, an abnormally high price of reproducing this kind of property. I am going to take all this evidence.
>
> "Mr. Neumann—Your Honor means a return based on that valuation?
>
> "The Master—I say a return based on that. It may well be that I have got to make some finding as to present cost of replacing or reproducing, and therefore I am going to take this proof, but I am frank to say I do not believe the Court ever intended to impose any such condition on the consumer."
>
> (R-260 [190].)

The Master's reference to this Court's decision in the "Consolidated Case" was apparently the following:

> "If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the Company is entitled to the benefit of such increase. This is, at any rate, the general rule. We do not say there may not possibly be an exception to it where the property may have so increased tremendously in value as to render a rate permitting a reasonable return upon such value unjust to the public. How such facts should be treated is not a question now before us, as this case does not present it. We refer to the matter only for the purpose of stating that the decision herein does not prevent an inquiry into the question when, if ever, it should be necessarily be presented."
>
> Wilcox *v.* Consolidated Gas Co., 212 U. S. 52.

The Public Service Commission Law under which respondent operates, provides, Section 72, as follows:

> "In determining the price to be charged for gas or electricity the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard among other things to a *reasonable average return* upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies."

Whitten, a writer on public utility questions, cited with approval by this Court, says, in his "Valuation of Public Service Corporations," Vol. II, page 17,

> "In recent years there has been a tendency to modify the reproduction method so as to bring it nearer to actual cost and to emphasize the importance of the actual necessary cost as a factor in determining value. Certain decisions go so far as to make the actual and necessary cost the most important, if not the controlling, factor in determining fair value."

And at page 827, he says:

> "Any method that is pre-eminently fair to both parties (meaning to the public and the public utility company), must get back to actual capital cost as a base for actual as distinct from nominal profits."

In San Diego Water Co. *v.* City of San Diego, 118 Cal., 556; 50 Pac., 633, 636, 638, the California Supreme Court says:

> "Nor would it, on the other hand, be just to the consumers to require them to pay an enhanced price for the water, on the ground that it would now cost more to construct similar works. Such a contingency may well happen; but to allow an increase of rates for such reason would be to allow the water company to make a profit, not as a reward for its expenditures and services, but for the fortuitous occurrence of a rise in the price of materials or labor. The law does not intend that this business shall be a speculation in which the water company or the consumers shall respectively win or lost upon the casting of a die, or upon the equally unpredictable fluctuations of the markets. For the money which the company has expended for the public benefit, it is to receive a reasonable, and no more than a reasonable, reward. It is to be paid according to what it has done and not according to what others might conceivably do. In effect, the bargain between the company and the public was made when the

works were constructed; and this matter is to be determined according to the state of things at that time. * * *"

In *Brymer* v. *Butler Water Co.*, 179 *Pa.*, 231; 36 *Atl.*, 219, 251, the Pennsylvania Supreme Court says that:

"Ordinarily that is a reasonable charge or system of charges which yields a fair return upon the investment."

And, commenting on the preceding decision, another Pennsylvania judicial tribunal, in *Wilkesbarre* v. *Spring Brook Water Co.*, 4 *Lack.* (*Pa.*) *Leg. News*, 367, 380, says:

"It may be contended that the rule adopted by our Supreme Court is somewhat arbitrary. But we know of no better one. The primary basis of any calculator as to the value of a water plant must be the money actually invested by the owners."

In *Public Utility Commission ex rel. City of Springfield, the Springfield Gas and Electric Company*, 291 *Ill.*, 209, the Illinois Supreme Court says.

"It would be equally as unfair to the consumer to fix the rate at a figure which would produce a reasonable income on a value determined by the cost of reproduction new at a time when cost of construction was abnormally inflated, as it would be unfair to the public utility to compel it to serve the public for a rate that would produce a reasonable income on a value determined by cost of reproduction new at a time when the cost of construction was abnormally low. Therefore it cannot be laid down as a rule without qualifications that cost of reproduction new, less depreciation, is the only basis of valuation for rate-making purposes. It is equally true that

> the original cost of construction, less depreciation, cannot be held to be the only proper basis for determination of valuation for rate-making purposes. As we have pointed out heretofore in this opinion, the weight of authority is that every element having any bearing on the situation must be considered in the investigation and then sound business judgment applied to the determination of a valuation that is fair and just to the consumer and the utility. Each case must be considered in the investigation and then sound business judgment applied to the determination of a valuation that is fair and just to the consumer and the utility. Each case must be considered on its own merits and such result of value arrived at as may be just and right in each case. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts. We consider any value a fair value which fair and reasonable men would say ought to be attached to the property, under all the circumstances of the particular case, for the purpose of measuring a return which the public should pay to the owner."

and, later in the opinion,

> "In rate cases the question in determining the value is not how much has been or can be got out of the property, but how much has been put into it, in order that from that fact it may be determined how much may be reasonably taken out of it in the way of net income."

The fundamental fallacy of using reproduction cost as an evidence of value lies in the fact that it is an endeavor to ascertain an *exchange value* for a property which admittedly has *no exchange value* as a whole. The effort is made by professional witnesses, in giving opinion testimony, to add to-

gether the assumed exchange values of all the individual items of the property and then claim that the resultant figure, which cannot possibly be the exchange value of the property under any conceivable competitive conditions of barter and sale, is, nevertheless, the fair value of the property to a monopoly upon which it is entitled to earn a return such as it could not possibly earn if subjected to the free play of competition.

The greatest weakness in the use of the reproduction cost estimate in determining fair value is to decide upon the price period upon which reproduction cost is to be figured. The witness Miller dodged this difficulty by taking prices as of January 1, 1920. *He takes spot prices of that date although it is clear such prices do not represent the price levels of the next year or two any more than they do of the past year or two.* He does not follow the practice promulgated by many experts who attempt to ascertain price levels over a sufficiently prolonged period in order to determine the normal prices. He ignores the fact that January 1, 1920, was an utterly abnormal time in relation to commodity prices of construction, materials and labor.

It is evident that the estimated reproduction cost of the *identical plant* at prices as of January 1, 1920, necessarily exceeds the exchange value or possible selling price of the existing plant because that plant was built over a long series of years and the existing depreciation must be deducted from such a reproduction cost to make the evidence even remotely available for determining value. In the instant case no witness was called for respondent to show the extent of the accrued depreciation in this very old gas plant, although

Miller gave his opinion as to the amount of money that it would be necessary to spend on the plant to put it in a proper state of repair.

Another weakness of reproduction cost, strikingly evidenced in the testimony of Miller, is that it includes an estimate of the cost of all capital items regardless of whether they were contributed by the investors or by the consumers. For example, although the items of overhead expense, represented in the cost of developing respondent's plant and business, have been carried in operating expenses and were thus paid by the consumers, nevertheless, in reproducing a theoretical plant Miller includes enormous sums representing his opinion as to the value of overhead expenses in his estimate of reproduction cost new. There is not one scrap of evidence to show that his estimates of theoretical overhead expenses represent a value contributed by and owned by the investor.

Still another objection to theoretical reproduction cost is that in itself it has no relationship to actuality. It is based on the assumption of conditions that do not exist and never can exist. The result of utilizing it is to give the same exchange value to a losing and inefficient plant as would be given to a profitable and efficient plant. No such value is recognized by economists or practical business men, and no such value can exist unless it is artificially created by governmental bodies authorizing rates to be charged upon this fictitious basis of valuing the property.

Miller's reproducing cost estimate is subject to the criticism expressed by this court in the Minnesota rate cases in the following language:

> "Moreover it is manifest that an attempt to estimate what would be the actual cost of

acquiring the right of way if the railroad were not there is to indulge in mere speculation. The railroad has long been established; to it have been linked the activities of agriculture, industry and trade; communities have long been dependent on its service and their growth and development have been conditioned on the facilities it has provided. The uses of property in the communities which it serves are to a large degree determined by it. The values of property along its line largely depend on it for its existence. It is an integral part of the communal life. The assumption of its nonexistence and at the same time that the values that rest upon it remain unchanged is impossible and cannot be entertained. The conditions of ownership of the property and the amounts which have to be paid in acquiring the right of way supposing the railroad to be removed are wholly beyond reach of any process of rational determination. The cost-of-reproduction method is of service in ascertaining the present value of the plant when it is reasonably applied and when the cost of reproducing the property may be ascertained with a proper degree of certainty, but it does not justify the acceptance of results which depend on mere conjecture."

Simpson v. *Shepard*, 230 U. S., 352.

It is evident that, as an estimate of cost, Miller's figures are wholly theoretical because no one would build an identical plant but would locate one on the waterfront and make it of a design suitable for making gas in the most economical way. No one can conceive of any gas company in 1919, when gas oil was almost unobtainable, building a plant which could not operate unless it secured large quantities of gas oil. Would not any gas company, building a new plant at that time, take into consideration the enormous selling price of the

residual coke that is obtained in the production of coal gas? Would not any gas company, building a plant in 1919, have utilized as a part of its plant the coal gas system for producing generator fuel for use in the water gas units that would comprise the remaining part of any well designed plant?

We have attempted to demonstrate, in later pages of this brief, that the sum required in meeting operating expenses of the present plant is in excess of the sum required to meet operating expenses in a modern, efficient gas plant. The probable earning capacity of this plant is far less than that of a modern and efficient plant; and, if one seeks to establish by the reproduction cost estimate an exchange or competitive value, the plant with the high operating expense is worth much less than a modern plant which can be efficiently operated. In other words, of the two, the plant with the high production cost must have a low earning capacity and necessarily a lower value than the modern plant, accepting the everyday meaning of the word "value."

Perhaps no better condemnation can be found of the reproduction cost method of estimating value than the decision of the Hon. Charles E. Hughes, as referee, in the case of Brooklyn Borough Gas Company *v.* Public Service Commission, et al.

> "While it is important to consider the cost of reproduction in determining the fair value of a plant for rate-making purposes, it cannot be said that there is a constitutional right to have the rates of a public service corporation based upon the estimated cost of the reproduction of its property at a particular time regardless of circumstances. *To base rates upon a plant valuation simply representing a hypothetical cost of reproduction at a time of abnormally high prices due to exceptional conditions would be manifestly unfair to the*

public, and likewise to base rates upon an estimated cost of reproduction far lower than the actual *bona fide* and prudent investment because of abnormally low prices would be unfair to the company. * * * A public service corporation is entitled to be reasonably compensated for its service and the actual cost of its operations must always be taken into consideration in determining whether or not it receives a fair compensation above that cost. But it is a different thing, after cost has been defrayed and the question is as to the compensation to be allowed in excess of cost, to take as the basis for a compensatory return an asserted plant value, far above the actual investment, which is reached merely by expert estimates of a cost of reproduction under abnormal condition. This would result in allowing a public service corporation to take advantage of a public calamity by increasing its rates above what would be a liberal return not only on actual investment but upon a normal reproduction cost in the view that unless it could make an essentially exorbitant demand upon the public it would be deprived of its property without due process of law. The enforcement of a constitutional guaranty does not require the application of any artificial formula. It has constantly been pointed out that the rate base must be what is called 'the fair value of the property' and that as to this there must be a reasonable judgment based on a proper consideration of all relevant facts [citing Smyth *v.* Ames and other cases]. As was said by the Court of Appeals in the case last cited: 'The cost of reproduction less accrued depreciation rule seems to be the one generally employed in rate cases. But it is merely a rule of convenience and must be applied with reason.' * * *" [Italics ours.]

Brooklyn Borough Gas Co. *v.* Public Service Com., 17 N. Y. State Dept. Reprs., 81.

The Interstate Commerce Commission, *in re Advances in Rates, Western Case* (20 *I. C. C.*, 307, 317), said as to value for rate purposes:

> "The trend of the highest judicial opinion would indicate that we should accept neither the cost of reproduction * * * nor the capitalization, * * * nor the prices of stocks and bonds in the market, nor yet the original investment alone, as the test of present value for purposes of rate regulation. Perhaps the nearest approximation to the fair standard is that of *bona fide investment*—the sacrifice made by the owners of the property—considering as part of the investment any shortage of return that there may be in the early years of the enterprise. Upon this, taking the life history of the road through a number of years, its promoters are entitled to a reasonable return. This, however, manifestly is limited; for a return should not be given upon wastefulness, mismanagement, or poor judgment, and always there is present the restriction that no more than a reasonable rate shall be charged."

Even if the theory of the witness Miller is considered of use in arriving at an estimate of the fair value of the property, his figures should be thrown out by reason of the fact that he did not take into account the present condition of the property as compared with a new property. As an indication of his views and the Master's opinion regarding depreciation, we refer to the record as follows:

> "Q. It is your idea that machinery does not wear out, is it?
> "A. No.
> "Q. It does wear out?
> "A. Yes.
> "Q. Automobiles wear out?
> "A. Surely.

"Q. And boilers wear out?

"A. Surely.

"Q. Everything wears out?

"A. If not properly maintained it will wear out. Anything that is properly maintained does not wear out. If it is not properly maintained it goes.

"Q. Do you want to say that if properly maintained it does not wear out.

"A. Yes.

"Q. Never does?

"A. Never does. There may not be any original part after a series of years, but it will be the same form, the same machine. You can replace part by part.

"Q. Have you ever heard of any court or any writer adopting your theory, Mr. Miller?

"Mr. Ransom—Objected to as absurd.

"The Master—Objection sustained.

"Mr. Ransom—This court has and the Supreme Court has.

"Q. Along these lines?

"The Master—Objection sustained.

"Mr. Chambers—Exception.

"Q. Are you familiar with the different rules laid down by the courts in fixing valuations for rate making purposes?

"Mr. Ransom—I object to that.

"The Master—Objection sustained.

"Mr. Chambers—Exception. Would you mind stating the grounds of your ruling?

"The Master—No, I won't state it.

"Mr. Chambers—Exception.

"The Master—It must be apparent to any reviewing Court. You are cross-examining this witness on a question of fact. We can leave the law out of it, so far as this witness is concerned. He has not qualified as a lawyer.

"Mr. Chambers—I thought I was cross-examining on a theory.

"The Master—I am not talking about theories, I am talking about facts. He states this as a fact.

"Mr. Chambers—It is a fact that they don't wear out?

"The Master—Yes.

"Mr. Cummings—He is an expert witness testifying to a theory.

"The Master—No, he is testifying to a fact.

"Mr. Cummings—We should be allowed to prove that his theory has never been approved by any Court.

"The Master—Go ahead.

"Q. Has this company, the complainant company, ever removed any mains or any other part of their plant because it was worn out?

"A. Not as far as I know.

"Q. Did they remove some purifiers?

"A. Yes.

"Q. Why?

"A. Because they were too small and in the way of the generator house which they were extending. It was cheaper to remove those purifiers and extend the generator house over that site, and put in new purifiers, than it was to build a new generator house. It was purely a question of economy. The purifiers were too small.

"Q. They did not wear out?

"A. No.

"Q. They were not worn out?

"A. No, they were not. Purifiers do not wear out.

"Q. Did they remove any engines because they were worn out?

"A. No.

"Q. Not any?

"A. No.

"Q. Did they not remove any meters because they wore out?

"A. No. Meters have corroded, I have no

doubt. They have in most situations that I have been in, where they are not cared for.

"Q. Then the company did not care for those properly?

"A. No.

"Q. Bad management, was it?

"A. No.

"Q. What kind of management was it?

"A. Very good management.

"Q. Not to care for them?

"A. Very good management in this company.

"Q. Not to care for them?

"A. No.

"Q. Well, I don't know what you mean by 'No.'

"A. No, I don't think you do. The facts are that there are certain exposed places in which gas meters are set. The company cannot go out and build enclosures for those meters. They set meters there, and in some cases they rust. Now, they do not care for them in one sense. That would require probably bringing them in every three months and repainting them. They leave them out there several years, and when they come in they are rusted.

"Q. Are those the only meters they have scrapped that you know of?

"A. As far as I know. They have scrapped very few meters, and I never made any elaborate investigation to get at the cause of the few meters that they have scrapped.

"Q. You say you dug up some mains?

"A. I did.

"Q. And those I suppose you say, as you said in the Consolidated case, would last forever?

"A. They will. There is no limit as far as I know on the life of a cast iron main.

"Q. You don't think they would ever want to take them out because they were inadequate as to size?

"A. I think in many cases—in some cases, not many, but in some cases they have abandoned pipe because it was inadequate as to size, yes, and I have no doubt they will do it again. Flushing is growing rather rapidly, and in the history of all gas companies they abandon pipe because it becomes inadequate as to size.

"Q. Are you acquainted with the term known as improvement in the art?

"A. I have been in the business thirty years, and I have made some inventions in connection with it, so I think I should.

"Q. Would they not replace or displace some of their apparatus on that account?

"A. The whole plant has been rebuilt on that account, and so I take it it may be done again. This was originally a coal gas plant.

"Q. And it is your idea, your testimony, that all of this plant and apparatus, mains and services and meters have their full value from the time they are put in there—have a value equal to cost, we will say, up to the time they are removed?

"A. They have a value greatly in excess of cost.

"Q. Up to the time they are removed?

"A. Greatly in excess of the cost at the present time.

"Q. Right up to the time they are removed?

"A. At the present time this plant has a value greatly in excess of the cost.

"Q. That is to say, here is a main that the company finds is inadequate because it is not large enough, and they replace it by a larger sized main. You say that that main that is replaced has a full value up to the moment when it is displaced by the larger one?

"A. If it is in good condition up to that time, yes.

"Q. Those meters that are rusted, they had a value equal to their cost, did they?

"A. As long as they were performing the

service I have taken them at their value. Every plant must have certain replacements, and parts are continually replaced. The system as a whole has its full value up to the time that it is shut down and abandoned."

(R-842-845, [1266-1271].)

The Master, in his opinion, proceeds upon the theory that the predecessor of the respondent actually paid for "franchises and rights," "preliminary and development expenses," "going value," and "undistributed structural items" the enormous amount of $390,380.06, and that these elements actually cost the said predecessor, Newtown and Flushing Gas Company and its *predecessors*, and were worth on August 1, 1904, at least that sum. He included that amount in his final figure of value, $1,655,877.94. There is no evidence to warrant this conclusion of the Master, and, in fact, no proof was offered that the franchises and rights, overhead expenses, or any of the intangibles, actually cost the respondent or its predecessors one cent over and above the amounts contributed by the consumers. This lack of proof was evident to the Master during the trial, as is shown by the following:

"The Master—Paragraph 7 of the complaint alleges that the said stock of $600,000 and some of the said bonds $816,000, were duly issued in payment of the reasonable value of the plant and the franchises purchased by your orator. As I understand it no proof was submitted of that allegation.

"Mr. Ransom—We have not regarded it as any part of the complainant's direct case to prove the cost of this property of this company. We are standing upon our proof of present value as we did in the Consolidated case." (R. 822 [1232].)

That respondent failed to offer proof of the intangible cost is further shown by the following:

> "Mr. Ransom—* * * The complainant had not as yet offered proof of the cost to the company, the amount which the company paid, in 1904, for the property which it at that time acquired" (R. 1235 [1951]).

In addition, we quote the following:

> "Mr. Ransom—* * * Might I just say a word that I started to say when I was interrupted. The complainant in this case, of course, has stood upon its direct case, upon the proof which it had offered, as to the present value of the property, based upon cost to reproduce new" (R. 1236 [1952]).

The basis for the Master's findings on the value of the property are apparent from his opinion, from which we quote as follows:

> "At the time of the merger of the Newtown and Flushing Gas Company into the New York and Queens Gas Company, the total property and assets of the former (exclusive of working capital) were carried on the books of the former at $694,678.00. Since that time, plant and equipment so acquired by the complainant on August 1, 1904, has been retired, at a book cost totaling $24,189.14. The tangible property acquired on August 1, 1904, and still in service, is agreed to have cost before August 1, 1904, and to have been worth on that date, the sum of $250,108 exclusive of franchises and rights and "going value" and the undistributed structural items under consideration. The deduction of these two items from the book total of $694,678.00 leaves only $390,380.86 as representing the book cost to the Newtown and Flushing Gas Company of the franchises and rights, the 'going value,' and the undistributable structural items here-

inbefore mentioned. There is sufficient evidence to warrant my conclusion upon the present record that the item of 'franchises, good will, etc.,' on the books of the complainant and its predecessors, covered, among other things, preliminary and development expenses and the various other items which Mr. Miller puts in a total of $320,350, and also the cost of 'franchises and rights,' which Mr. Miller puts in at $500,000; and I think it will be fair for me to say, for the purposes of the present case, that for all of these items just referred to, the New York and Queens Gas Company actually paid no more than their book cost to the Newtown and Flushing Gas Company and its predecessors, viz.: $390,380.86, and that these elements had cost the Newtown and Flushing Gas Company and its predecessors, and were worth, on August 1, 1904, at least that sum."

Respondent owned no property, in 1904, other than that acquired by it from the Newtown and Flushing Gas Company, August 1, 1904. There is no dispute on the fair cost at that time of the tangible property so acquired by respondent. It is agreed that it *at that time* amounted to $304,297.00; but it is disputed that said property has not depreciated. On the books of the predecessor, in 1904, there appeared a total book cost for that identical property, of $694,678, so that by deducting therefrom the agreed-upon cost of the tangible property we ascertain that said book figure contained the sum of $390,381.00 which is unexplained in the record.

We contend the Master was not warranted in concluding that there is sufficient evidence to justify the finding that the item of "franchises, *good will,* etc.", on the books of the respondent and its predecessors covered, among other things, preliminary

and development expenses and the various other items which the expert witness, Miller, put in his appraisal at a total of $320,350, and that these items also covered the cost of "franchises and rights," which Miller put in at $500,000. There is no justification for the opinion of the Master that for all of the aforementioned intangible items the respondent "actually paid no more than their book cost * * * $390,380.86, and that these

> "elements had cost the Newtown and Flushing Gas Company and its predecessors, and were worth, on August 1, 1904, at least that sum."

The record is wholly deficient in proof as to the cost or value of the franchises, and there is no evidence to lead the Court to believe that any sums were paid for franchises to the State or to the local authorities in the territory where respondent operates. This fact is apparent from the following excerpts from the record:

> "The Master—What proof is there in the record as to franchises?
>
> "Mr. Ransom—The books.
>
> "The Master—Only that.
>
> "Mr. Ransom—So far, and the franchise documents.
>
> "Mr. Neumann—What do the franchise documents show, the price?
>
> "Mr. Ransom—They speak for themselves" (R. 818 [1225]).

and again at page 1236,

> "The Master—Was there proof offered of the cost to reproduce the franchises?"
>
> "Mr. Ransom—Well, of course, the Miller exhibit in that respect related to the tangible property and the so-called non-distributed

structural cost in connection with the tangible property.

"Mr. Neumann—I understood Mr. Miller especially excluded franchises from reproduction cost.

"The Master—What I am trying to get at is, what basis have I for valuing franchises?

"Mr. Neumann—None at all.

"The Master—I am asking Judge Ransom something, Mr. Neumann.

"Mr. Ransom—I take it that from all of the evidence in this case, the testimony of Miller which related to that point, the evidence shown by the books, the evidence as to the acquisition of the property in 1904 and what was paid therefor, the judgment of the Board of Directors as to the value to be put upon those so-called intangibles—it is not a simple question, it is not a matter which has been adjudicated, it was the situation as to the value of the franchises and rights in the Consolidated case.

"The Master—That is what bothers me.

"Mr. Ransom—I am fully aware that it is a difficult question" (R. 1236 [1953]).

There is an absolute prohibition against the capitalization of franchise rights in the Public Service Commission Law under which respondent operates:

> "§69. *Approval of issues, stock, bonds, and other forms of indebtedness.* * * * Provided, however, that the Commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right. * * *"

In his report to the Court below the Master said, in his findings (No. 34) that the fair value of the property on which respondent is entitled to have a fair return, exclusive of working capital, is at least the sum of $1,520,877.94, and his figure comprises the following items:

1. "Tangible and intangible property acquired at the end of July, 1904, and still owned and used by it on January 1, 1920, exclusive of working capital"...	$670,488.86
2. "Additional land plant, apparatus, mains and other property, less withdrawals, since August 1st, 1904, and exclusive of working capital".....	850,389.08
"Total	$1,520,877.94

The defendant District Attorney, one of the appellants herein, does not propose to burden this Court with a full discussion of the cost and value of the property or to set up figures representing the rate base, as that subject has been fully covered in the brief submitted by the Attorney General to this Court in the instant case. With his views on the subject we are in entire accord.

We contend that the Master erred in finding (No. 34) that respondent's actual investment in the property, and the fair present value, is at least $1,655,877.94. Apart from the error he made in including in the investment a huge amount for franchise value, overhead expenses and other theoretical costs, as already set forth, the Master admitted that he made no deduction for depreciation "in whatever way calculated."

In a later part of this brief we deal with this matter of depreciation in detail.

We claim that respondent wholly failed to sustain the burden imposed upon it of proving the value of the property used and useful in the public service, and for that reason alone the decree should be reversed.

V.

The failure of the Master to take into account depreciation was in violation of the principles laid down by this Court.

The Master in his opinion (R. 57) states:

> "In determining that the complainant's property has a fair present value to at least the amount of complainant's actual investment therein as found by me, viz.: at least $1,655,877.94, I have made no deduction for what is termed 'depreciation' in whatever way calculated."

His reasons for refusing to make the deduction for depreciation are not very clearly presented (R. 57, 58, 59), but apparently are:

1. That the property has been well maintained and furnishes service as if new, and

2. That in respect of a very large proportion of gas property, there is no ascertainable "life expectancy."

As for the first reason, the Master was manifestly led into error by confusing the question whether the property furnished service as good as new, with whether the property itself was as good as new. The property might be furnishing service as

good as new, and yet its various constituent parts might be within a few years of necessary supersession, so that it would manifestly not be as good as new. The age and particularly the remaining life of the constituent parts, i. e., their remaining usefulness, determine whether they are as good as new or whether a deduction should be made for depreciation or impairment of gross capital.

As to the second point, however difficult it may be to ascertain the life expectancy of the remaining usefulness of the constituent parts of the property, it is nevertheless a fact which must be determined in the best way possible to make the requisite estimate of actual or unimpaired investment. Structures, apparatus, mains and equipment actually suffer wear and tear or are out of date to a substantial extent so as to affect their remaining period of usefulness, or have become inadequate for present requirements and will have to be replaced sooner than would otherwise be necessary. The extent of the impairment must be ascertained and deducted from cost new to establish the net capital devoted to the public service.

> "The cost of reproduction is not always a fair measure of the present value of a plant which has been in use for many years. The items composing the plant depreciate in value from year to year in a varying degree. Some pieces of property like real estate for instance, depreciate not at all, and sometimes on the other hand, appreciate in value. But the reservoirs, the mains, the service pipes, structures upon real estate, standpipes, pumps, boilers, meters, tools and appliances of every kind begin to depreciate with more or less rapidity from the moment of their first use. It is not easy to fix at any given time the amount

of depreciation of a plant whose component parts are of different ages with different expectations of life. But it is clear that some substantial allowance for depreciation ought to have been made in this case."

City of Knoxville *v.* Knoxville Water Co., 212 U. S., 1 at page 10.

The following quotation is also to the point:

"In the deduction made by the referee for expenses there is an item of $3,789.37 under the head of maintenance and it is clear that this does not include a proportionate allowance on account of the general depreciation which will ultimately require replacement. We suppose that judicial notice may be taken of the fact that in the conduct of many industrial enterprises *there is a constant depreciation of the plant which is not made good by ordinary repairs, which, of course, operates continually to lessen the value of the tangible property which it affects.* The amount of this depreciation differs in different enterprises, but the annual rate is usually capable of estimate and proof by skilled witnesses. No corporation would be regarded as well conducted which did not make some provision for the necessity of ultimately replacing the property thus suffering depreciation; and we cannot see why an allowance for this purpose should not be made out of gross earnings in order to ascertain the true earning capacity."

Peo. *ex rel.* Jamaica Water Supply Co., *v.* State Board of Tax Commrs., 196 N. Y., 39, at p. 57.

The Master's confusion is indicated by the statement that the "loss due to supersession cannot be said to have accrued during the period when the superseded unit was in service. It occurred when supersession took place. It became a proper charge

against the economies to be realized therefrom." He is palpably mistaken in this view, which in the past has been responsible for a large proportion of present over-capitalization and financial difficulties of public utility companies. It is this view which has charged at every stage the cost of reconstruction to capital account of street railways and other public utilities, ever increasing the interest burden of the properties and finally causing financial collapse.

Plant and equipment do not become obsolete or inadequate in a day. The obsolescence and inadequacy are factors which develop gradually, and their growing presence is usually apparent. When, for example, mains are placed in service, they are then sufficient for the need of the community and the expected service for the indefinite future, but if thereafter the population increases and a constantly increasing requirement is placed upon the mains, they become gradually inadequate and in course of time the fact appears clearly that sooner or later they must be replaced by larger facilities. *The supersession therefore is a gradual accrual and impairment, and at any time in ascertaining the amount of actual investment, it must be taken into account by deducting a proper amount for the depreciation from the cost new of the mains to fix the remaining capital value.*

The following decision is of interest:

> People *ex. rel.* Queens Co. Water Co. *v.* Woodbury, 67 Misc., (N. Y.) 490, at p. 493.
>
> "It would be a false system of accounting which did not take into consideration the destruction of the value of property from whatever cause, so long as that cause is in constant

operation and can be foreseen with reasonable certainty. A loss due to functional depreciation is incurred in the operation of the business, and, therefore, should be charged as an expense of operation. (Citing Knoxville case, *supra.*) Machinery which today is sufficient for its purpose may become scrap iron through the development of inventions; and so pipes and mains, sufficient for a system of water supply as it now exists, may become valueless through changes in the conditions under which it is used. Because an iron pipe will lie fifty years in the ground without disintegration, it does not follow that the pipe will be of value to the company for fifty years. The conclusion reached as the result of actual experience seems to be more reliable. I am, therefore, inclined to approve the estimate of the relator as to the depreciation in preference to that of the city."

The Court of Appeals of this State affirmed the order in *Brooklyn Heights R. R. Co.* v. *State Board of Tax Commissioners*, where the lower court in 69 Misc., 646, at page 656, says:

"As surely as humanity travels to the grave, the machinery and equipment of a public service corporation travel toward the scrap pile. The plant and structures depreciate in less degree but as certainly. This is ordinary depreciation.

"But another form of depreciation in the case of properties here being valued takes place. The machinery or equipment, while still capable of years of service, becomes inadequate to do the work demanded—not only by the corporation, but by the law itself. In the case particularly of electrical machinery, the type becomes obsolete by reason of invention and increasing public demands frequently require in aid of safe and adequate service that the obsolete appliance or equipment give way

to the new. Property which in itself may be almost indestructible in the hands of a public service corporation may be required to be replaced by the requirements of the public which the corporation serves. These requirements for change of plant, structure and equipment and their replacement, can be and are made by the State itself. Some of these changes are capable of definite ascertainment. Others are not so readily ascertainable. Many of them, however, may be provided against for the future by setting apart from gross earnings a reasonable sum to create a reserve against the day when they shall come."

Whether or not the company accumulated a "depreciation reserve" is of no consequence. If it did, it followed sound principles of finance and actually maintained its full investment according to the intent of the law against impairment of capital.

But if not, the depreciation is nevertheless real and must be taken into account in determining the actual investment. In the first instance, the unimpaired capital is equal to the gross cost of the property, less the amount of the depreciation reserve, and this net figure is equal to the original amount of money devoted to the enterprise by the stock and bond holders. In the second instance, the company has suffered an impairment of capital and the actual investment is thus the cost of the property, less the estimated depreciation. In either case the actual investment is the cost less deduction for depreciation covering wear and tear, obsolescence, inadequacy and all other factors of deterioration and impairment.

> "If, however, a company fails to perform its plain duty and to exact certain returns to keep the investment unimpaired, whether this is the result of unwarranted dividends upon

> overissues of securities, or of omission to exact proper prices for the output, the fault is its own. When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return cannot be enhanced by a consideration of the errors in management which have been committed in the past."
>
> Kansas City So. Ry. Co., *v.* U. S., 231 U. S., 423, at p. 448,

quoting approvingly the court's former decision in City of Knoxville *v.* Knoxville Water Co., 212 U. S., 14.

In this case, as is demonstrated elsewhere, the respondent earned a net income sufficiently large to set aside an amount sufficient to cover depreciation; in fact the respondent did up to 1914 set aside moneys for renewal and contingency, which fund it converted into a new contingency fund by resolution of the Board of Directors, on November 16th, 1915 (R. 703). If the respondent has failed to set aside a sum sufficient for a depreciation reserve it has deliberately failed to compiy with the requirements of the uniform system of accounts prescribed by the Public Service Commission, the decisions laid down by this and other courts and the sound principles of financial management universally recognized and incorporated among other places in the system of accounts prescribed by the Interstate Commerce Commission.

> "This in effect ignores depreciation—an inevitable fact which no system of accounts can properly ignore." Kansas City So. Ry. Co., 231 U. S., 423 at 449.

The Master, referring to the testimony of the witness Hines (R. 59) to the effect that the de-

preciation reserve should be accumulated and invested in property and that in such a case when the funds are needed for renewals and replacements they would be provided by issuing securities against construction work which has been done out of depreciation funds, states that:

> "The obvious fact that having deducted the amount of reserve temporarily invested in property from that on which he proposed the company should be allowed to earn a return, has, to all intents and purposes, destroyed the earning power of such property and investments; that therefore he could not issue any securities against such property, there being no earnings therefrom with which to pay interest on securities; that the reserve could never, therefore, be availed of for the purpose for which it was alleged to have been created, and that it would be, in fact, as if it had never been created. Thus he not only failed to sustain his contention that a 'depreciation reserve' was necessary for the purposes which he alleged, but he proposed to treat the reserve as if he himself believed it to be both unnecessary and ineffectual, except for the purposes of justifying a deduction from the complainant's investment."

By this statement the Master seemed to consider that he demolished completely the contention for the deduction of depreciation. But as a matter of fact the discussion is entirely besides the point, because as heretofore shown the amount of depreciation does not depend upon whether a reserve has been kept. The Master, however, shows himself singularly confused in this treatment of the matter and clearly does not grasp the effect of the witness' testimony. If a "depreciation reserve" has been accumulated and the funds expended for property, then as an arithmetical matter the total

cost of the property including the invested reserve is by so much greater than the original investment; so that if the amount of the reserve is deducted from the total cost the full actual investment is shown; and if a return is allowed on the amount the earnings will be adequate to meet the requisite interest and dividend payments. This is so elementary as to require apology for its statement. Then, when renewals and replacements are made, the necessary cash, since the depreciation funds have already been expended for property, may be obtained through the issue of new securities. This process thus results in a net additional investment, upon which a further return would be allowed, and the earnings would be sufficient to meet the new interest and dividend charges. At this stage again, after the old property has been taken out of capital account and deducted from the depreciation reserve, the net actual investment would be equal to the total cost of the property less the balance of the depreciation reserve—and none of the conclusions of the Master are applicable to the situation which he clearly did not comprehend. But suppose no depreciation reserve has been accumulated, nor a substitute of so-called surplus, then all additions to property must be financed out of new security issues with corresponding increases in gross investment. Now suppose substantial supersessions take place, resulting in retirements of old property and installation of corresponding new facilities. Then, clearly, new securities must be issued for the replacements, resulting in a greater showing of gross investment, and if the retired property is taken out of capital account it stands as a manifest impairment of capital; the total securities will be correspondingly in excess of even the

total gross cost of the property left in service. The depreciation reserve is thus necessary not only to meet the actual retirements of plant and equipment but to make provisions for the retirement as the factors limiting their life gradually work their effect. If there is no such accumulation of reserve, and no corresponding other allowances, there is inevitable impairment of capital although not shown directly by the accounts, and the determination of actual investment thus requires the computation of depreciation to be deducted from the gross cost of the property.

The Master is equally wrong in his final conclusion that if a depreciation reserve is accumulated its effect is to make piecemeal purchase of the property—"really asking the consumer to pay for the plant instead of paying a return on the investment" (R. 59). But, the accumulation of the reserve adds *pari-passu* to the gross cost of the property and therefore does not diminish the contribution to the total cost by the security holders. The reserve simply provides for the proportion of the total cost of plant and equipment in use properly chargeable to past operation whether for physical wear and tear or for obsolescence and inadequacy which have already appeared and have shortened the remaining life time of the constituent parts. At any time, therefore, the total cost of the property, less the depreciation reserve, is equal to the actual investment by the security holders; there is never a diminution, no piecemeal purchase, and the return on the investment is not affected. The accumulation of the reserve simply takes out of earnings the proper allowance for the complete maintenance to prevent impairment. It does not result in amortization or purchase of capital.

To bolster up the theory claimed by the respondents through the witness Miller and sustained by the Master and the Court below, resort is necessarily had to the proposition that there is no depreciation. Mr. Miller (R. 843), testified as follows:

> "Q. They don't wear out? A. No.
> "Q. They were not worn out? A. No, they were not.
> "Q. Purifiers do not wear out? A. No.
> "Q. Not any? A. No."

Respondent claims that there should be no allowance for depreciation whether the basis be original cost, book cost or reproduction cost new. Mr. Miller, testifying with reference to a Ford Runabout Automobile purchased in 1913, took the position that not alone was the respondent entitled to a return upon the cost to reproduce new but made no allowance for depreciation whatsoever, despite the fact that the car had been in use for seven years. He did this presumably upon their theory that replacements of parts could be had from time to time, the automobile could continue in service forever, implying therein two propositions, (1) that the Ford Car could continue to give service as good as new forever, and (2) that its value was therefore the value of a new car. The following is his testimony on that point (R. 838):

> "Q. This Ford Runabout Model 1912, how old was that? A. That was bought in 1913.
> "Q. So that the Ford is seven years old, and you put a price of $546.50 on it? A. Yes."
> "Q. That is reproduction? A. Yes.
> "Q. That is what they paid, is it, in 1912? A. Yes, in 1913."

The witness Miller testifying with reference to other automobiles in use by respondent (R. 836),

when pressed as to the proposition that cars would eventually wear out did admit that they would, answering as follows:

> "A. Automobiles will wear out, certainly." (R. 836 [1257])

and attempted to justify the figures he gave on the ground that the original cost of these automobiles was less than the reproduction cost, thereby evading the issue as to whether or not there was depreciation. The record thus discloses his admission in this instance that automobiles do wear out and on the other hand that purifiers do not, as disclosed in his testimony above set forth.

It is submitted that the decisions of this Court and other courts, below set forth, have amply sustained the common experience of mankind that all equipment sooner or later gives out and becomes useless for the service it is intended to render and finally have no other value than that of mere scrap or junk.

In *People* ex rel. *Kings County Lighting Company* v. *Willcox*, 156 App. Div., 603, 616, after quoting a portion of the opinion in *Knoxville* v. *Knoxville Water Company*, 212 U. S., 1, 13, the Court said:

> "This quotation completely answers the contention on the part of the relator that no allowance should be made for depreciation because the evidence is that the efficiency of the relator's plant continued to be equal to 100 per cent.; since it is manifest that deterioration to some extent must precede the loss of efficiency, and the mere fact that the efficiency remains stable does not necessarily contravene the other fact that deterioration has set in.
>
> "In the case at bar the Commission followed the rule laid down by the Court of

> Appeals in *People* ex rel. *Manhattan Railway Company*, vs. *Woodbury*, 203 N. Y., 231, as to the method of estimating the depreciation and the rule indicated by the Knoxville case of deducting the thus ascertained amount of accrued depreciation from the cost of reproduction new to ascertain the present value of the tangibles in use. We think this entirely proper, especially in view of the fact that it allowed appreciation in land values."

Respondent's witness O'Connor, testifying as to the value of buildings owned by it, was questioned as to deterioration. He was compelled to go so far as to admit deterioration, though he would not admit that they would deteriorate to such an extent that "they would not be any good at all" (R. 804). However, the Master despite his subsequent opinion did comment as follows (R. 804):

> "The Master—It depends on how a building is cared for as to how long it will last. If you take care of a building properly it will last 50 or 60 years."
>
> To which O'Connor responded as follows:
>
> "The Witness—And longer than that too."

Inasmuch as the judgment of the court below is based upon the estimated cost of property with no deduction for accrued depreciation, it should be reversed.

VI.

Appellants have not had a fair trial.

In the case of *City of Knoxville* v. *Knoxville Water Company*, 212 U. S., Mr. Justice Moody, writing for the Court, said (p. 8):

"There can be at this day no doubt, on the one hand, that the courts on constitutional grounds may exercise the power of refusing to enforce legislation, nor, on the other hand, that that power ought to be exercised only in the clearest cases. The constitutional invalidity should be manifest, and where that invalidity rests upon disputed questions of fact the invalidating facts must be proved to the satisfaction of the court. *In view of the character of the judicial power invoked in such cases it is not tolerable that its exercise should rest securely upon the findings of a master, even though they be confirmed by the trial court. The power is best safeguarded against abuse by preserving to this court complete freedom in dealing with the facts of each case.*

"Nothing less than this is demanded by the respect due from the judicial to the legislative authority. It must not be understood that the findings of a master confirmed by the trial court are without weight, or that they will not, as a practical question, sometimes be regarded as conclusive. All that is intended to be said is, that in cases of this character this court will not fetter its discretion or judgment by any artificial rules as to the weight of the master's findings, however useful and well settled these rules may be in ordinary litigation. We approach the discussion of the facts in this spirit."

The Master throughout the trial was very hasty and impatient and evidenced this attitude almost exclusively towards appellants' counsel. The record discloses reference by the Master to the extreme value of his time and his desire to shorten the proceeding so as to enable him to attend to his business affairs elsewhere. The following excerpts support this statement:

"The Master—* * * Counsel in this case from now on must not assume that time is go-

ing to be occupied. They must have the witnesses here. My time is getting too valuable and too short, I cannot afford to do it. Every minute counts with me now" (R. 1011).

During the discussion as to whether or not tax reports were competent proof as to the value of the real estate, some little discussion ensued, whereupon the Master broke out with the following:

"The Master—If you are going thus to keep me going until one o'clock you need not waste any more time with it

"Mr. Newman—No, I am not.

"The Master—*Because I can go out and talk business for a few minutes*, if that is what you are driving at. But there is no sense in keeping up the discussion" (R. 1013).

And again at page 803:

"The Master—We have had that, go on.

"Mr. Chambers—Let him say.

"The Master—You are going to finish with him before one o'clock; now go ahead."

His impatience was such that he seemed to have advance knowledge as to what question counsel was to put to the witness, as appears from the following:

"Mr. Neumann—Just one more question—I don't know whether it is covered.

"The Master—Sure, it is covered.

"By Mr. Neumann—Do you know where the testing station of the New York and Queens Gas Company is?

"The Master—Yes, that is covered. It is in the same building, on the same riser, the same case all right. Mr. Wacker, step down."

We deem it our duty to call the Court's attention to the Master's attitude to the statutory law.

His preconceived ideas were boldly expressed in the following:

> "Mr. Neumann—May I put this objection on the record here, that the statute requires this company to furnish 22 candlepower gas; that means very (obviously every) part of the day.
>
> "The Master—I think it is a perfectly stupid, silly statute." (R. 1117.)

The Master's irate attitude and lack of judicial temperament were exhibited when Mr. Tobin for the Attorney General, offered proof as to violations of the statutory requirements as to candle power between the years 1914 and 1918, which the Master declined to accept on the ground that he would "not go back as far as that" (R. 1016). The following colloquy ensued:

> "The Master—Nonsense; you do not expect me to find a deliberate violation of law with a record like that?
>
> "Mr. Tobin—For the four years between 1914 and 1918 the average shows a violation of law.
>
> "The Master—Oh, you won't get anywhere with me on that stuff. Make your record."

The Master did not hesitate in the midst of the trial to embarrass counsel by characterizations of counsel's line of questions as stupid, and to unduly restrict and restrain counsel from making what he deemed to be proper objections. The following colloquy is typical:

> "Mr. Newman—Objected to on the ground it is incompetent, irrelevant and immaterial, based upon an assumption, and hypothesis and a guess, and no proper foundation laid for it.
>
> "The Master—I do not believe you know what you are talking about.

"Mr. Newman—What was the Master's comment?

"The Master—It is quite apparent to me you don't know what you are talking about when you object to a question of that kind.

"Mr. Newman—Exception.

"Mr. Cummings—You don't know what it is going to lead up to. That is all.

"The Master—I am trying to indicate to you; I am trying to cross-examine this witness."

The Master's air of superiority and his criticism of counsel, is illuminated by the following extract:

"The Master—The trouble, Mr. Tobin, is that you are about twenty-five years younger than I am, and you don't recall the trouble that these companies had to get the people away from coal ranges and to the use of gas, and once having gotten them to use gas you don't need to do any more to get them to use it. That is what I am trying to bring out from Colonel Miller. I have not seen coal ranges to speak of in that Flushing section in fifteen years.

"Mr. Tobin—The particular point about it, if the Master please, is that there is considerable to be read into the record here, capital expenditures which are not capital expenditures.

"The Master—I am not worrying about that.

"Mr. Tobin—Well we are worrying about it.

"The Master—I am trying to demonstrate the proposition in behalf of the defendants that there is not any going value for me to allow in this case, and you are not letting me do so. It is a perfectly stupid line of objections; there is no sense to it at all. I am asking him whether there was in 1865, 1866 or 1870, and I am trying to eliminate it since 1904, and you gentlemen will not let me. It seems to me my

duty in this case to get this record in such shape that it will clearly present my views on this question of going value, and I am going to do it. Both sides can keep on objecting as long as they please.

"Mr. Newman—We are endeavoring to make the record.

"The Master—You are simply lumbering up the record with a lot of useless objections."

(R. 865.)

Further on (R., 866), Mr. Newman for the Public Service Commission objected to a question put by the Master, whose purpose it was to elicit the fact that in a section like Douglaston "where houses are going up" and where they have been pressing for the extension of gas mains to get gas "no expenditure of money is required to get them to use gas," his objection was to the entire line of questions of this sort. The Master said as follows:

"You can go on and object as often as you like and make yourself as ridiculous as you please. The objection is overruled."

To which exception was duly taken.

Another illustration occurs in the Record at page 798:

"The Master—As a matter of fact the bill on its face shows that there is some tax unpaid for the year prior to 1919. It may be a special franchise, it may be a real estate tax, but it has nothing to do with his testimony.

"Mr. Newman—And we had the officers of the company here who could have identified that and we could have gone into that question; we are deprived of our rights to cross-examine on that point and put it on the record.

"The Master—That is nonsense.
"Mr. Newman—Exception."

While endeavoring to bring out the strong interest of the witness Alrich, who testified that he was employed by respondent and that his salary was paid by the Consolidated Gas Co., the parent company of the respondent, and that the said Alrich had previously testified in another case that he devoted all his time to the Consolidated Gas Co., the Master broke out with the following impetuous statement:

> "The Master—He is very much interested; he has already stated that he is employed by the Consolidated Co., which company owns all the stock of the New York & Queens Co., and he feels that this is part of his employment and he is paid by his employer. Now, if you want to show that he has been convicted and had been to jail, go ahead, if you think that will have any bearing" (R. 499).

The Master's lack of judicial poise and his injudicious use of language is evidenced in another outburst:

> "Q. Then suppose I present another situation where a half dozen men in this room have gotten suddenly crazy and want to own the gas business, and they want this particular plant like Flushing; for some reason or other they think there is a great future to it—and the New York & Queens Gas Company and its trustees know the situation. Now, they are not going to sell it for what it is going to be replaced for, ordinarily, are they, to these crazy people that are going into this business?" (R. 1422).

The Master was unreasonable in the demands made upon counsel for the Public Service Commis-

sion to immediately proceed to cross-examine Mr. Allison, who presented (R. 1103-1117) his views on whether or not depreciation should be deducted for purposes of rate making. The following colloquy occurred:

> "The Master—I see no reason for postponing this cross-examination. *If I were counsel for the defendants I could proceed with it very easily.*
>
> "Mr. Newman—I will tell the Master that I am not prepared to go on, and if I am forced to go on I will have to put myself in the hands of the Master and bow to his wishes, and respectfully except to his forcing me to go on at this time with the cross-examination.
>
> The Master—*Well, I direct you to.*
>
> Mr. Newman—I take an exception."

Thereupon Mr. Newman proceeded as best he could to cross-examine the witness on a very technical matter which required careful analysis.

The Master's arbitrary attitude towards appellants' counsel and his exacting demands in the quality of the proof when offered by them, is evidenced by his requirement that official records of tests made by inspectors of the Department of Water Supply, Gas and Electricity were not competent proof unless substantiated by the testimony of the inspectors themselves (R. 1030). Further, when the testimony was offered, the Master was critically careful about the order of the proof and insisted that Mr. Wacker, the official who made the gas tests, was to first testify and then Mr. Birdsley was to corroborate Mr. Wacker's testimony, the former having been present when the latter made his tests. The Master had apparently definitely made up his mind in advance as

to the unreliability of tests for candle power. At page 1031 occurs the following:

> "The Master—Yes, I am going to have Mr. Wacker get on this stand and I am going to have him testify as to what he did, and I am going to bring out from Mr. Wacker, *as I did from Mr. Wacker on the Consolidated trial, that it is a matter of human judgment subject to human error.* You might as well understand it now as any other time."

It would seem that if there be any merit in this view it was the duty of counsel for the respondent to handle the affairs and interests of the company at the trial, particularly as it was represented by able and distinguished counsel, who had gone through a long trial of the Consolidated case, and who was undoubtedly wholly conversant with the testimony in that case, as referred to by the Master. This was unjustified intrusion and taking the advocate's part.

The Master evidenced his extreme impatience and intolerance and unduly interfered with cross-examination, as is evidenced in the following:

> "A. Oh, I do not recall just what year it was.
>
> "Q. About four or five years ago?
>
> "A. I think this one is No. 2.
>
> "Q. And how many years does this cover?
>
> "A. I cannot tell you all that without looking at it. It is in my testimony before when I was looking at the books.
>
> "Q. Would you mind looking at it: it is right in Court here?
>
> "The Master—*I'm not going to waste time on that;* I will not let the witness look at it.
>
> "Mr. Neumann—Does your Honor by rule mean—— What is that?
>
> "The Master—I will not let witness look at it. Look at it yourself."

The Master's arbitrary attitude towards the counsel is well illustrated in the following colloquy (R. 525):

"The Master—I want to get my records straight today. There is no appearance by the Queens County District Attorney, is there—no counsel representing the District Attorney of Queens County?

"Mr. Chambers—You have ruled him out apparently.

"Mr. Cummings—You have ruled him out.

"The Master—I am saying now, Mr. Hyatt having left the room, is there any counsel representing the District Attorney of Queens County? I understand there is not and the records will so show. I know that the District Attorney of Queens County ought to be represented, and I wanted the record to show that he is not.

"Mr. Chambers—If the Corporation Counsel cannot get in any other way then we will appoint him counsel.

"The Master—You will not.

"Mr. Chambers—I will get some more. The Court cannot stop us from having another.

"The Master—I am going to make a rule about you now. Who is going to handle this case for the Attorney General?

"Mr. Chambers—Why, there are several of us here.

"The Master—Well, who is going to do the talking now?

"Mr. Chambers—I cannot tell you.

"The Master—Somebody is going to do the talking for the Attorney General's office, and one counsel is going to be recognized and not more than one. Who is it going to be, Mr. Chambers? You can make your own selection.

"Mr. Chambers—I cannot tell you at this time.

"The Master—Mr. Tobin, isn't it?

"Mr. Tobin—Yes.

"The Master—Having last taken the floor, I will recognize Mr. Tobin and nobody else.

"Mr. Chambers—I take an exception.

"The Master—And the stenographers will take no statement by anybody else from the Attorney General's office until I get a statement that Mr. Tobin has been supplanted.

"Mr. Tobin—Why, that is not proper, if the Master please, because I am working entirely under the direction of Mr. Chambers.

"The Master—I want to know who represents the Attorney General here, once and for all. I am going to take objections by all counsel, Mr. Chambers can make the statement or not, just as he pleases.

"Mr. Chambers—No, I decline to make the statement as to who is going to do the talking. I am perfectly willing to abide by the ruling that one counsel talk at a time. You can make your ruling and I will take exception.

"The Master—I did not say anything about one counsel talking at a time. *There is only one going to do the talking today.*

"Mr. Chambers—I take an exception, I decline to say that today, because I have not considered that. Throughout these cases I think it is perfectly proper for the Attorney General to be represented by one or more counsel, and it is perfectly proper for one or more to cross-examine, so long as one starts it and completes it.

"The Master—For the orderly conduct of this proceeding I shall only recognize one counsel talking in behalf of the Attorney General. The Attorney General can have six representatives here, if he so desires, but only one counsel will be recognized today. Mr. Tobin having taken the floor and cross-examined the last witness, I am going to recognize Mr. Tobin and nobody else today.

"Mr. Chambers—I take an exception."

We respectfully state the attitude of the Master was out of harmony with the reasonable rules in general vogue in the Courts, and, in this instance, highly prejudicial to the interests of the defendants.

A question was made by one of appellants' counsel to ascertain from Mr. Raynor, Secretary of the respondent, the source of certain figures given by Mr. Raynor in the exhibit offered in evidence as to the cost of mains and services added to the account as it stood on January 1, 1919. This was proper information that counsel was entitled to elicit from the witness. The Master, in the abrupt manner that characterized him throughout the trial, would have none of it. We quote the following:

> "Q. Well taking the cost of mains and services that were added to the account as it stood on January 1, 1919, how did you obtain that value?
>
> "The Master—What is that?
>
> "Q. Taking the mains and services laid in the year 1919 which were added to the mains and services value as of January 1, 1919, how did you obtain the figures there necessary to add to the mains and services as they stood on January 1, 1919?
>
> "Mr. Ransom—Objected to on the same grounds, not cross-examination of this witness. You cannot put in an exhibit and then turn around and cross-examine the witness about that exhibit. The document itself shows the method and the peculiar basis laid down by the statute.
>
> "Mr. Tobin—The statute has nothing to do with it. I am simply asking Mr. Raynor how he got his figures and what was put in there for the mains and services for 1919.
>
> "The Master—Put in where?
>
> "Mr. Tobin—Put in this report.

"The Master—Objection sustained.

"Mr. Tobin—Exception. If your Honor please, I think we are entitled to know how they obtained their figures."

(R. 799.)

Mr. Woods, who attempted to qualify as an expert, was not to be thoroughly examined as to his qualifications. It was sufficient for the Master that he had been in charge of operations of plants of large gas companies. His views are palpably erroneous on that point, which is clearly evidenced in the following:

"Mr. Ransom—I object to the question, it has nothing to do with his qualifications.

"Mr. Hyatt—I want to test his knowledge.

"The Master—The question will not be allowed.

"Mr. Hyatt—Exception.

"Mr. Hyatt—He is partially qualified, I will concede that.

"Q. The cost of labor, Mr. Woods, is that about uniform with respect to certain kinds of labor in all gas works?

"The Master—On the general gas making industry and I am going to accept him as such without further waste of time.

"Mr. Hyatt—Exception.

"Mr. Neumann—That inures to the benefit of all defendants.

"The Master—Certainly. There must be somewhere or sometime in this case when counsel will concede that day is day and night is night.

"Mr. Hyatt—I object to that. I do not want to be captious at all, but this is technical information we are after and I think the witness should qualify thoroughly.

"The Master—I say it is perfectly ridiculous to even suggest that a man who has been

in actual charge of the operation of the plant of the Consolidated Gas Co., and of the Astoria Light, Heat and Power Co., and this company and the Standard Company, for over twenty years, with the responsibility that this man has had, according to his sworn testimony here, is not competent—I say that is a ridiculous position to take.

"Mr. Chambers—Do you think that a lawyer engaged in practice for twenty years, makes him a lawyer? I don't.

"Mr. Ransom—With some it does not.

"The Master—I *Man who has practiced law for twenty years is competent to testify as an expert on matters of law; I don't care how good or bad he is.*

(R. 402.)

VII.

Respondent's books of account, admitted in evidence over objections and exceptions of appellants, are not proof of their contents.

The Master found and reported that (8):

> "Since January 1, 1909, the books of account of the complainant company and of all other gas companies in the City of New York have been required to be kept in accordance with the rules and regulations of the defendant Public Service Commission of the State of New York for the First District, which Commission has had certain jurisdiction over said companies pursuant to the provisions of

> the Public Service Commission Law of the State of New York, and find that the books of the complainant company have been kept in conformity with the said rules and regulations and that they accurately set forth the facts therein undertaken to be shown." (R. 35 [59].)

Under his rulings, and over the objections of counsel for appellants who took exception to these rulings, the Master admitted in evidence the General Ledger, Journal, Operating Expense Ledger, Accounts Payable Ledger, General Cash Ledger, and many Tabulations from the books of account.

The books admitted are merely partial transcripts of other books, records and papers, many of which were not proven or even produced.

In the Consolidated Gas Company case which is now before this Court and is to be heard simultaneously on the appeal of the defendant state and local authorities, this point is argued at length in the brief of the appellant District Attorney Swann. It is therefore unnecessary for us to argue it herein, but we believe there are several aspects in which the record in the instant case differentiates the facts and makes the error of the Master altogether inexcusable. He himself saw there were even better grounds in this case than in the other and larger case for calling upon the respondent to produce proof of its operations:

> "By the Master:
>
> "Q. You have not made entries in them yourself?
>
> "A. Not in general books, no.
>
> "Q. In any books?
>
> "A. Well, some of the subsidiary books, yes. For instance, I approved all vouchers, all sundry creditors' vouchers, and classified them.

"Q. But the actual bookkeeping work is not done by you or under your immediate direction; you have a chief bookkeeper or accountant or somebody?

"A. Yes, but I am in conference with him all the time. He comes into my office and asks me questions with regard to the books, and I look over them.

"By Mr. Ransom:

"Q. So you classify the vouchers for materials and supplies and the like?

"A. Yes, I do.

"Q. And do you make up the various reports of the company?

"A. Well, they are made up under my direction.

"Q. That is, you have direct and personal charge of the doing of that?

"A. Yes.

"Q. Are you familiar with the books of the New York and Queens Gas Company, and the method of making entries therein?

"A. I am.

"Q. Will you describe what books of account and subsidiary records were kept by the New York and Queens Gas Company during the years 1919 and 1920.

"The Master—Do you believe that this will be a case where I am forced to take in general books of account, the same as I did in the Consolidated Case?

"Mr. Ransom—I so think.

"The Master—I should not imagine it would be very difficult to put in somewhat better proof here.

"Mr. Ransom—I think we will be able to produce somewhat more detailed proof in certain respects.

"The Master—You can have the man who made the entries in books, I imagine, and bring in the original papers, with a small company like this.

"Mr. Ransom—We can do something like that." (R. 180 [54-55].)

Respondent called as witnesses, who had knowledge of the books:

(1) Maynard H. Spear (R. 177) General Manager since 1907, who was asked to describe *the system* by which entries relating to the costs of materials used in the manufacture of gas find their way into the operating expense ledger (R. 181).

The Master again showed, at this part of the record, that he was not satisfied with the paucity of proof that was being presented:

"The Master—Yes. I have been asking these questions, Judge, to indicate how you might give us better proof on this than you did in the Consolidated Case.

"Mr. Ransom—Perhaps not better proof, but more proof.

"The Master—Well, perhaps a little better too." (R. 184.)

Spear was also asked to describe *the method* by which the record is kept of the amount of coal used, and *the system* of keeping track of the labor elements.

He did nothing more than describe a system, as the Master said in almost those very words. (R. 185 [63].) See also page 201 of the record.

(2) Arthur W. Teele, a public accountant, employed by respondent in the latter part of 1918 to make an examination of the accounts for the year 1919 and for 1918 (R. 222 [125]) with a staff of assistants. He merely made a percentage check of certain records, well instanced by the following:

"A. The consumers' accounts for sales of gas are contained in nine ledgers. I took one hundred accounts for the months of January, February, November and December, 1919. * * * * and checked them from the

original index books to the consumers' ledgers and to the "bill registers, or consumption record, as it is called, in which the total amount of gas entered upon the consumers' ledgers is made up. We did that for four months, and checked the summaries for all the months in the year to the journals, and from the journals to the ledger accounts representing the sales." (R. 230-1 [139-10].)

(3) William Raynor, Secretary (R. 262), who is not a certified public accountant but has immediate charge of the books of account of the respondent. He became secretary in January, 1920 (R. 263), and before that was head bookkeeper and chief clerk. He testified that with two exceptions the books are kept in accordance with the uniform system of accounts (R. 264). The setting up of renewals and replacement account, on the instructions of the Board of Directors, results in a credit balance, or, in other words, the actual charges are less than the sum resulting from the setting aside of three cents per M. cubic feet of gas sold (R. 265). He tests *the accuracy* of the books of account *by trial balance at the end of each month*. In answer to the Master's question he testified that he does not make the entries in the books but had made them previous to May, 1919 (R. 266), although only some of the entries in the books in evidence are in his hand writing.

All that Raynor proved was that in his belief the entries made by him were correctly transcribed from other records that he did not make (R. 267).

The character of proof presented by respondent is shown by the following questions to and answers by Raynor.

"By Mr. Ransom:

"Q. Are you prepared to say the books of account and records correctly reflect the transactions of the company?

"A. They do.

"Q. Are they correctly kept?

"A. Yes, sir." (R. 267 [201].)

Raynor testified that a bookkeeper kept these books of account since May, 1919, and that Miss Mold and Mrs. Townsend also made entries in the books (R. 268).

(4) William J. Foy, General Bookkeeper, not a certified public accountant (R. 287) who, since May, 1919, has had charge of the books. He merely testified to entries in the general books that are in his handwriting (R. 288). His direct testimony takes up less than two pages of the record.

This bookkeeper never checked any of the underlying data:

"Q. Now, Mr. Foy, if I understand your testimony correctly, it is to this effect, that if the underlying data from which you make the entries is incorrect, then the entries in the books are also incorrect, and if the underlying data is correct, then the entries in the books are correct—is that true?

"A. *I never checked back any underlying data. I take what is given to me as being correct.*" (R. 291 [246].)

(5) Martin Morrison, Superintendent (R. 569), who testified as to the method of receiving materials at the works. He had no personal knowledge of the quantities received or the amounts used. He merely prepares monthly statements of the daily operations, but these were shown to be in error in several instances.

It is very evident that the books admitted in evidence are not books of original entry, and yet not one witness was called by respondent to prove the underlying data on which the entries in these books rest.

We respectfully refer the Court to the brief of the defendant Swann in the Consolidated Gas Case, which case is now before this Court, wherein, at page 171, it is contended the cases agree that the books offered must be books of original entry, that *the one who made the entries therein* must be produced and testify as to their accuracy, or his death or unavoidable absence must be established before secondary evidence of the entries made by him is permitted, and that a sufficient amount of competent evidence of the underlying data must be adduced so as to give a circumstantial guarantee that as the books are shown to be correct for a selected limited period, they are accurate for the entire period covered.

In this case, as in the Consolidated Gas Case, these elementary rules were flagrantly violated by the Master, as is evident from the foregoing pages of this brief.

In the instant case the appellant's did not demand verification of *every item* first hand. They did insist that, as to some essentials, the figures in the books should be explained and proved by some one who had personal knowledge of the facts.

We contend that respondent failed to prove the cost of making gas by merely offering the books in evidence, and for this cause alone the judgment should be reversed.

VIII.

The statute is presumed to be constitutional. The burden of proof is on the Respondent to establish the contrary beyond a reasonable doubt.

We do not deem it necessary to here argue at length in support of this thesis. The character and weight of proof required to set aside a statute as unconstitutional is so fully sustained by abundant judicial authority as to but need an enumeration of the cases.

Wilcox v. *Consolidated Gas Co.*, 212 U. S., 19, at p. 41.

City of Knoxville v. *Knoxville Water Co.*, 212 U. S., 1, at p. 8.

Minnesota Rate Cases, 230 U. S., 352.

Des Moines Gas Co. v. *Des Moines*, 238 U. S., 153 at p. 163.

Detroit United Railway v. *Detroit*, 218 U. S., 112.

San Diego Land Co. v. *National City*, 174 U. S., 739.

Railroad Commission of Louisiana v. *Cumberland Telephone & Telegraph Co.*, 212 U. S., 423.

Shepard v. *Northern Pacific R. R.*, 184 Fed Rep., 765.

Palatka Water Works v. *Palatka*, 127 Fed Rep., 161.

Chicago St. Ry. Co. v. *Tompkins*, 176 U. S., 167.

Northern Pacific Ry. Co. v. *Lee*, 199 Fed. Rep., 621, at pp. 631, 632.

Sinking Fund Cases, 99 U. S., 700, p. 718.

Fletcher v. *Peck*, 6 Cranch (Star page), 128.

Stanislaus County v. *San Joaquin C. & I. Co.*, 192 U. S., 201, at p. 214.

Missouri Rate Cases, 230 U. S., 474, at p. 499.

People v. *McDonald*, 52 N. Y. Supp., 899.

Volen v. *Reichman*, 225 Fed. Rep., 818.

Lincoln Gas Co. v. *Lincoln*, 223 U. S., 357.

Atlantic Coast Line R. R. v. *Florida*, 203 U. S., 256, 260.

Seaboard Air Line Railway v. *Florida*, 203 U. S., 261, 270.

Louisville & Nashville R. R. v. *Garrett*, 231 U. S., 298.

Louisville & Nashville v. *Finn*, 235 U. S., 601, 607.

CONCLUSION.

The judgment should be reversed, the bill of complaint dismissed, and judgment rendered in favor of the appellants, with costs.

Respectfully submitted,

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FILED
NOV 10 1921
WM. R. STANSBURY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1921.

No. 296.

CHARLES D. NEWTON, AS ATTORNEY-GENERAL OF THE STATE OF NEW YORK, AND ALFRED M. BARRETT, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT,

Appellants,

against

NEW YORK AND QUEENS GAS COMPANY,

Appellee.

BRIEF FOR APPELLEE.

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Supreme Court of the United States,

OCTOBER TERM, 1921.

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CHARLES D. NEWTON, as Attorney-General of the State of New York, and ALFRED M. BARRETT, constituting the Public Service Commission of the State of New York for the First District,

Appellants,

AGAINST

NEW YORK AND QUEENS GAS COMPANY,

Appellee.

BRIEF FOR APPELLEE.

This appeal by the defendants below is from a final decree which enjoined as confiscatory the further enforcement of a statutory rate of One Dollar ($1.00) per thousand cubic feet, for gas sold by the appellee in the Third Ward of the Borough of Queens, City of New York.

The decree appealed from was entered in the United States District Court for the Southern Dis-

trict of New York, on November 19, 1920, upon the direction of the Honorable Julius M. Mayer, District Judge, before whom the case came for hearing, after the testimony had been taken before a Special Master.

The One Dollar ($1.00) rate enjoined was prescribed by Chapter 125 of the Laws of 1906, to be effective in that portion of the City of New York after the year 1910.

The proofs submitted in this case covered the years 1918, 1919 and the first five months of 1920.

The final decree of November 19, 1920, held the One Dollar rate confiscatory and void as to the appellee, and enjoined the appellant public authorities from seeking to enforce the statutory rate or the penalties prescribed for violation of it.

Statement.

The suit was started April 7, 1919, and was referred to a Special Master on May 19, 1919 (page 25). By reason of the fact that counsel on both sides were continuously engaged in the trial before the same Special Master of the case of the *Consolidated Gas Company* involving the rate fixed by the same statute for the Boroughs of Manhattan and The Bronx, the trial of this suit before the Special Master was not begun until after the close of the *Consolidated Gas Company* case in the spring of 1920. The Special Master's report was filed July 16, 1920, and the final decree was entered on November 19, 1920.

The Property of the Appellee.

The appellee supplies gas to the inhabitants of what is now the third ward of the Borough of Queens in the City of Greater New York, formerly the Town of Flushing, County of Queens. It owns a plant for the manufacture of water gas in the former village of Flushing, having a working capacity of 2,250,000 cubic feet of gas per day. It owns and uses more than 130 miles of gas mains in this sparsely settled territory, through which it furnishes gas to approximately 11,000 consumers (finding No. 6, pages 34 and 35). In 1919 its total sales were approximately 336,000,000 cubic feet of gas.

The Report of the Special Master.

The Special Master made detailed findings (record, pages 32 *et seq.*) as to the various facts proved before him, and also filed a separate opinion stating the reasons for his decision (page 46). Evidence as to the cost of making gas was presented for the years 1918, 1919, and for five months of 1920, and the findings separately state the manufacturing cost for those periods. The principal findings of the Master may be briefly summarized as follows (pages 38-40):

Cost of manufacture per thousand cubic feet made	$.6345
Cost of manufacture per thousand cubic feet sold	.7173
Cost of distribution	.2700
Taxes	.0707
Renewals and replacements	.0300
Total cost	1.0880
Miscellaneous operating revenue	.0675
Net cost of gas delivered to consumer	$1.0205

The Master based his findings upon the operations for the year 1919, stating that the cost of gas in the year 1920, when the statistics were completed, would be in excess of the figure for 1919 (page 48). For example, the Master found that, as of the time of the close of the hearings in June, 1920, the cost of manufacture was 84.27 cents per thousand cubic feet of gas sold (Record, pages 39-40), as contrasted with 71.73 cents per thousand for 1919. The difference between the cost per thousand cubic feet made and the cost per thousand cubic feet sold is due to the so-called "unaccounted for gas", found in this case to be 11.03% of the gas manufactured (finding 23, page 39).

The average selling price of gas, including that sold to the City of New York at 75 cents per thousand cubic feet, was found to be 99.51 cents in 1919, leaving a net deficit to the complainant company below operating expenses in 1919 of 2.54 cents per thousand cubic feet, irrespective of any return upon any of the property used in its gas operations (finding 31, page 41).

The Master's Findings as to the Value of the Property used by the Appellee.

Following the ruling made by him in the *Consolidated Gas Company* case, the Special Master limited his finding of the value of the property of the complainant used by it in the gas business, upon which it was entitled to earn a fair return, to a minimum *actual investment* of the company in the property. The company was incorporated in July, 1904 (page 33), and acquired as of August 1, 1904, the property of the Newtown and Flushing

Gas Company, which had been prior to that date furnishing gas to the inhabitants of this territory (finding No. 2, page 33).

The Special Master found the company's total investment as of January 1, 1920, to be as follows:

Property acquired in 1904 and still in use.....	$670,488.86
Net additions between August 1, 1904, and Jan. 1, 1920.....	850,389.08
Working capital	135,000.00
Total.....	$1,655,877.94

(finding 34, page 41). No sum was deducted by the Master for accrued "theoretical depreciation" for reasons stated in his opinion (pages 41 and 57 *et seq.*). The Master further found upon evidence that the sum of $5 per thousand cubic feet of annual sales fairly represents the actual and necessary investment in property used and needed for manufacture, transmission and distribution of gas under the conditions under which the complainant operates (finding 35, page 41).

The fair and reasonable present market value of the land unimproved, included in the foregoing amount as of January 1, 1920, was at least $45,153.90 (finding 39, page 42).

The Master felt it unnecessary to make detailed findings of the complete present reproduction cost of the complainant's property (page 57) but at the request of the complainant he did make a finding *upon undisputed evidence* of the actual present cost as of January 1, 1920, to reproduce the plant, distributing system and other tangible property of

the company exclusive of working capital and undistributable structural costs. This he found to be $2,100,774.90 (finding No. 40, page 42). He also found that, to the foregoing sum there should be added amounts to cover organization and development expenses prior to construction, cost of financing, interest during construction, taxes during construction, engineering, superintendence and general contractors expense and profit, administrative, legal and miscellaneous expenses during construction and going value. He did not, however, make definite finding as to the amounts to be added for these items.

He further found (finding 42, page 43) that using unit prices of labor and materials prevailing January 1, 1914, the cost to reproduce the tangible property would be about one-half the above stated cost to reproduce as of January 1, 1920.

He found that the reasonable and proper rate of return upon the capital investment in the gas business of the company was not less than 8% per annum, amounting to $132,407.24, calculated upon the investment of the company as found by the Master (finding 45, page 44).

During the year 1919 the actual net deficit in operating expenses in the gas business of the company was $9,074.70, and the deficit below a reasonable return upon the complainant's investment, as found by the Master, amounted to $141,544.94 (finding 48, page 44).

The Final Decree.

In reviewing the report of the Special Master, ie District Judge made the following modifica- ons in operating costs:

1. He reduced the percentage of unaccounted for gas from 11.03% to 10% (page 111), thereby decreasing the cost of manufacture of gas per thousand cubic feet sold by .83 cents.

2. He eliminated the item "interest on unpaid taxes" (page 111).

3. He added to the income the amount of dividends received from investments in an insurance participation fund (page 112).

4. He increased the income from sales of all gas from the amount actually received of 99.51 cents per thousand cubic feet to $1.00 per thousand.

The result of these eliminations was a net cost production and distribution of $1.0129 per thou- nd cubic feet as against the Master's $1.0205 page 111), and as against an actual net cost of .0705 per thousand cubic feet. In view of the ct that the cost of production and distribution as in excess of the rate prescribed by the stat- e, thus showing an actual deficit in operating penses regardless of any return upon any amount investment, the court, while refraining from pressing any opinion upon the various conten- ons as to the rate base or the proper method valuing the property of the appellee, found at the actual cost of the tangible property of e complainant company, *concerning which there as no controversy on the part of the defendants*, as $1,130,497.08, which sum the Court found as

the *absolute minimum* of actual investment (page 115). The Court said:

> "If it were necessary to find the reproduction value the figure would be much greater. It is, however, sufficient, for the purpose of this case, that the court shall find said sum of $1,130,497.08 as the smallest amount upon which a return should be figured. All other findings touching the rate base have become immaterial to this case. At any rate of return from 8% down to 6%, the statutory rate of $1 is confiscatory on the evidence in this case."

The Principal Facts are Undisputed.

In spite of the long record made, the evidence presents no issue of *fact* upon any matter material to the decision of the case. No witness on behalf of the appellants contradicted any fact testified to by any witness of the appellee. The few disagreements presented by the testimony concern matters of *opinion:* for the most part they relate to the rule of law to be followed or as to the amount to be allowed in instances where the necessity of some allowance was admitted. We call attention at this point to the absence of controversy on some of these principal facts:

a. Inventory and reproduction cost.

The appellee introduced a detailed inventory of property in use by the appellee as of December 31, 1919, together with a detailed estimate of the cost of reproduction as of that date. This inventory and the notes accompanying it are printed as constituting a part of the testimony of the witness Miller beginning at page 559 of the printed record. This inventory, as well as other tabulated exhibits sub-

mitted by the appellee, was submitted to the appellants at least six months prior to the trial of the action and was by them carefully checked and the various items therein actually examined at the plant. This inventory showed a total cost to reproduce as of January 1, 1920, of $2,907,062, including working capital but exclusive of going value which the same witness testified would be at least $525,000 to $550,000 additional (page 814). The Special Master found the reproduction cost of the *tangible* property, exclusive of undistributed structural costs and of going value, would be at least $2,099,621, or nearly twice the actual cost of the property to the company, and more than twice if the other elements of value were added (page 57). The correctness of the items of this inventory and of the cost to reproduce was not disputed by the appellants.

b. The original cost.

Likewise as to the original cost of the property the complainant prepared an exhibit showing the date of acquisition and original cost so far as ascertainable of the items in exhibit 66 (exhibit 96, page 1605 *et seq.*). As the complainant company acquired its property on August 1, 1904, prior to which date records of original cost are not available, both parties agreed in assigning to the property acquired on that date and still in use on December 31, 1919, as representative of original cost and reasonable value as of August 1, 1904, the sum of $280,108 (Master's opinion, page 54; testimony of defendants' witness Hine, page 1178). Since August 1, 1904, net additions to tangible property cost $850,389.08, and as to this figure both parties are likewise in accord. These two figures make up

the amount of $1,130,497.08 found by the court as the "absolute minimum of actual investment" (page 115). Thus the actual cost to the appellee of the tangible property used by it in the gas business is agreed to by both parties.

c. As to the *quantity* of property actually and necessarily used by the company in the conduct of its gas business, there was likewise no dispute. All of the property of the company is actively in use as will be seen by reference to the map and photographs thereof contained in the record (pages 1480 *et seq.*).

d. The appellants admitted that the plant of the complainant company was well maintained in excellent operating condition (page 1181).

e. The appellants did not seek to controvert, by any witness called in their behalf to testify, the reasonableness of the cost of the principal materials such as coal, oil, cast iron pipe, etc., used in the manufacture and distribution of gas by the complainant, as shown by its records, vouchers and books of account introduced in evidence.

f. No one on behalf of the appellants testified that any item in the company's expenditures was extravagant, wasteful or unnecessary.

g. No one testified on behalf of the appellants that gas could be made in a plant such as the company's with the use of less coal, oil, labor, etc., than is actually being used as shown by the complainant's books and records, or with less than should be used under average conditions according

to the testimony of the appellee's expert (see complainant's exhibit 77, page 1596).

h. No one testified that the percentage of gas lost or unaccounted for shown by the company's record was too high or that any other company similarly situated can do better (the Special Master took the actual percentage of unaccounted-for for 1919 of 11.03% while the court accepted the testimony of the complainant's expert that 10% would be a reasonable amount of unaccounted-for gas).

i. No one testified in contradiction to the testimony of appellee's witness (page 880, *et seq.*) that the proper rate of return upon the investment in the gas property of the appellee should be not less than 8% per annum.

j. The defendants did not offer any controversy or question that the appellee owns, exercises and enjoys franchises and rights to maintain its pipes and conductors and to furnish gas through the streets, alleys and public places in the Third Ward of the Borough of Queens.

I.

The appellee's proof as to the cost of manufacturing and distributing gas, and the confiscatory effect of the operation of the statutory rate of one dollar per thousand cubic feet of gas, has not been controverted by the defendants.

(1) *The Defendants' Evidence.*

The appellants (defendants below) persist throughout their briefs in a contention that the appellee (complainant below) failed upon the trial to prove its operating expenses in the production and distribution of gas, the use of materials and the employment of labor in such production and distribution, the quantity of gas produced and distributed, and the quantity of gas delivered (*e. g.*, Brief of Appellant Wallace, pages 11-12).

If all the evidence presented in behalf of the complainant through various officers, employes and others not directly connected with the company, including the books of account, records and vouchers received as exhibits, were stricken from the record, there would still remain in the record, among the cumulative proofs introduced *by the defendants*, the testimony of the defendants' witness Benjamin Cohen, the accountant employed by the defendant Public Service Commission (Record, page 977), who made an exhaustive examination of the complainant's records and operations, in part, as follows (Record, pages 1155-1156):

> "Q. Is it your testimony that the true operating results of this company's business as you

gather it from their books is as shown on this Exhibit A-13?

A. It is my testimony that the result their books show is as shown on this Exhibit A-13, especially the net result down below.

Q. In other words, it is your statement that in 1909, according to their books, you found that they sold their gas at a profit of 40.53 cents per 1,000 cubic feet?

A. That is correct.

Q. And that it dropped to 39.45 in 1910?

A. That is right.

Q. And to 32.57 in 1911?

A. That is right.

Q. It went up a little in 1912, dropped again in 1913, dropped some more in 1914, went up a little bit in 1915, a little more in 1916, dropped very substantially in 1917 down to 19.83 cents?

A. That is correct.

Q. And your testimony is that in 1918, according to their books, they only made 10.18 cents per 1,000 cubic feet?

A. That is right.

Q. *And in 1919 they lost 7.33 cents on every thousand cubic feet of gas sold?*

Mr. Neumann: According to their books.

Q. According to their books?

A. *That is right.*

Q. *That is your analysis of their books?*

A. *That is right.*

Q. And your statement as to their operating results as reflected in their books?

A. That is correct."

* * * * *

The Master: Just one other question, so I will get this clear. In your table 4-B, you show year ending December 31, 1919, a total sale of various classes, municipal, street lighting, buildings, prepayments, commercial meters of 336,241.4 thousand cubic feet, is that right?

The Witness: That is correct.

Q. So that your testimony is in substance that for the year 1918 their net profit was $33,600 at about 10 cents per cubic foot?

A. The net profits for 1918 were $33,350.56.

The Master: Where is that figure, where did you read that figure from?

The Witness: On Schedule 4-B.

Mr. Neumann: In that connection I would like to call the Court's attention to the fact that we contend that the item underneath that column totalling approximately $2,300, should be added to that amount, so that the total operating income of that year would be $35,000 odd.

Q. Taking for the year 1918, Exhibit A-13, the excess of revenues over deductions, the 10.18 is arrived at by dividing the amount shown on Exhibit A-12, $33,350.56, by the total quantity of gas sold. Is that correct?

A. That is correct.

Q. And the same for 1919?

A. The same for 1919.

Q. And the other years as well?

A. That is correct.

Mr. Neumann: In connection with 1919 I would like to call the Court's attention to——

Mr. Goetz: I do not like to be interrupted in this way, it is hard to follow these figures.

Mr. Neuman: In the year 1919, among the items that we claim should be included in the year 1919, but which have not been included in the computation is this amount of $15,518.73 for the rate case.

The Master: I understand those things, Mr. Neumann. Let Mr. Goetz make his record. I have this thing pretty clearly in my mind."

And we may note, parenthetically, that the question of the inclusion of the rate proceeding expenses in the 1919 operating expenses was about the only

one raised by the defendants by way
of the complainant's operating figures.

uld still be left in the record the evidence
by the defendants in the testimony of
Record, pages 1181-1182) that the com-
plant was "well maintained", and the
defendants' exhibits:

ral Ledger No. 2 of the New York &
ueens Gas Company (Record, page 987).
untant Cohen's Schedule No. 3 entitled
Materials and Supplies, 1904-1919" (Rec-
d, p. 1761; Orig. p. 2809).
untant Cohen's Schedule 4-B entitled
Gas Operating Revenues and Revenue
eductions" 1909-1913, 1914-1919 (Rec-
d, p. 1761; Orig. p. 2811).
untant Cohen's Schedule No. 5 en-
led "Gas Operating Revenues and Rev-
ue Deductions (Company's Books) per
000 cu. ft. of gas sold, 1909-1919" (Rec-
d, p. 1761; Orig. p. 2812).
untant Cohen's Schedule No. 6-B, en-
led "Details of Operating Expenses,
14-1919" (Record, p. 1761; Orig. p.
14).
untant Cohen's Schedule No. 10, en-
led "Gas Operating Revenues and Ex-
nses for first three months of 1919 and
20" (Record, p. 1720; Orig. p. 2830).
Annual Report to Public Service Com-
ssion, entitled "Station Cost of Material
d Labor in gas made (excl. General Ex-
nses, Taxes, Insurance, Renewals, etc.)"
Record, p. 1776; Orig. p. 2839).
Annual Report to Public Service Com-
ssion for 1918 entitled "Station Cost of
terial and Labor in Gas made (excl.
neral Expenses, Taxes, Insurance, Re-
wals, etc.)" (Record, p. 1780; Orig. p.
42).

15

A-52. Monthly Statistical Report for 1919 showing cubic feet of gas made, sent out, etc. for 1918 and 1919 (Record, p. 1795; Orig. p. 2875).

A-53. From Report to Public Service Commission for 1919 entitled "Details of Gas Manufacturing Expenses at each Station" (Record, p. 1795; Orig. p. 2876).

A-54. From Annual Report to Public Service Commission for 1918, entitled "Details of Gas Manufacturing Expenses at each Station" (Record, p. 1795; Orig. p. 2878).

The foregoing exhibits introduced by the defendants relate wholly or principally to details of operation and of revenues and expenses. The Master referred to this fact in the following statement (Record, page 47):

> "The defendants also offered in evidence data showing the operating results, the unit quantities of materials used, the unit costs thereof, and other information as to the revenues and expenses of the complainant company during the years from 1901 to 1920. Various of the underlying records of 1918 and prior years were also produced in Court at the instance of the defendants, and various of the entries in the books of the complainant and its predecessor company were placed in evidence by the defendants."

In addition, there were numerous exhibits introduced by the defendants corroborating the complainant's evidence as to charges and credits to its capital accounts.

The following statement made in the appellant Wallace's brief (page 3), is absolutely correct:

> "Appellants submitted data showing the operating results, the unit quantities of mate-

> rials used, the unit costs thereof, and other information as to revenues and expenses of respondent during the years from 1906 to 1920."

The findings of the Master and of the Court below as to the revenues and expenses of the appellee and the details of its operations and business, during the period taken by the Court as a test, are confirmed in all essential details by the evidence introduced by the defendants.

(2) *The Controlling Conditions of the Appellee's Operations.*

Ex-Justice Hughes, in the *Brooklyn Borough Gas Company* case (17 N. Y. State Dept. R. 81), expressed the sound rule by which the compensation to which this complainant is entitled must be gauged when he said:

> "A public service corporation is entitled to be reasonably compensated for its service and the *actual cost* of its operations must *always* be taken into consideration in determining whether or not it receives a fair compensation above the cost."

The distinguished jurist was there dealing with the contention of the appellants reiterated in this and companion cases that the *average* cost, over a number of years, not the *actual* current cost, of operation was the measure of compensation under a rate the constitutionality of which was attacked.

The appellee possesses a single manufacturing plant, at which it produces the gas necessary for the requirements of its consumers. There is no other source of gas available either to the complainant or to its consumers. In this respect the appel-

lee's situation is different from that of certain other companies in the Consolidated Transfer-of-Gas System in the Boroughs of Manhattan and The Bronx and in Long Island City, which can draw gas from several manufacturing plants. It is, therefore, the conditions at the appellee's plant, and not those at some other plant, which control its operating results.

(3) *The Uncontroverted Proof Submitted by the Appellee.*

The appellee called several witnesses to testify concerning details and cost of its operations and business. Mr. Spear, its Vice-President and General Manager, who has been in the public utility business for many years and has had extensive training and experience both on the technical side and on the executive side of the business (Record, pages 178-180); Mr. Woods, one of the most eminent gas engineers in the country, in direct charge of the manufacturing and holder plants of the companies of the Consolidated Gas System, and supervising and consulting engineer of the complainant (Record, pages 398-402); Mr. Morrison, the superintendent of the company's plant, who has had long experience in the gas business (Record, pages 569-571); Mr. Raynor, the Company's Secretary in charge of its accounting system (Record, pages 262-263), and Mr. Foy, the company's bookkeeper (Record, pages 287-288).

It also called Mr. Addicks, a distinguished engineer and Vice-President of the Consolidated Gas Company, who handles the purchases of coal and oil for companies in the system, including the appellee (Record, pages 317-319); Mr. Gawtry,

an executive of a financial institution who was formerly a Vice-President of the Consolidated Gas Company and in charge of coal purchases for the same companies (Record, pages 524-526); and Colonel Miller, an eminent engineer with a long and varied experience in construction and operation of gas plants and apparatus, who had examined and appraised the complainant's plant and distributing system (Record, pages 241-249).

The appellants failed to call any witness who would controvert the testimony of the complainant's witnesses concerning the reasonableness of the cost of the principal materials, such as coal, oil, cast iron pipe, etc., used in the manufacture or distribution of gas by the complainant; or who would testify that the company's expenditures were extravagant, or its methods of operation were improper or negligent, or its employees were incompetent, or that gas could be made in a plant such as the complainant's with the use of less coal, oil, labor, etc., than was actually used under the actual conditions.

It is most significant that the defendants called as a witness Mr. Hine, who had been Chief Gas Engineer of the defendant Public Service Commission from 1911 to 1919, who had made many investigations of gas service and service standards (Record, pages 1170-1171, 1174), who claimed a miscellaneous experience in the operation of gas plants (Record, page 1172), and who had examined the complainant's plant and had "done a great deal of miscellaneous work in connection with that company" (Record, page 1176), but that the defendants asked him no question whatever which might elicit any criticism of the methods and

efficiency of operation of the appellee or of the condition or maintenance of its property. No evidence was presented that during its whole existence the defendant Public Service Commission had at any time had occasion to require changes in the plant, apparatus or methods of operation of the complainant. Nor was the Chief Gas Engineer of the defendant Public Service Commission who succeeded Mr. Hine, or any member of his staff, called as a witness to give testimony in criticism of the practical operation of the complainant's plant or the conduct of its business.

It is respectfully submitted that the failure of the defendants to call these witnesses or interrogate them, justifies the strongest inference that the evidence presented in behalf of the complainant in these respects could not be impeached.

Cost of Production and Distribution.

It is contended by the appellants (Appellant Newton's Brief, pages 40, 61; Appellant Wallace's Brief, pages 97-98), that, if the findings of the Court as to the reasonable and necessary operating expenses were reduced by certain amounts as claimed by the appellants, there could be derived a net income for the year 1919—the test period used by the Court—in an amount sufficient to indicate a substantial return upon the complainant's property.

The following is a comparative table of the revenues and expenses for the year 1919 as claimed by the appellee (Exhibits 64 and 65; Record, pages 1569, 1573; Orig. pp. 2496, 2500), as found by the Master (Record, pages 38-40), and as allowed by the Court (Record, pages 111-112):

MPARATIVE STATEMENT OF AMOUNTS CLAIMED BY COMPANY AND AMOUNTS ALLOWED BY THE MASTER AND THE COURT.

REVENUES AND EXPENSES OF THE GAS BUSINESS PER THOUSAND CUBIC FEET OF GAS SOLD.

	CLAIMED BY THE COMPANY		ALLOWED BY THE MASTER		
	1919 Actual Ex. 64	As of May 1921 Exs. 77 and 90	1919	As of July 1920	ALLOWED BY THE COURT 1919
st of Production.....	$ .7173	$ .7127	$ .7173	$ .8427	$ .7090
st of Distribution.....	.3200	.3982	.2700		.2707
newals and Replacements.	.0300	.0300	.0300		.0300
xes	.0707	.0708	.0707		.0707
tal Cost of Gas Sold.....	$1.1380	$1.2117	$1.0880		$1.0804
scellaneous Operating Revenue	.0675	.0675	.0675		.0675
t Expenses.....	$1.0705	$1.1442	$1.0205		$1.0129
come from Sales.....	.3951	.3951	.3951		1.0000
Net Loss.....	$ .0754	$ .1491	$ .0254		$ .0129

The deductions made by the Master from the actual operating expenses for 1919 are as follows:

Defensive Emergency Service (Record, page 52)	$747.46
Rate Proceeding Expenses (Record, page 52)	15,518.73
The further deductions from operating expenses or credits made by the Court below are as follows:	
Interest on Insurance Participation Certificates (page 112).....	57.58
Interest on Unpaid Taxes (pages 111, 117)	233.71
Total	$16,557.48

The Court reduced the "unaccounted-for gas" from the actual of 11.03 per cent. accepted by the

Master to 10 per cent., reducing the cost of gas production from 71.73 cents to 70.90 cents per thousand cubic feet of gas sold, or by .83 cents per thousand cubic feet of gas sold.

The Court increased the income from sales of all gas from the amount actually received of 99.51 cents per thousand cubic feet of gas sold to $1.00, in order to treat the sales of gas to the City at the statutory rate of 75 cents per thousand on a parity with the sales of gas to private consumers at the rate of $1.00 per thousand, thereby adding an unrealized income of .49 cents per thousand cubic feet of gas sold.

The Court, in its opinion, stated that—

> "In that spirit of caution, the Court may eliminate for the purposes of the case some contentions which might be successfully pressed in a rate case pure and simple" (Record, page 109).
>
> "In arriving at this figure, it will be appreciated that I have stripped the constituent items down to their lowest minimum" (Record, page 112).

The Legislature of New York State, in prescribing a rate of one dollar for gas service in the territory served by the appellee, from and after the year 1910, at the same time that it prescribed a rate of 80 cents for gas service in other metropolitan territory (Chapter 125, Laws of 1906), recognized the wide differences between the necessary costs of operating in the suburban and sparsely settled territory of the complainant and those in other areas in the City of New York in which there is a congestion of population and a concentration of in-

dustries. Nothing has since transpired to remove or reduce the relative differences in cost of operation or to warrant a change in the differential. On the contrary, many factors have contributed to the necessity of increasing the differential. Obviously, if the 80 cent rate is not compensatory and is unconstitutional as to gas service in territory in which the 80 cent rate was originally prescribed, the dollar rate cannot possibly be remunerative and compensatory in the territory served by the complainant.

The briefs in behalf of the appellants make reference to the fact that in other water gas plants such as that of the Consolidated Gas Company, the smallest of which is many times larger than the plant of the complainant, there are not required the use of certain quantities of material and certain operating expenses, per thousand cubic feet of gas made or sold, as in the case of the complainant. But, in the case of a small company with a small plant, there are certain units in the cost of manufacture that are higher, and the legislature recognized that fact when it created a differential between the rate applicable to the complainant's territory and the rate applicable to the Consolidated Gas Company's territory.

Principal Exhibits of the Appellee as to Operations.

It may perhaps be of convenience to have indicated the relatively small number of exhibits which disclose in concise and graphic form the details of the complainant's operations and properties as established by the evidence, and in which exhibits

are shown the details of any items as to which controversy may arise upon the argument:

EXHIBIT 47: Tinted map showing real property owned and used by the complainant (Record, p. 1480; Orig. p. 2389).

EXHIBIT 48: A series of 17 photographs showing the buildings, holders, etc., of the complainant's plant (Record, p. 1480; Orig. p. 2390).

EXHIBIT 58: Sheets showing the rates of pay per hour in all departments of the company, from 1911 to 1920 (Record, p. 1567; Orig. p. 2489).

EXHIBIT 59: Statement showing the unit prices paid for generator and boiler coal and for gas oil, from 1911 to 1920 (Record, p. 1567; Orig. p. 2491).

EXHIBITS 60, 61 AND 62: Comparative statements showing the unit prices paid for materials other than coal and oil, from 1914 to 1920 (Record, pp. 1567, 1568; Orig. pp. 2492-2494).

EXHIBIT 64: Detailed statement of the unit costs of the production and distribution of gas during 1919, prepared by Mr. Teele, a certified public accountant of high standing and wide experience (Record, p. 1569; Orig. p. 2496).

EXHIBIT 65: Detailed statement of the revenues and expenses of the complainant's gas business during 1919; also prepared by Mr. Teele (Record, p. 1573; Orig. p. 2500).

EXHIBIT 66 FOR IDENTIFICATION: Detailed inventory and appraisal of all the complainant's property; received as Colonel Alten S. Miller's testimony and printed in full at pages 559 *et seq.* of the Record.

EXHIBIT 77: Table prepared by George E. Woods, a gas engineer of many years' experience, showing the unit operating costs under the conditions obtaining in the complainant's plant (Record, p. 1596; Orig. p. 2534).

EXHIBIT 96: Detailed schedules showing the cost to the complainant of the property acquired by it in 1904 and still in use, and the cost of property added since that time (less withdrawals) (Record, p. 1605; Orig. p. 2563).

EXHIBITS 112 AND 113: Map and statement showing land purchased by the complainant and the cost thereof (Record, p. 1719; Orig. pp. 2706, 2707).

EXHIBIT 115: Statement comparing the cost of production and distribution, and the complainant's revenues and expenses, during the first five months of 1920 with the same details for the first five months of 1919 (Record, p. 1727; Orig. p. 2722).

Inspection of the list of Exhibits will disclose that all coal and oil vouchers, oil contracts, bills for other materials, payrolls, tax bills, manufacturing records, books of account, and other supporting data, and the like, for 1919 and five months of 1920, were placed in evidence, together with the pertinent regulatory orders of the defendant Public Service Commission.

Cost of Production.

After reviewing the record and hearing argument the Court below disposed of the defendants' (appellants' in this Court) exceptions (Record, pages 110-111, as follows):

> "The Cost of Production.—Some attack has been made in respect of the cost of oil. An examination of the record shows clearly that the oil accounts were carefully kept and checked. Most of the slight errors during the course of a month were corrected and the most generous acceptance of the contentions of the defendants would result in a variance of a few gallons which, translated into money, would be equivalent to a fraction so negligible as to amount to an infinitesimal part of a mill.
>
> The cost of other materials and of labor is attacked not on the basis of evidence adduced but, as it were, on general principles. The suggestion is that certain increased costs are suspicious. Yet there is nothing suspicious in the testimony, and it is a matter of common knowledge that during the year 1919 the cost of materials such as are here concerned, and of labor, rose materially in this and other industries. An examination of the testimony, including the exhibits, leads readily to the conclusion that the Special Master was right in his figures. It was made entirely plain that these costs, in the main, were greater in the first five months of 1920 than in 1919. The point of the inquiry in respect of 1920 was to ascertain whether there was any likelihood that the cost of 1919 had decreased or would decrease and no such hope was realized."

The Master described the scope of the proofs offered by the complainant and by the defendants, and the examination and analysis made of the complainant's summaries of proof by the defendants'

counsel, accountants and engineers (Record, pages 47, 48-49), and he summarized his conclusions as to the unit quantities of material and labor used by the appellee as follows (Record, page 50):

> "The first question to determine is whether the quantities used by the complainant company as they appear from the books and records of the company are correct and set forth a reasonable and necessary use of materials and of labor, or whether there has been a waste of gas-making material and unnecessary use of labor forces and the books do not accurately reflect the quantities actually needed and used. I have analyzed these figures in the light of the defendants' proofs and also of the sworn testimony given by Mr. Woods, an operating engineer of wide experience produced by the complainant company, whose testimony has not been directly attacked or contradicted by any witness. Except for some minor variances when contrasted with the 1919 operating results, such as his estimate of 'unaccounted-for' gas at 10 per cent. (the record for 1919 shows 11.93 per cent.), his slight under-estimate of the required boiler fuel, and the slight difference as to the figures given by him for the gas oil required, it may be said that the results shown in the operating records closely accord with the sworn expert opinion of Mr. Woods, and are confirmed by his judgment as to the results which might reasonably be looked for and secured."

Location of Plant.

The appellee owns and uses a plant for the manufacture and distribution of carbureted water gas, located at Myrtle Avenue and Farrington Street, in the former Village of Flushing, in the Third Ward of the Borough of Queens, New York City (Finding No. 6; Record, page 34). The plant

has been and is "maintained in excellent operating condition" and is "in as high a state of efficiency as if new" (Finding No. 32; Record, p. 41; see, also, testimony of Spear, Record, pages 738-739; Woods, Record, page 435; Miller, Record, page 656; Hine, Record, page 1181).

Without any evidence whatever in the record to support it, the contention is made for the first time by the appellant Wallace (Brief, page 15) that, if the complainant's plant were located on the waterfront, which is one-half mile distant from the present site of the plant, "the fair cost of unloading coal from barge direct to coal pits would not exceed ten cents per ton", and it is, therefore, argued that the cost to the complainant of coal handling from the point of unloading to the coal pile is excessive. This contention was not suggested by any exception to the Master's report or by any assignment of error in this Court. The only evidence on this question in the record negatives this claim. Mr. Woods testified (Record, page 432):

> "The amount of money involved, however, in the transportation would not justify the abandonment of the plant for the purpose of putting it on the water; the amount expended for the purpose of putting it on the waterfront would not justify any changing from the present location of the plant."

The appellants' criticism as to coal-handling was confined to the lack of direct rail connection to its plant. In assignment of error No. 35 (Record, page 133) the appellants asserted that—

> "The cost of handling coal would be very much less if complainant company were to construct sidings from the railroad company to the plant which would result in a saving of at least fifty cents per ton."

The same suggestion is made in the appellants' Thirteenth exception to the Master's findings (Record, page 69).

This subject was referred to upon the cross-examination of the witness Woods (Record, pages 432-433), from which it appeared that the plant is some 200 feet from the railroad tracks and that a railroad siding cannot be installed unless and until the acquisition by the complainant of sufficient intervening land to enable it to avail itself of this facility. As shown by Exhibit 47 (Record, p. 1480; Orig. p. 2389), the complainant's land does not at any point extend to the right of way of the railroad from which it is urged such a siding should be built. Obviously, any saving in the cost of coal effected by the installation of such a siding would be to a substantial extent offset by the additional investment required, which would result in additional carrying charges, increased maintenance expense and more property upon which a fair return would have to be allowed, but for which the appellants make no provision in the calculation of the necessary return.

Generator Fuel and Boiler Fuel.

The Master found (Finding 13, Record, page 37):

> "13. In the manufacture of water-gas under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 37 pounds of anthracite coal of the grade of coal being supplied in recent years, or its fuel equivalent, of which approximately 34 pounds are used in the generators, and approximately three pounds are used

under the boilers. In addition, there is also required to be used under the boilers approximately nineteen pounds of bituminous boiler coal or its equivalent in water-gas tar (one gallon of such tar weighing nine pounds and one pound of tar having a fuel value of about 1.7 pounds of the grade of boiler fuel now and recently supplied). The plant and operating conditions of the complainant company require the use of slightly more boiler fuel per thousand cubic feet of gas made than would be required if it were not under the necessity of compressing a portion of the gas sent out in order to reach the distant community of Douglaston and Douglas Manor, hereinbefore referred to."

The appellant Newton's contention as to the use by the complainant in 1919 of an excessive amount of coal is made only in respect to boiler fuel, for which a deduction is claimed from operating expenses of $5,367.21 or 1.4 cents per thousand made (Brief, page 58). The appellant Wallace, however, contends that the cost of both generator fuel and boiler fuel is too high, because of the method of unloading coal, of the lack of proof by the gas-makers personally as to the quantities used by them, and of an alleged use of an excessive quantity of coal (Brief, pages 13-48).

In so far as the contention of the defendants is based upon their "purely negative attitude" toward all the evidence presented by the complainant, which ostrich-like, shuns not only the complainant's but also the defendants' evidence of the details of operation, it cannot be taken seriously; and we shall discuss it only from the standpoint of any possible merit.

Mr. Woods said that average operations in such a plant would require the use in the generators, per thousand cubic feet of gas made, of 37 pounds of anthracite generator coal, "of which about 34 pounds would be used in the generator and three pounds would be fine screenings which could be used for boiler purposes" (Record, page 410). In 1917 there was used in the generator 37.17 pounds (Ex. 100, Record, p. 1023; Annual Rept. Ex. A-53, Record, p. 1795; Orig. p. 2881); in 1918, 34.69 pounds (Annual Rept. Ex. A-32, Record, p. 1780; Orig. p. 2842); in 1919, 34.59 pounds (Ex. A-29, Record, p. 1776; Orig. p. 2839); during five months of 1920, 36.57 pounds (Ex. 115, Record, p. 1727; Orig. p. 2722).

As to boiler fuel, the Master found that 19 pounds of bituminous boiler coal or its equivalent in water-gas tar was required in addition to 3 pounds of anthracite coal (Finding No. 13, Record, page 37).

Mr. Woods said that at least 22 pounds of boiler coal or its equivalent in tar would be required. In 1919, 16 pounds of coal and 0.7 gallons of tar were used—the total equivalent to 26.71 pounds of coal. In 1918, 16.69 pounds of coal and 0.5 gallons of tar were used—the total equivalent to 24.34 pounds of coal. In 1917, 16.3 pounds of coal and about the same quantity of tar—a total equivalent to about 24 pounds of coal. During five months of 1920, 15.65 pounds of coal were used and 0.6 gallons of tar,—a total equivalent to 24.83 pounds of coal (*Ibid*).

The appellants would limit the allowance for boiler fuel to the average over the years 1913 to 1918, inclusive (Appellant Newton's Brief, page 58; Appellant Wallace's Brief, page 47). How could gas have been produced in 1919 if the gas

makers had been limited to an average of materials used in past years when they required under present conditions a greater quantity? This average, of course, included nothing by way of additional boiler fuel which has been necessary since November, 1919, when service on the Douglaston Extension was opened, for the purpose of pumping at high pressure a portion of the gas sent out in order to reach that distant community (Record, page 745).

Counsel for the appellants confuse the testimony of Mr. Woods and the findings of the Master as to the quantity of boiler fuel ordinarily required, and the quantity actually used, because they overlooked the fact that Woods, in his Exhibit 77 (Record, p. 1596; Orig. p. 2534) specifically calls attention to the fact that over and above the ordinary requirements of coal for boiler fuel there is required *additional* boiler fuel on account of steam used for high pressure transmission in supplying Douglaston extension under order of Public Service Commission for the First District.

The appellants would find an inconsistency between Mr. Woods' testimony in the present case and his testimony in the *Consolidated Gas Company* case where he testified concerning the quantities of material and labor required in the operation of a plant producing an average of ten million cubic feet of gas a day (for this plant he used an average of one million cubic feet of gas per day), and where he testified to 14 pounds of boiler fuel. Mr. Woods explained (Record, pages 429, 430) that the capacity of the plant would have something to do with it, shutting it down (not operating the full twenty-four hours), keeping it warm in the winter time, and the radiation loss would

be greater with that plant than it would be with a larger plant. He further testified that it takes eight more pounds in the production of only a million cubic feet of water gas than it does in the production of ten million cubic feet of water gas (Record, page 431). In the plants of the Consolidated Company there were operated ten-, eleven- and twelve-foot machines, while the complainant used seven-foot six and eight-foot six machines (Record, page 431). As a matter of fact, on the Consolidated System as high as 17 pounds of boiler fuel had been actually used (Record, page 477).

The criticism of the inadequacy of the receipt and disposition of coal (Appellant Wallace's Brief, pages 20-28, 34-38) is dispelled by the quotations from the testimony as set forth in that portion of the brief.

Gas Oil.

The Master found 4.2 gallons of gas oil were necessary in the plant of the complainant in manufacture per thousand cubic feet of gas (Finding No. 11, p. 36):

> "11. In the manufacture of water-gas of the statutory standard of 22 candle power, under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 4.2 gallons of gas oil of the gravity and quality now being supplied to the complainant, and the complainant did, in fact, use on the average 4.19 gallons per thousand cubic feet of gas made, during the year 1919."

But the Master included in the operating expenses for 1919 the use of only 4.19 gallons of gas oil.

In a plant such as that of this complainant, not making gas throughout the year on a twenty-four hour basis, Mr. Woods said not less than 4.2 gallons of oil would be required, on the average, per thousand cubic feet of gas made.

The statistical exhibits show in 1917, this company used 4.43 gallons; in 1918, 4.26 gallons; in 1919, 4.19 gallons; during five months of 1920, 4.38 gallons per thousand cubic feet of gas made.

No contention is made by the appellant Newton in his brief that the allowance was unreasonable. While the Master held 4.2 gallons to be a reasonable quantity, the amount taken by the Master in the cost of production included only 4.19 gallons per thousand cubic feet of gas made. The allowance by the Master of the actual figure which is somewhat less than Woods' deemed reasonable on the average, does not justify the criticism by the appellant Wallace (Appellant Wallace's Brief, page 48). There is no inconsistency, as is sought to be attributed to Mr. Woods, between his testimony in the Consolidated Gas case where he testified to 4.1 gallons, and the testimony in this case to 4.2 gallons, in view of the dissimilarity of operating conditions. Mr. Woods testified that, in order to secure the statutory 22-candle power standard on the distributing system, there would be required the production of gas of from 23 to 26 candle power, in a plant of this kind and for this district, as the fact that the mains are smaller and the distance is greater tends to reduce the candle power on the system and to require a higher candle power at the works in order to maintain the statutory candle power throughout the distributing system (Record, pages 415-416). Mr. Woods also testified that, in shut-

ting down a plant, as would be necessary in the case of the appellee's plant, there would be somewhat less efficiency as compared with a larger plant which was in continuous operation, and that the oil efficiency would also be diminished by a poor quality of coal (Record, page 434).

The Corporation Counsel's brief in behalf of the appellant Wallace, who took no active part in the trial, endeavors to exaggerate the importance of alleged discrepancies as to gas oil in the so-called "daily record of manufacture" kept at the complainant's works, which, however, did not at all enter into the charges in the *cost* of gas oil used which were made in the complainant's books of account and which were in turn summarized by Mr. Teele in his Exhibit 64 (Appellant Wallace's Brief, pages 62-67), and which are, therefore, in no way consequential to the results in the case. The oil vouchers and the New York Produce Exchange certificates of quantities and qualities are all in evidence (Exs. 63 and 87). The company *pays for* what it receives as shown by these certificates, and these quantities are fully confirmed, as we shall show. The Teele exhibits, in so far as they relate to gas oil as an element in the cost of manufacture, present the total amount of money actually paid for gas oil and the total number of gallons actually used, ascertained by taking the inventoried quantity on hand at the beginning of the year, and adding to it the number of gallons received, as shown by the vouchers and New York Produce Exchange certificates, and deducting the quantity measured as on hand at the end of the year. For a complete understanding of the method by which oil is received into the tanks and afterwards accounted for daily, reference is made to the testimony of Mr. Morrison,

Superintendent of the Works, at pages 573 *et seq.* of the Record.

When a boat-load of oil is received, it is pumped into the tanks at the works through a pipe line and the tanks are measured before and after the pumping to determine the quantity of oil received from the barge. This measuring is accomplished by means of a scale on the outside of the tank, and by a plum-bob. The amount of oil used in the course of a day's manufacture is determined by measurement of the tanks and verified by meter measurement at the gas machines (Record, page 574). It is possible, therefore, to determine every day the amount of oil used for the quantity of gas produced, and that is done daily.

The first alleged discrepancy claimed by the defendants was with reference to the daily record of manufacture for January, 1919, introduced in evidence as Defendant's Exhibit "A". It will be observed that the column headed "Oil Used"—which shows a total in red ink of 146,964, indicates the amount, in gallons, for each day of the month. If the figures in this column are added up, the total will appear to be 149,964, as was brought out on the cross-examination of Mr. Morrison (Record, pages 578-579). This would appear to be a clerical error calling for explanation until we observe in what method the total amount of oil used is derived and how the supposed error occurred. In the column immediately to the left of the column marked "Oil Used" is a column marked "Oil on Hand 7 A. M."; the amount of oil used each day is determined by subtracting the amount of oil on hand in the tanks as ascertained by measurement from the amount on hand the previous day at

7 A. M. Thus the amount of oil used on the first day of the month will be found to be the difference between 68,610 gallons and 63,604 gallons, the amount on hand at 7 A. M. on the first and second days respectively. On the 18th an error in subtraction of 1,000 gallons was made by the clerk, and another error of 2,000 on the 22nd, resulting in two misstatements in the "Oil Used" column, amounting to 3,000 gallons. If the column headed "Oil Used" had then been added up correctly and the total, 149,964, carried down to the recapitulation in the lower right-hand column of the sheet, this error would then have found its way into the books. *This was not done, however,*—the total 149,964 not being derived by adding the column of oil used each day, but by taking the stock on hand at the beginning, 68,010 gallons, adding to it the amount bought during the month, 131,618 gallons, producing a total oil to account for during the month of 192,628, and subtracting therefrom the amount on hand on the last day, namely, 52,664 gallons, which produced 146,964 gallons (see computations in the lower right hand corner of the sheet). This amount was then inserted as the total oil used. *The total so inserted is the correct total,* and the clerical errors occurring during the month were thus entirely eliminated by the practice of proving the stock account and did not find their way into the books of account, which contain only the correct totals.

But even if this error of 3,000 gallons had found its way into the final computations, what effect would it have had upon the result for the month? As shown by Defendants' Exhibit "A" (no item of which was in any way challenged except the oil figures now under discussion), the total make of

gas during that month was 32,903,000. An error of 3,000 gallons of oil, therefore, would have amounted to .09 of a gallon per thousand cubic feet. Taking this at the rate of 6.7¢ per gallon (Finding No. 12) would produce six mills per thousand cubic feet as the total effect of the clerical error pointed out by the defendants. But even this error was eliminated at the end of the month, and did not find its way into the books of account.

Instead of reflecting upon the accuracy of the books of account and records of the complainant company, the occurrence of this trivial error and its discovery and elimination before it found its way into the books of account and records of the complainant company, rather emphasizes their accuracy and reliability, for out of the hundreds and thousands of entries upon these twelve sheets for the year 1919, this was *the only clerical error* pointed out by the defendants, after weeks and months of careful checking by their accountants. And, as we have shown, this error was absorbed and completely wiped out at the end of the month by the method used of determining the oil used by means of the inventory of the stock on hand at the beginning and the end of the month.

Another alleged error is upon the sheet for February, 1919 (Defendants' Exhibit "B", Record, page 583). Here it appears that on February 3rd record was made of the receipt of 118,311 gallons which was later stricken out, and the amount 118,639 gallons inserted, a difference of 228 gallons. The subtractions and additions from day to day were correctly computed upon the amount first set down. The total stock account for the month was

correctly worked out after it had been determined what the exact amount of oil received amounted to by means of the certified invoice rendered by the Oil Company and certified to by the inspectors of the Produce Exchange. Gas oil varies in volume considerably according to its temperature, so that the oil measured by the oil company's inspectors at the time it is shipped may be of a different temperature and different volume when it is received at the works, but no allowance is made for this until the bill is received from the Standard Oil Company (Record, pages 601-604).

The next alleged discrepancy pointed out was upon the June sheet, marked Defendants' Exhibit "C", in which it appears at the bottom of the column "Oil Used" that an addition of 500 gallons was made to the total amount shown in that column. This was done "to make up some of the discrepancies that appear in the oil received and the oil that was billed for" (Record, pages 584-585). There was a 500 gallon discrepancy, apparently due to difference in temperature at the time the oil was measured, which appeared in the invoices received from the Oil Company, not necessarily in the same month. The same thing occurred in the month of November, when 2,000 gallons were added to the oil to cover apparent discrepancies in the invoices, and again in December, 1,000 gallons (Record, pages 585-586). So, also, as was brought out on cross examination of this witness, the December figures were changed to show that the amount for which the company was billed and compelled to pay was *less* than the amount its records indicated it had received.

All of these records which have been referred to, perhaps at unnecessary length, prove conclusively, not that the daily records are unreliable, but that they are carefully revised and corrected so as to eliminate not only all clerical errors, but also to take account of the changing volume of the gas oil and to have the daily records exactly correspond to the amount of oil for which the company is billed, and which it is required to pay for.

In addition to the foregoing, there are in evidence all of the oil vouchers for the year 1919 and for 1920, and attached to them, the certificates of the Produce Exchange as to quantities, and also, when necessary, memoranda of credits allowed by the Standard Oil Company for oil not received (Complainant's Exhibit 88, Record, page 617).

The alleged claim that the December records show 193,000 gallons, whereas the capacity of the tanks had been testified to be only 180,000 falls to the ground upon the testimony of Mr. Spear, General Manager of the complainant company (Record, page 617), stating that with the tanks full and the oil line extending from the tanks down to the dock, the capacity would be 193,000 or 194,000 gallons. The working capacity of the tanks up to the inlet pipe is about 180,000 gallons, but sometimes, if the cargo is a large one, the tanks are filled above the inlet pipe.

Thus a discrepancy of 300 or 400 or 500 gallons discovered upon the unloading of the barge would not be considered by the officers of the company until the bill was received (Record, page 637). A

larger discrepancy amounting to, say, several thousand gallons, would be taken up at once with the Standard Oil Company and a credit secured. This was done in January, February and March, 1920, where as will appear from the reports of manufacture offered in evidence by the complainant, credits amounting to some 8,000 gallons were allowed by the Standard Oil Company on account of the barge pulling out from the dock before it had completely unloaded (Record, page 636). The point of all this is that it is not the *daily* record of manufacture with respect to oil and coal and similar materials used in the manufacture of gas, but the inventory at the beginning and end of the month, which determines the quantities used and the quantities which shall be reported to the company and recorded in its permanent books. If the daily record of manufacture does not check with the inventory at the end of the month, the inventory governs and the daily record is corrected to conform therewith (Record, page 683).

We believe that the foregoing will completely dispel any shadow of doubt cast upon these records by the defendants. The total differences pointed out amount to 6,500 gallons, assuming (which is not the fact) that they found their way into the books of account. The total number of gallons of oil used during the year 1919, according to the twelve manufacturing reports in evidence was 1,590,785; of this, 6,500 gallons represents 4/10ths of 1%, a variation so infinitesimal as to be worthy of not a moment's regard. Translated into dollars at the rate of 6.7¢ per gallon, 6,500 gallons would make a difference in the annual expense for oil of $435.50, a mere trifle out of the $107,192.16 expended for gas oil

during that year, according to the books of account (Record, Exhibit 65).

Additional confirmation of the entire correctness of the records of manufacture in their final form is furnished by the testimony of Mr. Arthur W. Teele, one of the country's foremost accountants, who prepared Exhibits 64 and 65 from the complainant's books. With respect to oil, he testified (Record, pages 751-752):

> "I went back to the original invoices and the original entries of the inventory at the beginning of the year."
>
> * * * * *
>
> "The total aggregate of the quantity reported by the daily work reports agrees with the quantities of oil on hand at the beginning of the year plus the oil purchased during the year less the oil on hand at the end of the year."

And again, at Record, page 752, he elaborates the process of his checking as follows:

> "They are reported by the works manufacturer as having been consumed. The works manufacturer reports that he had on hand a certain quantity of oil at the beginning of the year, the vouchers duly approved and endorsed as showing the quantities of oil received during the year were submitted to me and examined by me, and starting with the admitted quantities of oil on hand at the beginning of the year and adding thereto the amount of oil acknowledged by the responsible authorities as having been received during the year, less the quantity of oil which that same authority admits as having on hand at the end of the year, I arrived at a quantity of oil which is to be accounted for, and that quantity of oil reported by the manufacturing department as having been used during the year, and I, there-

fore, have taken it for granted, or I have taken that quantity of oil as being the quantity of oil that has been used."

The appellee could scarcely have a better verification of the accuracy of its accounting method, and even of the substantial accuracy of the works records kept by the operating men, than the fact that these defendants, with a large force of accountants, devoting many weeks to this company's books and records, were able, with the most painstaking and critical scrutiny, to find only a few slight errors in arithmetic affecting only the works sheet for the day upon which it was made, but having absolutely no effect whatsoever upon the final result.

Uncontroverted Proof of the Reasonableness of the Cost of Gas Oil and Coal

The record affords no support for a contention that the prices paid by complainant for gas oil are or have been excessive.

This contention is now advanced in the brief of the Appellant Wallace (pages 48-62), who took no active part in the trial. The brief in behalf of the appellant Attorney-General does not refer to this point. In fact, the defendants called no witness who would testify that *at or about the time* the gas oil requirements of the complainant were contracted for, any dependable producer of gas oil was willing to enter into a *term* contract for the supply of gas oil in the quantity and of the quality required by the complainant, at a price lower than that fixed for the gas oil contracted for, to be supplied to the complainant's plant.

The requirements of the appellee for gas oil are included in the contract made by the Consolidated Gas Company to cover the requirements of itself and its affiliated companies. When the complainant requires a cargo of oil, it arranges direct with the Standard Oil Company of New Jersey for delivery of the same pursuant to the terms of the contract negotiated by Mr. Addicks (Record, pages 202 *et seq.*). Payment therefor is made directly by the complainant to the oil company.

The gas oil contracts for 1919 and 1920 were produced and received in evidence as Exhibits 71, 72, 73 and 74, and the subject of the prices at which oil could be secured was exhaustively covered by the testimony of Mr. Addicks, Vice-President of the Consolidated Gas Company, who has charge of the negotiations of oil contracts (Record, pages 319 *et seq.*), and also in certain respects by Mr. Spear, general manager of the complainant (Record, pages 215-217). There is also in evidence as Exhibit 59 a statement of the prices paid by the complainant for oil for a series of years and also comparative costs of coal and oil from 1914 to 1920, all of which are supported by the original vouchers showing the actual payment made by the company (Exhibit 63; Record, page 219; Exhibit 87, Record, page 676). No testimony or evidence of any kind was offered by the defendants tending in any way to show that oil could have been purchased for a less amount. On the contrary it was testified, and the Master found that the trend of oil prices at the time of the trial was sharply upward and that it would not be possible to secure a new contract at the expiration of the 1920 contract, or any supply of gas oil, at a price less than 10 cents per gallon (Finding No. 12; Record, page 37).

The good faith and the propriety of the oil contracts and the reasonableness of the prices therein contained, were sharply litigated upon the trial of *Consolidated Gas Company* vs. *Newton, et al.*, now before this Court, and the good faith of the Consolidated Gas Company's officers in negotiating the contract and the reasonableness of the prices paid, were attacked from every possible angle. After a thorough review of the testimony upon this subject, Judge Learned Hand, who rendered the final decision in that case on August 4, 1920, found that the prices paid by the Consolidated Gas Company pursuant to its contracts were paid in good faith and were reasonable (*Consolidated Gas Co.* v. *Newton*, 267 Fed. 231). He said (page 246):

> "It is clear beyond peradventure that, based upon New York prices, the charge is utterly baseless that the Company was paying more than the market, so far as there may be said to have been a market."

He added (page 247):

> "The charge of a sinister connection between the Company and the Standard Oil Company of New Jersey appears therefore to be without the slightest evidence, * * * I have no doubt that this [6.8¢ per gallon] was an honest price made in a genuine effort to do the best possible and it is certainly less than could have been got later in that year (1919); it is a most conservative figure for reckoning costs for the future, so far as can now be seen, and I accept it."

For a fuller discussion of this phase of the case, we refer to the Appellee's Brief on the Facts (Docket No. 257, Brief, Point III, pp. 145 *et seq.*).

The New York and Queens Gas Company has greatly benefited by its ability to secure gas oil under the contracts made by the Consolidated Gas Company; indeed, when the Consolidated Gas Company took over the arrangements for the supply of gas oil to the complainant, it succeeded in effecting a large financial saving to the complainant (Record, p. 346).

The purchase of coal, like oil, is made pursuant to contracts negotiated by officers of the Consolidated Gas Company for itself and affiliated companies (testimony of Mr. Addicks, Record, page 328 *et seq.*; testimony of Mr. Gawtry, Record, page 525 *et seq.*), whenever contracts for coal can be obtained. Recently such contracts have been unobtainable on the yearly basis, and purchases have commonly had to be made in the market. The unit prices paid for coal during a period of six years are shown in Exhibit 59, and the correctness of these figures is further verified by the various vouchers supporting the same (Exhibit 63), the coal contract under which coal was purchased during a portion of the period under consideration (Exhibit 80), and the coal vouchers for the first five months of 1920 (Exhibit 86). The Master's findings as to the cost of coal and other fuel (Findings 14, 15 and 16; Record, pages 37-38) are amply supported by this evidence, and there is no evidence by any defendant in any way contradicting the fact of the payment of such prices nor their reasonableness, nor tending in any way to show that coal could have been procured in any quantity whatsoever for any less price. The finding as to the recent cost of anthracite generator coal, $11.50 per gross ton at the works (Finding No. 14)

is supported by the testimony of Mr. Spear given on one of the last days of the trial (Record, page 1462).

Gas-Making Labor.

The Master found (Finding No. 20, Record, page 38) that there is necessary, in the manufacture of water gas, the employment of gas-making labor, and that in 1918, under the prices and the rates of pay then in force, the cost of gas-making labor in the complainant's plant was 4.67 cents, and in 1919, 6.31 cents per thousand cubic feet of gas made, and as of the then present time, the testimony showed that under average operations and the rates of pay and prices then in force, this item cost at least the sum shown for the year 1919.

The finding of the Master and of the Court concerning the amount to be allowed for gas-making labor is not challenged in the appellant Newton's brief. The brief of the appellant Wallace, however, contends that the proof of the employment of labor and the compensation paid to labor is not sufficient (Appellant Wallace's Brief, pages 67-90), and also that there is some inconsistency between Woods' figures to which he testified in the Consolidated case and the figures in this case. The figures in the Consolidated case were based upon a lower wage rate than was paid at the time Mr. Woods testified to in this case, and furthermore, Mr. Woods said (Record, page 442):

"A. * * * For instance, you have a gas maker who makes a million feet a day, in three shifts they would make a million feet for each of these machines, and in a larger plant, where they had larger machines, in a plant capable of handling larger machines that same gas-

maker would make three million, so for the gas-maker himself it would be three times as much as in the large plant where they have these large individual units. You could not afford to put up individual units of that kind in a plant like Flushing, you would have to rebuild the plant entirely in order to handle the proposition.

Q. Four cents more to make gas in a million cubic-foot company than in a ten million company.

Mr. Ransom: I object to that. He is comparing September, 1919, with April, 1920, whereas the proof in the Consolidated case showed two increases in pay after the September figure.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. The gas-manufacturing labor in a plant such as exists there would be infinitely more than in a plant making ten million cubic feet a day."

Works Repairs and Materials.

The actual expenditure by the complainant in 1919 for repair labor was $10,101.99, or 2.66 cents per thousand cubic feet, and for repair material $17,843.55, or 4.69 cents per thousand, a total of $27,945.54, or 7.35 cents per thousand (Exhibit No. 61, Record, p. 1569; Orig. pp. 2496, 2497).

In his computation of the cost of gas made, the Master allowed the actual expenditures by the complainant for 1919 (Finding No. 21, Record, pages 38-39). This allowance is criticized by the appellants (Appellant Newton's Brief, pages 41-49; Appellant Wallace's Brief, pages 90-92). In appellant Newton's brief it is suggested that the allowance of the average for the five years from 1914 to 1918

would result in a deduction from the actual cost of 5.88 cents per thousand (Brief, pages 47-49), whereas in appellant Wallace's brief it is suggested with some leniency that the amount which should be deducted from the actual cost is 3.85 cents, reducing it to 3.05 cents per thousand (Brief, page 92). Thus, the appellant Newton would deduct from the actual cost $19,770.01 (Brief, page 61), but the appellant Wallace would deduct only $12,945.29 (Brief, page 92).

We do not perceive how the unavoidable repairs in a plant can be made upon any theoretical basis of averages. Had the Public Service Commission issued an order to the company to make the repairs, would it have been a tenable answer that the order requires the expenditure of a greater sum than the average spent during a period of ten years? The fact that the complainant's repairs cost during 1919 substantially more than they did, on the average, during the four or five years preceding, is in no way surprising. The appellants have failed to take into account considerations which above all others stand out in this record: The rates of pay for the labor and the prices of the materials used in the maintenance and repair of a gas plant, distributing system, and appurtenant property have advanced sharply and continuously since 1914. In 1919, these elements of cost were in many cases more than 100% greater than they were in 1914, and they were still advancing (Complainant's Exhibits 58, 60, 61; also Spear, Record, pages 1438, 1459-1460). There was also a lessening of the efficiency of labor—more men and more hours were required on an equivalent repair job. It would be strange indeed, and a matter really calling for explanation, if during a period of rising prices the unit cost of repairs remained

stationary. If the same repairs were made on the average in each year, we should expect the cost per unit as well as the total cost to increase with rising price levels; if they did not so increase, the inference to be drawn therefrom would be that the company was neglecting its repairs. The fact that the 1919 cost of repairs was about double that of 1915, if it requires any inference at all, tends to show that the company in 1919 was keeping its plants in at least as good repair as it was in 1915.

Cost of Distribution and Other General Expenses.

The actual cost of distribution claimed by the complainant for the year 1919 was $107,597.82 or 32 cents per thousand cubic feet of gas sold (Complainant's Exhibit 64, Record, p. 1569; Orig. p. 2496), exclusive of renewals and replacements (3 cents per thousand) and taxes and interest thereon (7.07 cents per thousand). The Master allowed approximately 27 cents (Record, page 52), instead of 32 cents as claimed. He eliminated $15,518.73 charged in 1919 to the account of the present rate case, and $747.46 charged for defensive emergency service, or a total of $16,266.19, which, deducted from the actual expenses of $107,597.82, gave $91,331.63 (Record, page 52).

In reviewing the report of the Master, the District Judge further eliminated the item of Interest on Unpaid Taxes, credited the item of Interest on Insurance Participation certificates, reduced the amount of unaccounted for, and raised the income from sales of gas to a rate of $1.00 per thousand for all gas sold (Record, pages 111-112).

Repairs to Mains, Services and Meters.

In the actual cost of distribution there was included the sum of $11,077.65 for repairs to gas mains, services and meters (Exhibit 64, Record, p. 1569; Orig. p. 2496). This item was not varied by the Master or by the Court.

The appellant Newton contends that there should be deducted from the actual cost $4,962.54, or 1.4 cents per thousand cubic feet, for the reason that the actual cost in 1919 exceeded by that much the *average* for the years from 1914 to 1918. Obviously this argument disregards the increase in cost of materials and labor during that period (Exhibits 58, 60 and 61, Record, p. 1567; Orig. pp. 2489, 2492, 2493), and would place the service to the consumers upon a theoretical basis rather than upon the basis of actual conditions as they exist.

Uncollectible Bills.

In Complainant's Exhibit 64 (Record, p. 1569; Orig. p. 2496) there was included the sum of $1,349.02 for uncollectible bills which the Master included in his allowances (Finding No. 28, page 40) and which the Court did not disturb. This item is challenged by the appellants (Appellant Newton's Brief, page 55; Appellant Wallace's Brief, page 97).

In Defendants' Exhibit A-12 (Record, p. 1761; Orig. p. 2811) prepared by defendants' accountant Cohen, entitled "Gas Operating Revenues and Revenue Deductions", 1909-1913, 1914-1919, there is included, for each year, under the title "Operating Revenue Deductions" the item of uncollectible

bills. Defendants' accountant assumed to make various adjustments conformably to the contentions of the defendants, as will be noted by the several items with which he attempts to surcharge the complainant. Nevertheless, he treated uncollectible bills as an "Operating Revenue Deduction" and not as a charge against Profit and Loss.

Uncollectible bills are classified in the category of operating expenses in the Uniform System of Accounts prescribed by the Public Service Commission (Exhibit 49, Record, p. 1481; Orig. p. 2407; Account G-870, p. 1536).

Every recognized accounting procedure for ascertaining net income sanctions the inclusion of bad debts in operating expenses, and the income tax laws invariably provide for it. The deposit which may be exacted in accordance with Section 63 of the New York Transportation Corporations Law does not provide for a sufficient protection to a gas company, as most of the uncollectible bills are due to consumption in excess of deposits collected.

Interest on Consumers' Deposits.

Included in the expenses set forth in Complainant's Exhibit 64 (Record, page 1569; Orig. p. 2496), is an item for interest on consumers' deposits, amounting to $1,621.10. This item was allowed by the Master (Finding No. 28, Record, page 40).

The payment of this interest is a requirement imposed upon the complainant by the New York Transportation Corporations Law, Section 63. These deposits are not advance payments for gas.

The paring of operating costs should not be extended by the Court to payments required by law. If these payments of interest are not proper operating charges, then the Master and the Court should have eliminated from miscellaneous operating revenue the interest received on bank balances and other items of interest (Exhibit 64, Record, p. 1572; Orig. pp. 2498, 2499).

Deductions made by the Master and the Court Below from the Complainant's Actual Operating Costs resulting in the Allowance of an insufficient amount for Operating Expenses.

If any revision of the Distribution and Other General Expenses of the complainant as found by the Court were at all warranted, the revision should be in favor of the complainant, for it should be borne in mind that both the Master and the Court made deductions from the actual expenses of operation, which are justifiable only as a measure of rigorous elimination of items susceptible of real controversy.

Defensive Emergency Service—Rate Proceeding Expenses.

The Master eliminated altogether the defensive emergency service outlay of $747.46, amounting to 0.22 cents per thousand cubic feet of gas sold, and the whole of the item of $15,518.73, amounting to 4.62 cents per thousand cubic feet sold, covering the services of accountants and engineers paid for in 1919 in connection with the present rate case (Record, page 52). These deducted items amounted to substantially 5 cents per thousand cubic feet and resulted in a finding that only 27 cents per thou-

sand cubic feet of gas should be allowed on account of what is known as "cost to distribute", as compared with the 32 cents actually expended in 1919, and the sum of 39.82 cents being expended in May, 1920, and thereafter (Exhibit 90).

The propriety of the inclusion in operating expenses, and of the allowance in a computation of the cost of service for which compensation should be made through adequate rates of (*a*) unavoidable charges on account of the expenses of the suit, and (*b*) highly necessary expenditures on account of defensive emergency service to meet exigencies, has been discussed in principle by counsel for this appellee in their Brief on The Facts in the case of the *Consolidated Gas Company* v. *Newton* (Docket No. 257, Brief, pages 124, 126-129), and we shall not here reiterate the discussion.

Upon final hearing of this case, the Court below approved the findings of the Master which made the deductions to which we have referred, and, in *addition*, the Court further pared the operating expenses and increased the income. The Court credited the expenses with income from investments made by the complainants in insurance participation certificates and deducted from the expenses interest accrued on unpaid taxes—both insignificant items but for the rule or principle. The Court also reduced the "unaccounted for" gas, thereby reducing the cost of gas per thousand cubic feet sold (discussed under Point VI, pp. 76 *et seq.* of this Brief), and increased the rate by which the income from sales of gas to the municipality at the statutory rate of 75 cents per thousand should be calculated.

The appellee has not filed any assignment of error, but brings these deductions to this Court's attention to indicate the attitude of the Court below in resolving really doubtful questions in the favor of the defendants below.

Interest on Unpaid Taxes.

The taxes in question upon which interest was accrued in the expense account of the complainant were actually levied by the taxing authorities of the State. The Attorney-General was not willing at the trial to bind the State not to collect these taxes. Under the circumstances, until the taxes are legally cancelled, the interest on them during the period of contest must be provided for and becomes a proper operating expense.

Income from Insurance Participation

The Court below said (Record, page 112) that

> "Whether or not the amount of income from insurance participation should be charged as an expense [credited against expenses] is a debatable question and for the purpose solely of this decision, I resolve the doubt in favor of the defendants."

It is respectfully submitted that the income from the fire insurance participation certificates should not be credited against the company's expenses for making and distributing gas. These certificates represented an investment made by the complainant in an insurance fund and are no different from any other investment which the complainant might make. If the income is credited to operating expenses, the investment itself should have been added to capital account, but it was not so treated by the Master or by the Court.

Loss Due to Selling Gas to the City of New York at the Statutory Rate of 75 Cents.

The Court below held that, in determining whether the statutory rate of one dollar to private consumers was confiscatory, the loss resulting to the complainant from the sale of gas to the City of New York at the rate prescribed by Chapter 736 of the Laws of 1905, of 75 cents per thousand, should not be considered. This view is contrary to the ruling by Judge Hand in *Consolidated Gas Co.* v. *Newton* (267 Fed. 231), by Judge Hough in *Kings County Lighting Co.* v. *Niron* (268 Fed. Rep. 243), and by Ex-Justice Hughes in *Brooklyn Borough Gas Co.* v. *Public Service Commission* (17 N. Y. State Dept. Repts. 81).

Of the total of 336,241,100 cubic feet of gas sold by the New York and Queens Gas Company during the year 1919, 1,554,000 cubic feet were sold to the City of New York (Exhibit 65, Record, p. 1574; Orig. p. 2502), or less than one-third of one per cent. of the total. The effect of the sale of the gas to the City of New York at the lower statutory rate was to reduce the total income by .49 cents per thousand cubic feet of gas sold.

In the prior suit of the *Consolidated Gas Company* (212 U. S. 19), both the eighty-cent rate for general consumers and the seventy-five cent rate for the municipality were attacked by the company. The Supreme Court (212 U. S. 19, 54) refused to consider separately the seventy-five cent rate or to annul that rate because seventy-five cents would be a confiscatory rate if applied generally. Separately considered, the seventy-five cent rate was confiscatory, but the test of the confisca-

ory effects of the eighty-cent rate was based by he Court upon the combined revenues of all gas old as contrasted with the combined expenses of naking and selling all of the gas sold, and upon he return on all of the property.

The same view was adopted and acted upon by ex-Justice Hughes as referee in the *Brooklyn Borough Gas Company* (17 N. Y. State Dept. Reports, 14), where the gas sold to the City amounted to our per cent. of the company's total sales. The listinguished referee found the eighty-cent rate and ninety-five cent rate both unremunerative, but nevertheless, upheld the seventy-five cent rate for as furnished to the municipality. He tested the ighty cent rate and the ninety-five cent rate by omparing the company's total revenues, including hat from gas sold to the City, with the company's otal expenses, and figured the return on the whole nvestment. While sustaining the complaint as o the rate applicable to private consumers, he dismissed it as to the rate applicable to the municipal ervice, basing his decision upon the authority of *Willcox* vs. *Consolidated Gas Company*, 212 U. S. 9, 54, and *Northern Pacific Railway Company* vs. *North Dakota*, 236 U. S. 585, 601 (17 State Dep. Rep. 114).

II.

The contingency reserve set up on the appellee's books in 1915, 1916 and 1917, is no justification for the complainant to make and distribute gas without adequate compensation for the service, or for the confiscation of the appellee's property.

Certain general phases of this question are discussed by counsel for the appellee in the appellee's brief on the facts in the case of the *Consolidated Gas Co. of New York* vs. *Newton*, Docket No. 257, at pages 461 to 470. Under this point, counsel for the appellee will confine their argument to specific statements made in the appellant's briefs in this case (Appellant Newton's Brief, Point III, pages 33-40).

During three years only the appellee set aside out of the net income or surplus distributable by it after paying the bare operating expenses, and not by way of a charge against operating expenses (See Deft.'s Exs. A-12 and 13 from which it appears that the amounts were not included in "operating revenue deductions") the following sums:

1915	$11,970.52
1916	12,615.51
1917	14,308.81
Total	$38,894.84

which it credited to a reserve account entitled "Contingency" (Defts.' Ex. A-16; Record, page

1761; Orig., page 2815). In 1915 it also credited to this account, and transferred from an account, which in accordance with the Commission's nomenclature, was entitled "Accrued Amortization of Capital", the sum of $62,254.82. At the end of the year 1918 the total credits to the account "Contingency" were, therefore, $101,149.66. No further credits have been made to the account since then either during the year 1919 or 1920 (Defts.' Ex. A-16, Record, page 1761, Orig., page 2815).

It is contended by the appellants (Appellant Newton's Brief, Point III, pages 33-40) that the "respondent has accumulated a *fund* amounting to $101,149.66 as a contingency reserve. The statute should not be declared confiscatory until this fund is exhausted".

There is not a scrap of evidence to show that this reserve is in the form of a "fund". If it were, the fund could be identified. The defendants themselves have proved that no such reserve exists in the form of a "fund". On December 31, 1919, according to the transcript from the balance sheet of the complainant put in evidence by the defendants (Defts.' Ex. A-9), the complainant had on hand $41,637.88 in cash, which was nearly three times as much as it had on hand on the corresponding days in the two prior years, but it also had bills payable amounting to $490,000, and accounts payable amounting to $60,270.64, the largest in its history and several times more than it had on corresponding days in a number of previous years. The complainant was "head over heels" in debt. Of course, the complainant had and has no "fund" available; the credit to the reserve is merely a book

figure and cannot be identified with any particular asset.

Although the resolution adopted by the appellee's Board of Directors on November 16, 1915 (Record, page 719), might justify the inference that the amount of the credit to the reserve should be included in operating expenses, in fact, as appears from defendants' exhibits, no part of the credits to this reserve during 1915, 1916 and 1917, was included in the calculation of operating expenses (Exs. A-12 and A-13, Record, page 1761; Orig., pages 2811, 2812).

The direct credits to the contingency reserve for the years 1915, 1916 and 1917 amounted to $38,891.84, which, added to the balance transferred from the accrued amortization reserve to this reserve, made the total credit $101,119.66. During the year 1919, the Master found, after making various eliminations for the purposes of the rate case only, the deficit below a reasonable return on the minimum actual investment of the appellee was $141,544.94 (Record, page 44), which included an operating loss of $9,074.70. According to the defendants' exhibits and the testimony of their accountant Cohen (Record, pages 1155-1156), the appellee's net profits for 1918 were $33,350.56, which obviously was at least $100,000 less than a fair return even upon the minimum actual investment as found by the Master. Thus, even if the principle contended for by the appellants had any merit, the reserve was wiped out before the advent of the test period adopted by the Court and no vestige was left by the end of 1919 when the appellee was facing operating costs higher than those of 1919.

An altogether unjustifiable and strained construction is sought by the appellants to be placed upon the resolution authorizing the creation of the Contingency reserve (Record, page 719). This reserve was "for the purpose of providing for contingencies or casualties such as those caused by fire, flood, earthquake, insurrection or riot, *or any other hazards*". Counsel for the appellant Newton contends that the phrase "any other hazards" should be given such an interpretation as would make it embrace the operating losses which have been suffered by this appellee due to no other cause than the arbitrary limitation of the rate to be charged for the service and the resulting disparity between the income from such a rate and the operating costs and a fair return upon the property. Under the rule of *ejusdem generis*, the phrase "any other hazards" may not be interpreted to describe things not of the same kind as the things specifically enumerated. Can it be said, therefore, that the arbitrary rate limitation is a contingency or casualty like fire, flood, earthquake, insurrection or riot? Is the imposition of an arbitrary rate limitation upon a public utility a "hazard" in any sense? If the doctrine contended for by the appellants were sustained, it would mean that, instead of the business of a public utility being affected with a *public interest*, it would be subjected to a *confiscation hazard*.

It is contended by the appellants (Appellant Newton's Brief, page 39) that the appellee should "not thus enrich itself at the expense of *the* consumers. The only burden which the consumers must bear is to see to it that they pay a rate which will give the company a fair return", etc. In view

of the powers vested in the Public Service Commission since 1907 to regulate the rates of the complainant, and the reserve power in the legislature to do likewise, and the statutory prohibition against the charging of anything more than a reasonable rate, it can not be assumed that the complainant has earned, during the years when it set aside, out of distributable net income, the credits to the contingency reserve, anything more than a reasonable return, or that it has charged unreasonable rates (*Municipal Gas Co. vs. Public Service Commission*, 225 N. Y. 89, 98). If it be the obligation of the consumers, as the appellant Newton contends, to pay a rate which would give the company a fair return, what justification is there for the *present-day* consumers refusing to pay a rate which will yield a fair return simply because *past-day* consumers *may* have paid a rate which yielded more than a fair return? The books of account of the complainant placed in evidence, and the tabulations made therefrom by the defendants, show that the complainant, the New York and Queens Gas Company, has never paid any dividend. Even if the former-day consumers had discharged their obligation to pay a fair rate, certainly that does not entitle present-day consumers to enjoy free or inadequately compensated service.

It is suggested by the appellants that the "contingent fund" (which, as a *fund*, does not exist) could have been capitalized by the issuance of securities by the complainant and the proceeds utilized to make up the operating losses. Of course, the proceeds would have been too soon exhausted to stem the tide of accumulating losses, but the suggestion is so amateurish a financial scheme as

to be humorous. A company whose property, including this "contingent fund", has been confiscated by the effect of a rate limitation, which has been unable to pay its fixed charges except by borrowing them, and which does not earn enough to pay the interest on its outstanding bonds, is, under the financial scheme of the appellants, to issue new securities and create additional fixed charges which it cannot meet under the statutory rate. Unless the complainant is expected to practice the grossest fraud upon those who would be enticed into making the investment in such new securities, who would put up the money for such an investment?

Finally, the appellants' brief (Appellant Newton's brief, pages 39-40) says that, without assuming "that the fair value of the company's property and the rate of return it was entitled to enjoy was correctly set forth by the learned judge below, it will be readily seen that this fund [contingency reserve] was large enough to carry the company over a period of several years without changing the statutory rate and without any income for making and selling gas for such period". By what arithmetical process such a result is obtained is, we respectfully submit, beyond intelligent comprehension.

III.

The Period Proper for a Test.

The same point is made in this case as in the *Consolidated Gas Company* case (No. 257 submitted herewith) that the period during which the rate was shown to have been confiscatory was insufficient, and that the appellee, over a period of years, derived a fair return upon its investment on the average.

The District Judge found himself "in full accord" with the views of Judge Cardozo of the New York Court of Appeals, and of Judges Hand and Hough in the cases submitted herewith (Record, page 110) and sustained the Master.

As to the general point involved here, a full discussion will be found under Point VII of Appellee's General Brief in the *Consolidated Gas Company* case, No. 257, and repetition here is unnecessary.

We may add, however, that the proofs showed, and the Special Master found, the complete operating costs of the Appellee for the years 1918, showed, and the Special Master found, the complete operating costs of the Appellee for the years 1918, 1919, and for the first five months of the year 1920. Surely confiscation for more than two full years is sufficient to call for judicial relief.

Rather elaborate tables have been made up by the appellants showing their claims as to the returns earned by the complainant during the years 1906 to 1919, upon the basis of which they contend

that the appellee has earned on the average a fair return (*e. g.*, Appellant Newton's Brief, Point I, pages 8-13; Point VII, pages 88-98).

Discussion as to the average return over a number of years is academic, since the current operating expenses of the complainant and the compensation to be made to the investors for the use of the complainant's property, cannot be defrayed by any calculation of averages for a prior period. The complainant cannot be deemed to have earned more than a fair return during the prior years in view of the power vested in the Public Service Commission, and also reserved in the Legislature, and of the statutory prohibition against charging more than a reasonable rate (*Municipal Gas Co. v. Public Service Commission*, 225 N. Y. 89, 98).

Moreover, the process used by the appellants to compute the value of the property for the years 1906 to 1919 was soundly rejected by the Master and by the Court below. It is stated in Appellant Newton's brief, page 10, that "Mr. Hine showed that the *fair value* of respondent's property does not exceed the following average amounts for these years." In point of fact, Mr. Hine did not attempt to testify to the "fair value" of the complainant's property and none of his tables are labelled "fair value". His Ex. 109 (which is referred to in Appellant Wallace's brief, page 10, as the basis of their claims as to the fair value of the complainant's property) bears the caption "Average Fixed Capital, Including Engineering, 1904-1919 (Exclusive of Land)" (Record, page 1877, Original, page 3059). Hine testified merely to calculations of original cost and "accrued theoretical depreciation", and the latter he deducted from the original cost. The absurd

values for the years 1906 to 1918 are arrived at by the appellants in the same manner as was their value for 1919, that is, by the deduction of enormous sums for "accrued theoretical depreciation", by either starvation or no allowances for working capital, organization, interest, taxes, engineering, etc., and by a failure to make any allowance whatever for franchises or going value; or, in other words, by a process of decimation. We do not believe that a basis such as this will commend itself to this Court any more than it has to the various judges in the Second Circuit before whom similar contentions were urged by the defendant public authorities in the various rate cases.

IV.

No error was committed by the Special Master and District Court in admitting the books of account.

The methods of proof as to operating expenses, pursued in the present case, were thus described by the Special Master:

> "The books of account, vouchers, manufacturing records, works reports, and the like, of the complainant company were placed at the disposal of the defendants, more than six months in advance of the beginning of the trial before me, along with copies of the principal statistical exhibits which the complainant proposed to offer in evidence upon the trial, and were carefully and thoroughly examined and analyzed by counsel for the defendants, their accountants and engineers" (Record, p. 48).

> "For the purpose of proving the quantity and cost of materials, labor and the like, as well as the revenues and expenses of its gas business, the complainant company presented to me, as previously to the accountants and experts of the defendants, all of its invoices and vouchers for coal, oil and other materials and supplies purchased, together with its various payrolls, works reports, records of manufacture, office reports, and the like, together with its books of account in which the items of expenditure and revenue shown by these underlying records had been entered. All of this data covered the year 1919 and the first five months of the year 1920. To the invoices for coal, oil and other materials, were attached the certificates evidencing the receipt of the quantities indicated, and to the oil invoices were also attached the certificates of the New York Produce Exchange inspectors attesting the quantity and quality of the oil delivered. The

public accountants employed by the complainant had checked these vouchers and records to the books and certified to the accuracy of both. There was also submitted to me the sworn testimony of qualified witnesses as to the actual cost of oil, coal and other materials from 1906 down to the present time, including the years 1919 and 1920, and the sworn testimony of experienced operating engineers as to the quantities of coal, oil and other materials, and of the labor, actually required for the manufacture of gas and the wages necessarily paid to labor during this period, including 1919 and the first five months of 1920.

"The defendants also offered in evidence data showing the operating results, the unit quantities of materials used, the unit costs thereof, and other information as to the revenues and expenses of the complainant company during the years from 1906 to 1920. Various of the underlying records of 1918 and prior years were also produced in Court at the instance of the defendants, and various of the entries in the books of the complainant and its predecessor company were placed in evidence by the defendants" (Record, p. 47).

The brief of the Attorney-General (page 106) contains a specification of error in the admission of the books of account on the ground that "the books were incorrectly kept and that the underlying data on which the books were based were incorrect and that there existed errors in the underlying data which had found their way into the books". The point is not argued and the particular errors in the underlying data claimed to have found their way into the books of account are not specified. It would seem that the Attorney-General places no great reliance upon this assignment of error. As both the Master and the District Court have found that the books were correctly kept and correctly reflect the trans-

actions of the company, it seems perhaps unnecessary to speculate as to what "inaccuracies" might be deemed referred to by the Attorney-General's innuendo.

The brief of the Corporation Counsel of the City of New York submitted on behalf of the appellant Wallace, makes some point of the admission of the books of account (page 182), but he may find excuse for the inaccuracies of his statements as to the books, in the fact that the Corporation Counsel took no part in the trial before the Special Master, the defendant District Attorney being represented by other outside counsel who took little or no part in the proceedings. He was not represented by the Corporation Counsel until after the appeal had been taken to this Court.

Thus on page 187 the point is made that the books are not books of original entry and that not one witness was called to prove the underlying data on which the entries in the books rest. Had the writer of this brief read the record with sufficient care he would have found that the correctness of the entries in the books were proved: (1) by the Vice-President, who is in general charge of the system and has been for many years (page 180); (2) by the Secretary of the company, who is in direct charge of all the books of account (page 262 *et seq.*), and who testified that there is but one set of books (page 267), and that they are correctly kept (page 268); (3) by the bookkeeper, who since May 18, 1918, has made all entries in the general books of account (page 287); (4) by the introduction of all the vouchers underlying the books of account for 1919 (page 271) and for 1920 (page 616); (5) by the Superintendent of

the works (page 569), who is on the job twenty-four hours a day (page 571), and who produced in court all of the daily records of manufacture for both years (page 576), and who was cross-examined at great length upon the operations at the works and the method of recording the transaction of the manufacturing department (pages 576-609, inclusive); and also by the witness Teele, an expert accountant of high standing (page 220 *et seq.*), who testified to a complete and thorough examination of the books of account and all of the underlying data from which he made tabulations showing the results of the company's operations. The attitude of the defendants upon the trial is illustrated by the remark of the Master on page 619, provoked by the continual objection to all testimony of any kind relating to the transactions of the company:

> "The Master: When I take the pay rolls you object because there should be some man to swear to it, and when we have a man to swear to it, you say I should take the pay rolls."

Not only were the records of manufacture underlying the books of account produced in court but as many of them as were desired were received in evidence on behalf of the defendants (defendants' exhibits C to H, record, page 1729 *et seq.*).

It would seem that the only further proof in substantiation of the books of account that might have been offered would have been to bring the gas plant into court and to have it operated in the presence of the Master.

The District Judge who reviewed the findings of the Master found sound ground for resting his approval of the admission of the books of account

(Record, page 110) upon the opinions of Judge Hand in the *Consolidated Gas Company* case (No. 257) and of Judge Hough in the *Kings County Lighting Company* case (No. 295, submitted contemporaneously herewith). In the Appellee's Brief on the Facts in the *Consolidated Gas Company* case argued contemporaneously herewith, the admissibility of the books of account of the Consolidated Gas Company is fully dealt with (see Points IV and V thereof; pages 155 to 238), and we respectfully refer to that discussion.

V.

The appellants' claim of a deficiency in candle power is without merit and is not supported by the evidence.

The answer of the defendant, Public Service Commission contains a separate defense (page 16), alleging that the complainant has "persistently, continuously, knowingly and wilfully failed to abide by and comply with the foregoing provisions of Chapter 125 of the Laws of 1906, in that it has persistently, continuously, knowingly and wilfully failed during the years of 1918 to date and prior thereto, to furnish gas having an illuminating power of not less than twenty-two sperm candles", etc.; as a consequence of which the complainant does not come into a court of equity with clean hands, and should be dismissed.

Under Point X, p. 289 *et seq.* of the Appellee's Brief upon the Facts, in *Newton* v. *Consolidated Gas Company*, No. 257, submitted simultaneously herewith, we have discussed at length the merits of such a plea in an equity action involving rates for gas. It is not necessary to repeat at length in this brief what has been there said. It is sufficient to point out that in not one of the many gas cases recently tried in the City of New York in the Federal Courts, nor in any case in any court of last resort in the country, has it been held that a public utility corporation must suffer the unlimited confiscation of its property through inadequate rates, because it may have at isolated intervals in the past occasionally fallen slightly below

the standard quality fixed by law for the commodity furnished by it.

But in this case the defendants failed even more dismally than they failed in the *Consolidated Gas Company* case in their efforts to prove the failure on the part of the appellee to conform to the statutory standard of candle power. The statement of the complainant's expert, Mr. Woods, that the making of 23½ candle power gas at the works would ensure on the average 22 candle power on the district (page 456) was not disputed, nor was it disputed that the company habitually made gas of 23½ or greater candle power at its works. Indeed the statistics of the company offered in evidence by the defendants themselves amply proved that fact.

The test sheets showing candle power tests made by employes of the City of New York for a period of four years were tabulated and placed in evidence (page 1796), and show substantial compliance by the complainant with the requirement of the statute. During the year 1919 the period for which complete returns were in evidence, and the period used by the Special Master as the basis of his findings, there were but two months when the average for the month showed below 22, and on one occasion the deficiency was .14 of a candle power (page 1833) and on the other .4 of a candle power (Record, page 1841).

The number of "violations", that is, the number of times when the City tester in his judgment concluded that the candle power of the gas he was then examining was slightly less than 22, is immaterial. A large part of the so-called violations referred to by the defendants represent only slight fluctuations of a few hundredths of a candle power below 22.

At such times as the candle power appears to have gone substantially below 22, the record is ample in explanation in the fact that the mains of the company are for many miles exposed in salt meadows to the action of cold weather and to the action of severe winter weather encountered during the period in question.

Not only are the mains of the company exposed for a number of miles upon the salt meadows of Long Island (page 623), but there are also many points in the district in which, owing to change of grade of railroads in the streets under the jurisdiction of defendant Public Service Commission, the mains are continuously exposed to the effect of cold air, and there is even such an exposed main within 100 feet of the testing station of the city, so that the gas tested may frequently come from a main which has been directly exposed to the effect of the most severe winter weather (page 624).

The effect of cold upon the candle power of gas was admitted by the city tester, who also admitted that candle power once lost from the gas through the effect of cold is never recovered (page 1151).

The reading of the cross-examination of the city's tester discloses the utterly unreliable method of test used by the city, which falls far short of compliance with the standard fixed by the law. Not only are there considerable variations due to the personal equation, making necessary the taking of ten readings of candle power in order to secure a fair average and to attempt to eliminate the imperfections of the candle and other inaccuracies of the method used (page 1139), but after the so-called "observed candle power" has been ascertained

elaborate mathematical calculations must be carried out in order to obtain a figure called "corrected candle power" (pages 1140-1141).

The city tester appears to be entirely satisfied with one test per day if he succeeds in obtaining a reading showing the corrected candle power below 22; but where his test shows candle power substantially in excess of 22 he frequently makes two and even three tests in the hope of securing a result which he may report as a violation. If this hope is realized and he finds one test well above 22 and another below it, the average of the two or three tests made is reported as candle power for that day (pages 1143-1147 inclusive). But even with the unfair and unreliable method employed by the city testers, the defendants were unable to prove any substantial or continued violations of the statute; and the proof does not show "persistent, continuous, knowing and wilful" failure of the company, as set up in the answer of the defendant Public Service Commission (page 16).

On the contrary the reports of the City tester of the candle power of appellee's gas show that during 1919, the year prior to the trial, the average candle power was 22.59, and during the first five months of 1920 was 22.72 (pages 1833 *et seq.*). And even over a period of more than four years, when severest winter weather was encountered, the total average candle power found by the City was 22.12. The appellants disproved their contentions by their own evidence, and apparently place no reliance upon their assignment of error relating thereto.

VI.

There is no evidence justifying a lower percentage of unaccounted-for gas than the conservative figure of 10% found by the District Court.

In order to indicate the fallacious nature of the claims made by the Attorney-General in his brief on the subject of unaccounted-for gas (pages 52, 53 and 54), it will be necessary to describe in some detail what unaccounted for gas is and how it is ascertained.

A gas company like the present appellee knows from day to day and for a period of months and years, exactly how much gas is made and sent out from its stations; this is ascertained through its large recording meters at the manufacturing plants. It likewise knows, through the reports of its meter readers of the readings of consumers' meters, how much gas is delivered to its consumers for which it may charge the statutory rate. It also knows by like means how much gas it uses in its own works, offices and shops. The sum of the gas recorded in the consumers' meters and the cubic feet of gas used by the company constitutes gas accounted for; this amount is always less than the amount of gas manufactured and sent out, and the difference is unaccounted-for gas.

This difference is due, as testified by the appellee's expert, Mr. Woods, a gas engineer of many years of experience (page 406 *et seq.*), to slow consumers' meters, condensation and leaks in the mains and services, differences in temperature at

which the gas is registered at the consumers' meters, and is a greater percentage of the gas made in a suburban territory built up like the territory of the present appellee as compared with a more congested metropolitan territory (page 407). Thus it was testified that a leakage or loss of gas through these various causes, amounting to 10% of the amount made and sent out, would be a very reasonable amount of unaccounted-for gas for a company like the appellee. Indeed he said upon cross-examination (page 410) that anything from 9 to 12 or 13% would be a fair operating condition.

The appellants do not dispute that some amount of unaccounted-for gas is to be encountered in all gas companies, but undertake by a fallacious table to state unaccounted-for gas, not in percentages, but in terms of cents per thousand cubic feet, a thing which we shall demonstrate is meaningless.

Inasmuch as there are less cubic feet sold than are actually made, the cost per thousand cubic feet *sold* will always be greater than the cost per thousand cubic feet *manufactured*. This may be seen by reference to complainant's exhibit 64 (pages 1569 and 1570). The total quantity of gas made, as appears on page 1570, was 380,086,000 cubic feet. The total operating cost was $241,176.84, resulting in a figure of 63.45 cents per thousand cubic feet made. Of this quantity 1,933,300 cubic feet were used by the appellee and 336,241,400 cubic feet were sold to its consumers, as disclosed by the reading of consumers' meters. The difference between the sum of the latter two figures and the first figure given above (after giving

consideration to a small variation in the gas on hand in the storage holders) is 41,915,300 cubic feet, which represents the gas lost or unaccounted for, and is 11.03% of the total quantity made.

Stating it in another way, it may be said that it was necessary in the year 1919 to manufacture 380,086,000 cubic feet of gas in order to deliver to paying consumers 336,241,400 cubic feet; using this last amount as a divisor of the operating expenses shows a cost per thousand cubic feet *sold* of 71.73 cents (page 1571). The difference between this figure and 63.45 cents, the cost per thousand made, is 8.28 cents per thousand. It is not correct, however, to say that unaccounted-for gas cost 8.28 cents per thousand cubic feet, for in this figure also is found the gas used by the company.

Nor does a comparison of this figure, derived by subtracting the cost per thousand cubic feet sold from the cost per thousand made, in other years, offer any basis of comparison, for with the varying operating cost due to changing price levels from year to year the quantity of unaccounted for gas is not disclosed by the difference in price between the cost per thousand sold and the cost per thousand made. It may be illustrated by a glance at defendants' exhibit A13, referred to in the brief of the Attorney-General. This table was prepared by a witness for the defendant Public Service Commission, who said he had compiled it from the company's books and from the reports of the company to the Public Service Commission made annually in accordance with the requirements of law (page 1164). The cross-examination, however, dis-

closes that it is largely a computation made by the witness. A comparison of the various figures from 1909 to 1919, comparing the total production expense in cents per thousand cubic feet with the gas unaccounted-for in the line immediately above it, would show that there is no relationship whatever to be deduced from the figures.

A low quantity of unaccounted-for gas in a year when prices were high would show a comparatively high cost per thousand, while a very large amount of unaccounted-for gas in a year when prices were comparatively low would show a low cost per thousand. This is illustrated by the following table in which we have set up opposite the table printed on page 53 of the appellants' brief, the actual percentage of unaccounted-for appearing in each of the years for which the so called cost of unaccounted-for is stated:

	Difference between cost per M cu. ft. made and sold.	Actual percentage.
1909	5.67	15.23%
1910	6.62	18.88%
1911	6.03	17.50%
1912	6.25	18.49%
1913	6.79	18.13%
1914	5.97	15.13%
1915	6.32	16.37%
1916	4.40	10.74%
1917	4.11	7.78%
1918	5.27	8.07%
1919	8.27	11.02%

From the foregoing we see that while the apparent cost of unaccounted for gas did not fluctuate materially throughout the period, the actual percentage of unaccounted varies greatly, and while

comparatively low in 1919, nevertheless results in a comparatively high cost per thousand because of the higher price level and consequent increase in operating costs of that year.

In view of the foregoing percentages of unaccounted for, taken from the same sources as defendants' exhibit A13, what becomes of the appellants' claim that unaccounted for gas should be stated as an average over a period of years, a theory which they succeeded in inducing Judge Hand in the *Consolidated Gas Company* case to adopt? The average unaccounted for for the ten years stated amounts to about 14%. It appears as a generally diminishing percentage down to 1918, in which a winter of extraordinary severity was encountered. In 1919 and 1920 the Douglaston extension, comprising more than six miles of transmission mains, constructed pursuant to the mandate of the defendant Public Service Commission, was in operation, through which gas at high pressure is transmitted to the sparsely settled community of Douglaston. Under the conditions there existing as well as under the severe winter weather conditions in that year, the percentage of unaccounted gas necessarily increased (pages 491-494, etc.).

In view of these facts the Master was fully justified in accepting as he did the actual figure of 11.03% unaccounted for gas for the year 1919 as typical of the cost of that period, for unaccounted for gas is a *fact* and not a *theory* and should be taken into consideration in connection with all the circumstances influencing the cost of gas at a given time; and what it may have been under other con-

ditions of coal, oil, weather, etc., in previous years, or what it may have averaged over a period of varying conditions, can have no bearing upon present unaccounted for gas.

In like manner the court is well within the margin of safety when, in order to take all the doubtful questions against the company, he accepts the amount of 10% testified to by the witness Woods as constituting a very reasonable amount of unaccounted for gas for a company such as the appellee. We have already pointed out that no one disputed the testimony of this witness nor attempted to show that the amount of unaccounted for gas either was not the percentage of 11.03 shown by the record or was an excessive percentage. All that is sought by the appellants is to whittle away the legitimate operating expenses proven by the appellee by an ingenious but fallacious attempt to translate unaccounted for gas into cents per thousand cubic feet. This as we have shown presents no reliable basis for comparison.

It is significant in this connection to note that the appellants, while they contended for an average of a long period of years in the *Consolidated Gas Company* case, carefully refrain here from calling attention to the *percentage* of unaccounted for gas prior to the years 1918 and 1917, the only two years in the table printed above where the unaccounted for fell below 10%. If their contentions in the *Consolidated Gas Company* case are correct, the unaccounted for to be taken in this case should not be less than 14%. Indeed, in a company similarly situated Judge Hough accepted 15% as reasonable (see his opinion in *Kings County Lighting Co.* v. *Newton*, No. 295, submitted herewith).

VII.

The Proper Rate of Return.

As in the *Consolidated Gas Company* case, the Master found eight per cent. per annum to be a reasonable and proper rate of return upon the property used in the appellee's business (Record, page 44). This finding is based upon the same proof that was submitted in the *Consolidated* case (pages 880 to 910), and as it is fully covered in the Appellee's General Brief in that case (Docket No. 257, General Brief for Appellee, Point Sixth, page 23); further discussion need not be undertaken here.

VIII.

The Appellee should be allowed a fair return on the present value of all its used and useful property; the minimum value of tangible property, found by the District Court, is far less than any sum justified by the law or the evidence.

Under Point XIII, p. 344, of the Appellee's Brief on the Facts and Incidental Questions of Law, submitted contemporaneously herewith in *Consolidated Gas Company* v. *Newton*, we have set forth at length our reasons for believing that, as the State Court of New York has held (*Municipal Gas Co.* v. *Pub. Serv. Comm.*, 113 Misc. 751), following the decisions of this Court, a gas corporation is constitutionally entitled to have its fair return computed upon the *present value of* its property at the time the rate complained of is being tested, and not by the original cost of such property. For a full discussion of the decided cases, we beg to refer here to pages 350 *et seq.* of that brief.

In the present case, as we have seen, the appellee *did prove the full present value of its property, upon undisputed evidence* (Findings Nos. 36, 40 and 41; Record, pages 42, 43).

In addition to proving the *present value of* its property, as of the time of trial, the appellee also proved:

(1) The cost to reproduce the property by applying to the *present inventory of* property the unit prices prevailing as of January 1, 1914; and

(2) In rebuttal of the defendants' claims, the appellee's actual investment in its gas properties.

This Court thus has before it all possible pertinent facts to reach and state an accurate, adequate and comprehensive figure, for the value of the appellee's property as of the time of trial. The appellee contends for a return based on "*present* value", and not on the original cost of the property.

In any event, however, and under any possible theory, the figure used by the District Court for the purpose described by him (i. e., what the defendants admit was the original cost of tangible property admittedly used and useful), was and is far too low.

As already pointed out, the District Court found the actual cost of the tangible property to be $1,130,497.08 (page 115), as to which there is no controversy. This figure is composed of the item of $280,108, representing the amount agreed by both parties to represent the actual cost of property at present in use and acquired prior to August 1, 1904; and $850,389.08, representing the cost of net additions to the property since August 1, 1904 (Master's opinion, page 54). At page 1178 of the record the defendants' witness, Hine, testified that he took the figure in complainant's exhibit 96 showing the amount expended prior to 1904 and still in use, and on page 1180 he testified that as to the additions to the property since 1904 he did not make any change in the figures of the complainant's witness. These figures being accepted by both sides as representing actual costs, there can

be no question that the sum of these figures found by the court as the minimum value of the complainant's property is correct. Were it merely necessary to justify the court's figures we believe this would be sufficient. But the appellee believes both the Master and the court erred largely on the side of prudence, and in order to demonstrate the ultra-conservative nature of the findings as to value made by each of them, we desire here to point out briefly the evidence as to present value offered by the appellee upon the trial.

Present Reproduction Cost.

The appellee submitted through Col. Miller, an expert gas manufacturer and builder of gas apparatus, a detailed inventory of all the plants and property of the appellee, together with the cost to reproduce the same as of January 1, 1920. This appraisal is printed in full at page 560 of the record. To the total of $2,907,062 there shown should be added according to this witness at least $525,000 to $550,000, representing going value (record, page 814). As to the items of this appraisal representing the tangible property, the appellants offered no testimony tending in any respect to contradict either the correctness of the inventory itself or the correctness of the unit prices applied thereto by the witness. The appellants had this inventory well in advance of the trial and for many weeks prior thereto and during the trial were engaged through their experts in examining the property and checking the inventory; their failure to challenge any item therein, as well as the use thereof by the witness Hine in computing his own tables, establishes their correctness.

As to the portion of the appraisal dealing with development expenses, cost of financing, working capital, and other so-called "intangibles", there was dispute upon the trial as to the amount, but all parties agreed that some allowance for these various items as well as for going value should be made.

The Special Master, while not basing his rate base upon reproduction cost or present value, made a finding (page 42) of the total present reproduction cost, including land of $2,100,774.90. To this sum he found various structural overheads, going value, etc., should be added in order to make a complete valuation (page 43).

The items used by the Master to get the foregoing total not having been the subject of any dispute upon the trial, it is plain that if present value is to be considered in computing the rate base, the present value of the appellee's property useful in its gas business will be far in excess of the sum found by the Master or by the court, even after the deduction of the enormous sums for accrued depreciation claimed by the appellants.

Land.

The appellee owns and uses in its manufacturing plant a tract of land containing 107,402 square feet (exhibit 112, page 1719). The appellee offered upon the trial the testimony of a highly qualified real estate expert residing in that portion of the city, who testified that on January 1, 1920, that land was worth $55,000 and would bring that sum in the market (record, page 297 *et seq.*).

The Master included as the cost of land in his finding, both as to reproduction cost and as to

actual cost, the sum of $15,153.90, made up of the figure of $19,423 for land acquired prior to August 1, 1904, and $20,630.90, the actual cost of additions to real estate since 1904 (page 56). These figures, therefore, constitute part of the figures of tangible property above referred to and are undisputed.

Exhibit 112 (page 1718), prepared at the request of the Special Master upon the basis of the average unit cost of land acquired since August 1, 1904, establishes the figure of $47,867.93 as an estimated present cost of land upon the basis of the cost of that portion of it acquired since 1904 (see record, page 1384).

The authorities requiring ascertainment and use of present value in a case such as this require the use of the present value of land even more unhesitatingly than in the case of plant and machinery. This was clearly held in the *Minnesota rate* cases (230 U. S. 351). The valuation of Mr. Halleran of $55,000 was not impeached in any respect upon the trial but on the contrary was strengthened upon cross-examination and should have been accepted by the Master as the present value of real estate, particularly when making a finding as he did of the present cost to reproduce.

The Method Used by the Master of Ascertaining Value.

As we have already pointed out, the actual cost to the company of the various items of tangible property in use on December 31, 1919, was the subject of agreement between the parties. This property, as shown in exhibit 96 (page 1605) is subdivided into two classes, (1) property on hand

August 1, 1904, which both parties agree cost and was reasonably worth as of that date $280,108, and (2) cost of additions to the property since, shown in detail on exhibit 96 and on the books of record of the company and agreed by both parties as being $850,389.08, making the total of $1,130,497.08 accepted by the court as the minimum value of the tangible property.

In addition to the foregoing items of tangible property, the appellee asked the Master to find in accordance with the evidence of the books as summarized in exhibit 96 (page 1606), $320,350 for preliminary organization and other undistributable structural costs, $500,000 for franchises and rights, and at least $500,000 for going value (record, page 814). The Master allowed as covering all of the last three items enumerated the sum of $390,380.86, which he reached as follows (page 55):

> "At the time of the merger of the Newtown and Flushing Gas Company into the New York and Queens Gas Company, the total property and assets of the former (exclusive of working capital) were carried on the books of the former at $694,678.00. Since that time, plant and equipment so acquired by the complainant on August 1, 1904, has been retired, at a book cost totalling $24,189.14. The tangible property acquired on August 1, 1904, and still in service, is agreed to have cost before August 1, 1904, and to have been worth on that date, the sum of $280,108 exclusive of franchises and rights and 'going value' and the undistributed structural items under consideration. The deduction of these two items from the book total $694,678.00 leaves only $390,380.86 as representing the book cost to the Newtown and Flushing Gas Company of the franchises and rights, the 'going value' and the undistributable structural items hereinbefore mentioned.

There is sufficient evidence to warrant my conclusion upon the present record that the item of 'franchises, good will, etc.', on the books of the complainant and its predecessors, covered, among other things, preliminary and development expenses and the various other items which Mr. Miller puts in at a total of $320,350, and also the cost of 'franchises and rights', which Mr. Miller puts in at $500,000; and I think it will be fair for me to say, for the purposes of the present case, that for all of these items just referred to, the New York and Queens Gas Company actually paid no more than their book cost to the Newtown and Flushing Gas Company and its predecessors, viz: $330,380.86, and that these elements had cost the Newtown and Flushing Gas Company and its predecessors, and were worth, on August 1, 1904, at least that sum."

The foregoing finding of the Master as to undistributable structural costs, going value and the like, is based upon the defendants' exhibit Y, page 760, showing the balance sheet of the Newtown and Flushing Gas Company, the predecessor of the appellee, just before the acquisition of its property by the appellee. This exhibit was offered by the defendants and is based upon books of account placed in evidence by the defendants. The appellants are, therefore, in no position to dispute the correctness of the figures of property shown upon the books placed in evidence by themselves. Indeed the appellants did not dispute upon the trial, nor do they dispute here, that in an enterprise of this kind actual costs are incurred for such items as organization expense, interest during construction, etc., grouped together here under the title of undistributable structural costs; nor that some allowance should be made for going value. The only real controversy upon the trial, as to valuation,

was as to the amount to be allowed for these items and for working capital, and on the subject of depreciation, which is dealt with in another section of this brief.

That the finding of the Master was very conservative may be seen by a glance at this balance sheet, the largest single item of which is for "franchises, good will, etc." It is significant, however, that no *gas plant* is shown but only real estate, mains, meters and other accessories. It is apparent, therefore, that the gas plant, which it was conceded has existed at this site since 1859, must be found in the item "franchises, good will, etc." of $469,435.61.

The statement in the brief of the appellant Attorney General (page 89), that the "appellants successfully convinced the court that this finding of the Master was erroneous", is without foundation. In his original opinion the court declined to pass upon the question of valuation at all (Record, page 113), saying that any expression of opinion going beyond the requirements of the case would be mere dictum and would amount to a little more than an individual opinion.

Upon the earnest request of the complainant, however, the court upon settlement of the final decree recognized the force in the contention that he should find that the company owned property of some value. The court, therefore, took the actual cost of tangible property concerning which there was no dispute (page 115). The court said:

> "This figure, of course, does not include various other controverted items referred to in the master's report."

Far from finding the Special Master to have committed an error in his finding on value, the District Court confirmed the Master's finding as far as he thought it necessary to do so, refusing to enter into a determination of the controverted items.

The absurd values set forth in the appellants' brief are arrived at (1) by the deduction of enormous sums for theoretical accrued depreciation (dealt with in another portion of this brief) and (2) by starvation allowances for working capital, organization, interest and taxes, etc., and a failure to make any allowance whatsoever for franchises or going value, although the testimony was undisputed on both sides that allowances for such items should be made, and the complainant offered evidence placing going value at $500,000 or more which was not controverted by any witness for the defendants.

Furthermore the error of $33,444 in the tables of the witness Hine, who is responsible for the valuations, cannot be so lightly brushed aside as is sought to be done by the appellants in their brief (page 93). This error occurred in the exhibit which is the basis for all the subsequent calculations of the witness (record, page 1332). It is carried forward into exhibits A106, A107 and numerous other exhibits depending upon the table in which the error was made (page 1333). No attempt was ever made by the witness to correct his inaccurate computations, an inaccuracy which, together with the rest of his cross-examination, thoroughly discredited the witness upon the trial, and because of these and because of the unintelligible method of making up this table, they were entirely disregarded by the Master in arriving at his finding.

The Appellee's Actual Investment in the Property.

On August 1, 1904, as found by the tables prepared and introduced by the defendants (defendants' exhibit Y) the appellee actually paid for the properties including franchises, rights and the value which attaches to a going concern, $1,250,000 in face value of its stock and bonds. Opening entries were made in its books reflecting these properties and that payment.

From and after August 1, 1904, the books correctly and fully showed the cost of all additions to appellee's property. No item of such additions has been challenged by the appellants; they proved these items and stand on them.

If then the property acquired in 1904 was fairly worth in money what was paid for it, the books correctly show the present investment of the Company in its property.

We believe that upon all the evidence, the property acquired in 1904 had cost and was then worth what was then paid for it in the par or face value of the securities turned over and that such securities were then worth at least their par or face value. This is confirmed by the testimony of Mr. Miller for the appellee and Mr. Hine for the appellants, by indications as to market quotations, by the known fact as to prices prior to 1904, and by the weight and presumption attaching to the action of the corporate trustees and by all the surrounding circumstances.

The Necessary Investment Per Thousand Cubic Feet Sold.

A still further check is provided by the testimony of the appellee's witness Miller, a gas engineer of nation-wide repute and of great experience and attainments. He testified (page 943) that the reasonable and necessary investment per thousand cubic feet of annual sales for plant and distributing systems like that of the appellee Company would be between $5.50 and $6. This was not disputed by the defendants except that one of their witnesses questioned the possibility of stating investment cost in terms per thousand cubic feet of annual sales. This witness, however, was not a gas manufacturer and has had no experience in investment matters. The Master found that $5 per thousand cubic feet of gas sold fairly represents the actual and necessary investment in the property used and needed for the manufacture and transmission and distribution of gas, and that such investment may for the purposes of this case be taken to be at least that sum (finding 35, page 41).

This figure of $5 applied to the annual sales of $336,000,000 for 1918, produces $1,680,000 as the necessary investment, a figure closely approximating the figure of $1,655,877.94 taken by the Master for the rate base in finding 34 (page 41).

The figure finds further confirmation in the action of the defendant Public Service Commission, in 1913, in valuing the Brooklyn Borough Gas Company, a company comparable to the appellee here in that it makes water gas only, at $4.85 per thousand cubic feet of annual sales (4 P. S. C.

First Dist. N. Y. 328), and this value was obtained after deducting a large amount of accrued theoretical depreciation. The company's investment was actually over $5 per thousand. Similar valuations were made in the cases of the Kings County Lighting Company and the Queens Borough Gas and Electric Company. It is obvious that these valuations relating to property erected or installed prior to 1911 are far below what such property would have cost per unit in the period of high prices prevailing in 1919 and 1920 and at the present time. Surely Colonel Miller's figure of $5.50 to $6 is a very reasonable estimate of present day prices and the figure of $5 taken by the Master is a very conservative estimate.

This matter of a standard or usual investment per thousand cubic feet of gas sales was discussed fully under Point XIV, pages 366-368 of the Appellee's Brief on the Facts, in the *Consolidated Gas Company* case (Docket No. 257), to which we here refer.

Working Capital.

The appellant, Attorney-General, in his brief, page 74, rather vaguely combines working capital, which is tangible capital, with undistributable structural items or overhead, and asserts the combination should be allowed at some indefinite figure less than $100,000. The Master adopted $135,000 as the proper allowance for working capital in the amount upon which the company was entitled to earn a return (page 56). The defendants appear to derive some comfort from the fact that the Master's report respecting this item was not affirmed by the District Court (brief, page 75). Like consolation is also afforded to the appellee on the ground that neither was the Master's report

in this respect reversed or overruled by the District Court; the fact is that the District Court did not pass upon the question of working capital, deeming it unnecessary to do so for the purposes of this case. His sole finding upon property was the undisputed figure of the actual cost of the tangible property.

Working capital may be defined as "the total floating or mobile capital required in addition to the fixed capital". It is found in the form of cash requirements, or in the form of material and supplies. Money has to be put into things which are not reflected in the fixed capital account and a reservoir of cash has to be kept on hand to handle current transactions promptly and economically (Record, page 566). Colonel Miller, an expert gas manufacturer and an appraiser of gas properties, estimated the complainant's working capital requirements at $165,000, made up as follows (Record, page 567):

Materials and supplies.....	$60,000
Cash	50,000
Accounts Receivable	35,000
Gas furnished but not yet billed.	20,000
	$165,000

The defendants claim that no more than $70,000 working capital for the year 1919 should be allowed (Defendants' Exhibit A112, page 1880; Testimony of Maltbie, Record, pages 1214 *et seq.*; cross-examination, pages 1261 *et seq.*, inclusive).

The Master concluded from all the evidence that $135,000 was a reasonable amount to be allowed for working capital and included the same in the total sum upon which the complainant is entitled to

earn a fair return (Finding No. 33; Master's Opinion, pages 41, 55-56).

The appellee believes that it is entitled to the allowance of the full amount of $165,000 as testified to by Colonel Miller, who said upon cross-examination that in his opinion it was a very important amount for the company to have on hand if it was to operate economically and pay its bills promptly, taking advantage of cash discount (Record, page 856). When asked if 15 cents a thousand cubic feet of annual sales would not be sufficient, he said: "No living company could operate on that." Even the witness for the defendants, Maltbie, who used every means known to pare down the amount of working capital, was compelled to admit that a small company, such as the complainant, requires a larger working capital per thousand cubic feet than the Consolidated Gas Company (Record, page 1267). The Special Master in the Consolidated case allowed 20 cents per thousand cubic feet of annual sales. Colonel Miller's figure in this case amounts to 50 cents per thousand.

The methods by which the witness Maltbie arrives at his ridiculously low figure for working capital, in so far as those methods are comprehensible at all, are disclosed by him in his cross-examination. It is apparent from the reading of that cross-examination that he failed to take into account the very important element of gas furnished to consumers but not yet billed, an element which all witnesses agree exists in the case of all gas companies. His method is further faulty in that it fails to take account of accounts receivable, the witness claiming that they should be balanced by accounts payable, a fallacious doctrine leading to the most absurd conclusions.

Moreover, the witness did not adhere to the figures which he pretended to have used both for materials and supplies and for cash, making them vary without apparent reason from the actual book figures furnished him, and making use of a so-called "rounding off" process to arrive at a figure satisfactory to himself. For example, in making the computation for 1906, the witness used the figure of $10,000 for materials and supplies, when the defendants' own exhibit A10 showed an amount of over $23,000 (Record, page 1761). For the year 1919 the witness reported $25,000 for materials and supplies, whereas complainant's record showed $60,000. The witness used $15,000 for cash where the complainant's record showed $50,000 (Record, page 1272). Instances might be multiplied from the cross-examination of this witness showing the arbitrary and unreasonable paring down to which he resorted in order to reduce the amount of working capital of the complainant company.

Moreover this very witness Maltbie, while a member of the Public Service Commission for the First District, allowed as working capital, in decisions filed by him, sums far in excess of the amounts allowed in this case. The details of these decisions and the allowances made by him for the working capital of gas companies in this territory, will also be found in his cross examination in the present record. See, also, discussion of working capital, under Point XI of the Appellee's Brief on the Facts, in *Consolidated Gas Company* v. *Newton* (Case No. 257), argued contemporaneously herewith. The witness' attitude upon the witness stand in attempting to support his ridiculously low estimate was obviously not tempered by the same sense of fairness and freedom from bias,

which may be assumed to have actuated him while he was a member of the Public Service Commission.

It must further be remembered in considering this subject of working capital, that the conditions reflected at the end of the year 1919 were very different from those of earlier years in this century, with respect to the quantity of cash or the quantity of materials and supplies which the company must have on hand. As to materials, conditions are adverse, especially as to the principal items of coal and oil. The price of each of these has more than doubled so that a given amount of money allowed for the items of coal and oil on hand represents only half as much material as in former years. The same is true of cash on hand of which a far greater quantity must be kept available in order to perform the same amount of useful service as formerly. Furthermore this company has been suffering for years from this inadequate and confiscatory rate and the lack of necessary funds with which to operate, and indeed has had to borrow money, not only for the payment of its bond interest but for the payment of its current operating expenses. It has been continuously upon an inadequate cash basis. The figures in the company's balance sheet showing cash on hand, therefore, cannot be taken as a proper indication of an adequate amount for the economical conduct of its business.

It is submitted that Colonel Miller's estimate of $165,000 is under all the circumstances a very fair and conservative estimate, and that under no conceivable possibility could the court have confirmed any figure lower than the extremely low figure arrived at by the Master as allowable for this item.

IX.

The claim that the cost of the Douglaston Extension should not be included in the "rate base" is without merit.

The contention is made by the appellants that the investment which the State Commission required this appellee to make in extending its mains to the remote community of Douglaston should not have been included by the Master in the sum found by him as the value of the appellee's property.

The history of that litigation will be found stated at length in *New York and Queens Gas Company* v. *McCall*, 245 U. S. 345, where this Court affirmed the order of the State authorities requiring this extension.

The validity and propriety of this Order of the Commission was fairly open to controversy. It was set aside, in first instance, by the Appellate Division of the State Supreme Court (171 App. Div. 580), reinstated by the Court of Appeals, and finally affirmed by this Court, which has recently, in the *Ben Avon Borough* case (253 U. S. 287, 295) left some doubt whether it still adheres to its ruling in *New York and Queens Gas Company* v. *McCall*. Surely this appellee was within its rights in seeking a judicial review of a Commission Order of such doubtful validity. In particular it is not blameable for failure to comply with an Order of the State Commission during the time that Order had been annulled by the State Court.

After the decision of this Court the great War brought the necessity of the conservation of labor

and materials. In accordance with the recommendation of the Federal authorities charged with seeing to it that construction not absolutely essential was deferred during the War, the defendant Public Service Commission granted the company additional time within which to comply with the Order of the Commission (Order in Case No. 1856; Record, page 1597). Before the trial of this case, however, the work had been completed, at an expense of $145,735.71 (record, page 745), and the investment now constitutes a part of the property used by the company in its business.

The fact that this extension was not completed until the latter part of the year 1919 does not prevent its being a part of the property used and useful when the case was tried and decided, in 1919 and 1920.

It is difficult to see why the company should be denied any return upon it, especially in view of the large investment the company was required to make in it, and the complete lack of any substantial earnings therefrom. Gas is supplied to this section only through high pressure mains, and actually costs several dollars per thousand cubic feet sold in that territory.

In our view of the case the inclusion or omission of this investment in the rate base could not affect the result, but there was no error in its inclusion, and the claims of the appellants have neither merit nor sincerity.

X.

The Special Master and the District Court were correct in refusing to make any deductions for so-called "depreciation", from the appellee's actual investment in gas property.

Under Point XV, p. 369 *et seq.* of the Appellee's Brief on the Facts, in *Consolidated Gas Company v. Norton* (Docket No. 257), we have dealt fully with the subject of "depreciation", and have, we think, demonstrated the soundness of the numerous rulings of State and Federal Courts, in these and other cases, which have refused to make deduction for "accrued theoretical depreciation".

Without developing anew herein the argument or citations of authority, we beg to refer to that brief. That case and the case at bar present similar records, so far as concerns the testimony on this particular subject.

The Special Master, in his Opinion in the present case, summarized the testimony and discussed the subject with great clarity (Record, page 57 *et seq.*).

Upon the present trial it was developed very clearly from the defendants' witnesses that the adoption of their theories would add at least three cents per thousand to the required rate per thousand cubic feet (see Testimony of Hine; Record, page 1885 *et seq.*).

The cross-examination of the defendants' witness in this case will be found a complete revelation of the anomalies and absurdities of the "accrued de-

preciation" theory and the methods of conjecture, speculation, and utter error, on which it is based.

The Special Master found as a fact, from uncontradicted testimony, that (Finding No. 32):

> "The plant, machinery and equipment used in the gas business of the complainant company have been and are maintained in excellent operating condition; proper repairs, renewals and replacements have been made as and when needed, and the same are now in as high a state of efficiency as if new."

The uncontradicted testimony of Colonel Miller (Record, page 656), confirmed as to the condition and efficiency of the property by the only "engineer" placed on the stand by the defendants (Mr. Hine) (Record, page 1181), was that an expenditure of $6,144.07 for repairs, renewals and replacements would put the plant, structures, machinery and equipment in a condition substantially as good as when they were erected or installed. Colonel Miller's tabulation, printed in the record at page 658 *et seq.*, gives the detailed estimates for such work in full. Concerning this the Master said (Opinion, page 60):

> "This sum, however, does not, in my opinion, measure any impairment in the present value of the property used and useful in the gas business. It represents merely an unmatured obligation to *maintain* the property in efficient operating condition *out of future earnings*, the expert witnesses of both the complainant and the defendants agree *that it was and is maintained in efficient and first class condition*. I, therefore, have not deducted this or any other sum representing so-called accrued depreciation from the amount found by me to represent the investment of the complainant in its gas property upon which it is entitled to have its rate such as to yield a reasonable return."

XI.

The final decree entered by the District Court should be affirmed, with costs.

November 14, 1921.

SHEARMAN & STERLING,
Solicitors for the Appellee.

JOHN A. GARVER,
WILLIAM L. RANSOM,
CHARLES A. VILAS,
JACOB H. GOETZ,
of Counsel.

FILED
JAN 6 1922
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 296.

CHARLES D. NEWTON, AS ATTORNEY-GENERAL OF THE STATE OF NEW YORK, AND ALFRED M. BARRETT, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT,

Appellants,

against

NEW YORK AND QUEENS GAS COMPANY,

Appellee.

SUBJECT-INDEX OF APPELLEE'S BRIEFS, WITH CROSS-REFERENCES TO APPELLANTS' POINTS.

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CROSS-REFERENCES TO POINTS OF BRIEF OF CORPORATION COUNSEL OF THE CITY OF NEW YORK FOR DANA WALLACE AS DISTRICT ATTORNEY OF QUEENS COUNTY*

Points of Appellant's Brief		Reply Page Appellee's Brief
I.	**The Sufficiency of the Proofs of Manufacturing Cost.**	
	REPLIED TO: Appellee's Brief; Point I; pages	12–57
	See, also Appellee's Brief; Point IV; pages	67–71
	See, also, Appellee's Brief on the Facts in *Consolidated Gas Company v. Newton* (No 257); Points II and IV.	
II.	**The Earnings of the Appellee Prior to the End of the Year 1917.**	
	That the Earnings in These Prior Years Were Immaterial to the Question Before the Court, see Appellee's Brief; Point III; pages	64–66

*For the convenience of the Court, we have indicated, in connection with each of the Points contained in the respective briefs of the Appellants, the pages of the Appellee's Brief at which such Point of the Appellants is replied to. The Appellee's Brief in this case was prepared and filed for its argument as originally assigned, contemporaneously with the argument in *Consolidated Gas Company v. Newton, et al.* (Docket No. 257), heard in this Court on November 18, 1921, involving substantially the same parties defendant, in which the same counsel appeared for the respective sides of the litigation. For that reason, contentions by the appellants which are common to both cases were dealt with primarily in the briefs in behalf of the *Consolidated Gas Company* in No. 257 and suitable references to those briefs were made in the Appellee's Brief in the instant case and are incorporated in these indices. At certain points in these indices, cross-references have also been made directly to the Exhibits and testimony in the present case. We have also, on page 8, *post*, set forth a Subject-Index of the Appellee's Brief.

Points of Appellant's Brief		Reply Page Appellee's Brief
	To the Same Effect, see, also, the Appellee's General Brief in *Consolidated Gas Co. v. Newton*, Point Seventh, pages 31-46; Appellee's Brief on The Facts, in the Same Case, Point I, pages 24-27.	
	The Appellants' Tables of Conjectured Earnings During Period Prior to 1917, Are Based on Misrepresentations as to Value of Property, Giving Less Than Half of Actual Value, and Upon Erroneous Computations as to Operating Results (*e. g.*, Double Deduction of Miscellaneous Revenue), as on Page 61 of Brief of Appellant Newton.....	65-66
	The Appellee Has Paid no Dividends; Since 1918, It Has Had to Borrow Its Bond Interest and even a Part of Its Necessary Outlays for Labor, Coal and Oil (Record, page 44).....	62
	See, also, Appellee's Brief; Point II; pages.....	58-63
	III. The Sufficiency of the Test Period Used In This Case by the Master and District Court (1918, 1919, and Five Months of 1920).	
	REPLIED TO: Appellee's Brief; Point III; pages.....	64-66
	See, also, Principally, Appellee's General Brief in *Consolidated Gas Co. v. Newton;* Point Seventh; pages 31-46.	

Points of Appellant's Brief		Reply Page Appellee's Brief
	See, also, Appellee's Brief on the Facts in *Consolidated Gas Co. v. Newton;* Point I, pages 24-27; Point VIII, pages 267-271; Point IX, pages 272-288.	
	IV. The "Fair Value" of the Appellee's Property—The Appellee's Investment Therein.	
	REPLIED TO: Appellee's Brief; Points VIII and IX; pages	83–100
	The District Court Did Not Find $1,130,497.08 to Be the Proper "Rate Base" of the Appellee for the Year 1919, as Stated on Page 9 of Appellant Newton's Brief; See Record, Pages 118 and 115, and Appellee's Brief, Pages.....	8–11
	See, also, Appellee's Brief; pages.....	8–11
	See, also, Appellee's Brief on the Facts in *Consolidated Gas Co. v. Newton;* Point XIII; pages 344-353.	
	V. The Alleged Erroneous Refusal of the Master and District Court to Deduct "Accrued Theoretical Depreciation."	
	REPLIED TO: Appellee's Brief; Point X; pages	101–102
	See, Principally, Appellee's Brief on the Facts in *Consolidated Gas Co. v. Newton;* Point XV, pages 369-460; Point XVI, pages 461-470.	
	See, as to the Fund for "Contingencies," Appellee's Brief; Point II; pages....	58–63

Points of Appellant's Brief — Reply Page Appellee's Brief

VI. The Conduct of the Trial Before the Special Master.

REPLIED TO: Appellee's Brief; pages.. 8-18

See, also, Appellee's General Brief in *Consolidated Gas Co. v. Newton;* Point IV; pages 14-24

See, also, Appellee's Brief on the Facts in *Consolidated Gas Co. v. Newton;* Point I, pages 17-29; Point II, pages 31-144; Point IV, pages 155-219.

VII. The Admissibility in Evidence of the Books of Account.

REPLIED TO: Appellee's Brief; Point IV; pages 67-71

See, also, for comprehensive reply, Appellee's Brief on the Facts in *Consolidated Gas Co. v. Newton;* Point IV; pages 155-219.

See, also, for a detailed discussion showing the compliance of these books with the Uniform System of Accounts prescribed by the Public Service Commission, *ibid.*, Point V, pages 220-238.

See, also, Appellee's Brief; pages.....8-56

CROSS-REFERENCES TO POINTS OF BRIEF OF APPELLANT NEWTON AS ATTORNEY-GENERAL*

Points of Appellant's Brief — Reply Page Appellee's Brief

I. The Earnings of the Appellee Prior to the End of the Year 1917.

See above as to Point II of Brief of Corporation counsel.

II. The Sufficiency of the Test Period Used In This Case by the Master and District Court (1918, 1919, and Five Months of 1920).

See above as to Point III of Brief of Corporation Counsel.

III. The Claim of a Fund for "Contingencies."

REPLIED TO: Appellee's Brief; Point II; pages 58–63

*For the convenience of the Court, we have indicated, in connection with each of the Points contained in the respective briefs of the Appellants, the pages of the Appellee's Brief at which such Point of the Appellants is replied to. The Appellee's Brief in this case was prepared and filed for its argument as originally assigned, contemporaneously with the argument in *Consolidated Gas Company v. Newton, et al.* (Docket No. 257), heard in this Court on November 18, 1921, involving substantially the same parties defendant, in which the same counsel appeared for the respective parties to the litigation. For that reason, contentions by the appellants which are common to both cases were dealt with primarily in the briefs in behalf of the *Consolidated Gas Company* in No. 257 and suitable references to those briefs were made in the Appellee's Brief in the instant case and are incorporated in these indices. At certain points in these indices, cross-references have also been made directly to the Exhibits and testimony in the present case. We have also on page 8, *post*, set forth a Subject-Index of the Appellee's Brief.

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IV. The Earnings of the Appellee in 1918, 1919, and During Five Months of 1920.

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VI. The Working Capital Required for the Appellee's Gas Business and the Undistributed Structural Costs as Elements in Valuation.

	See, as to working capital, Appellee's Brief; pages	94–98
	See, also, as to working capital, Appellee's Brief on the Facts in *Consolidated Gas Co. v. Newton*; Point XI; pages 305-316.	
	See, as to undistributed structural costs, Appellee's Brief, pages	86, 88–91

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VII. The "Fair Value" of the Appellee's Property—The Appellee's Investment Therein.

See above as to Point IV of Brief of Corporation Counsel.

VIII. The Conduct of the Trial Before the Special Master.

See above as to Point VI of Brief of Corporation Counsel.

IX. The Rate of Return.

REPLIED TO: Appellee's Brief; Point VII; page 82

See, principally, Appellee's General Brief in *Consolidated Gas Co. v. Newton;* Point VI; pages 27-31.

See, also, Appellee's Brief on the Facts in *Consolidated Gas Co. v. Newton*, page 277.

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EXHIBIT 48: A series of 17 photographs showing the buildings, holders, etc., of the complainant's plant (Record, p. 1480; Orig. p. 2390).

EXHIBIT 58: Sheets showing the rates of pay per hour in all departments of the company, from 1911 to 1920 (Record, p. 1567; Orig. p. 2489).

EXHIBIT 59: Statement showing the unit prices paid for generator and boiler coal and for gas oil, from 1911 to 1920 (Record, p. 1567; Orig. p. 2491).

EXHIBITS 60, 61 AND 62: Comparative statements showing the unit prices paid for materials other than coal and oil, from 1914 to 1920 (Record, pp. 1567, 1568; Orig. pp. 2492-2494).

EXHIBIT 64: Detailed statement of the unit costs of the production and distribution of gas during 1919, prepared by Mr. Teele, a certified public accountant of high standing and wide experience (Record, p. 1569; Orig. p. 2496).

EXHIBIT 65: Detailed statement of the revenues and expenses of the complainant's gas business during 1919; also prepared by Mr. Teele (Record, p. 1573; Orig. p. 2500).

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nel Alten S. Miller's testimony and printed in full at pages 559 *et seq.* of the Record.

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EXHIBIT 96: Detailed schedules showing the cost to the complainant of the property acquired by it in 1904 and still in use, and the cost of property added since that time (less withdrawals) (Record, p. 1605; Orig. p. 2563).

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NEWTON, ATTORNEY GENERAL OF THE STATE OF NEW YORK, ET AL. *v.* NEW YORK & QUEENS GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 296. Argued January 6, 1922.—Decided March 6, 1922.

Approving the conclusion of the master and the District Court that a gas rate fixed under Laws New York, 1906, c. 125, had become confiscatory.

269 Fed. 277, affirmed.

APPEAL from a decree enjoining enforcement of a statutory gas rate as confiscatory. See also the cases, *ante*, 165, and *post*, 180.

Mr. Wilber W. Chambers, with whom *Mr. Charles D. Newton,* Attorney General of the State of New York, and *Mr. Clarence R. Cummings* were on the brief, for Newton, Attorney General.

Mr. M. Maldwin Fertig, with whom *Mr. John P. O'Brien* and *Mr. James A. Donnelly* were on the brief, for Wallace, District Attorney.

Mr. William L. Ransom, with whom *Mr. John A. Garver, Mr. Charles A. Vilas* and *Mr. Jacob H. Goetz* were on the briefs, for appellee.

Mr. Justice McReynolds delivered the opinion of the court.

This appeal brings up for review a final decree entered November 19, 1920, which adjudged that in so far as c. 125, Laws of New York of 1906, prohibited appellee from charging and receiving more than $1.00 per thousand cubic feet for gas delivered and sold in the Third Ward, Borough of Queens, New York City, it was and had been confiscatory since January 1, 1919. 269 Fed. 277.

After taking a great mass of evidence the Master reported that the actual cost to appellee of manufacturing and distributing gas exceeded $1.00 per thousand cubic feet and that the challenged act was confiscatory. With this conclusion the trial court agreed and entered an appropriate decree. We find no sufficient ground for disapproving the action so taken, and it is accordingly

Affirmed.